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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

YULISSA MEDINA, on behalf of herself and "aggrieved" employees pursuant to Labor Code section 2698, et seq.,

Plaintiff,

vs.

24 HOUR FITNESS USA, LLC., a California limited liability company; and DOES 1-10, inclusive.

Defendants.

Case No. 24CV089740

Assigned to Hon. Mark Fickes, Dept. 518

PLAINTIFFS' UNOPPOSED APPLICATION FOR APPROVAL OF ATTORNEYS' FEES AND COSTS, CLAIMS ADMINISTRATION FEES, AND CLASS REPRESENTATIVES' SERVICE PAYMENTS

DATE: July 23, 2026
TIME: 2:30 p.m.
DEPT.: 518

Reservation ID: 238179068951

Action Filed: August 30, 2024

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PLEASE TAKE NOTICE THAT on July 23, 2026 at 2:30 p.m., or as soon thereafter as the matter may be heard, in Department 518 of the above-entitled Court, located at 24405 Amador Street, Hayward, CA 94544, Plaintiffs Yulissa Medina, Bruno Cruz, Desiree Cumpian, and Evelyn Pasquel-Herrera will and hereby do move unopposed for an Order (1) awarding Class Counsel attorneys' fees in the total amount of $1,008,565.80, (2) awarding Class Counsel litigation costs in the total amount of $14,788.06, (3) approving service awards in the amount of $20,000 each to Plaintiffs and Class Representatives Yulissa Medina, Bruno Cruz, Desiree Cumpian, and Evelyn Pasquel-Herrera, and (4) approving claims administration fees of $67,500. This application is made pursuant to California Rules of Court, Rule 3.769, which requires court approval of the settlement of class actions. This application is unopposed by Defendant 24 Hour Fitness USA, LLC, and will be based on the Memorandum of Points and Authorities, the Settlement Agreement and Release of Claims, the Declarations of Evan S. Gaines, John G. Yslas, Roman Shkodnik, and Kaylie O'Connor of CPT Group Inc., Yulissa Medina, Desiree Cumpian, and Evelyn Pasquel-Herrera, such evidence or oral argument as may be presented at the hearing, and on the complete records and file herein.[1]

DATED: June 29, 2026

Respectfully submitted,

GAINES LAW CORPORATION

By: ______________________________

EVAN S. GAINES
Attorneys for Plaintiff Yulissa Medina and Class Counsel

[1] This application should not be construed as a waiver of any attorney-client or attorney work-product privileges.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

California Cases

Federal Cases

TABLE OF AUTHORITIES
(Continued)

California Statutes

Rules

Treatises

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Yulissa Medina, Bruno Cruz, Desiree Cumpian, and Evelyn Pasquel-Herrera ("Plaintiffs") move for an award of attorneys' fees and costs, approval of the claims administrator's fees, as well as approval of service payments to the Class Representatives in connection with the final approval of the class and representative action settlement of this action. As discussed in the Motion for Final Approval submitted concurrently herewith, Plaintiffs and Defendant 24 Hour Fitness USA, LLC ("Defendant") (the "Parties") have settled the Class Members' Released Class Claims and Released PAGA Claims as defined in the Parties' Settlement Agreement and Release of Claims ("Settlement") for a settlement package worth $3,026,000.

The Parties have agreed upon a settlement class defined as: "all hourly or non-exempt current and former employees employed by Defendant in the State of California during the Class Period." The Class Period is defined as May 2, 2021 through and including July 1, 2025.

The Settlement is "direct distribution" – there is no claims process, and all Qualified Settlement Class Members who do not submit an opt-out request will automatically be mailed a settlement check when the Settlement is granted final approval.

The Settlement Administrator has calculated pro rata settlement payments to Class Members from the Net Settlement Amount based on the total number of Qualified Workweeks worked by each Qualified Settlement Class Member during the applicable class period. The average settlement share to be paid to the 15,181 participating Class Members is approximately $111.91 and the highest settlement share to be paid is approximately $468.08. Declaration of Kaylie O'Connor of CPT Group, Inc. ("CPT") ("O'Connor Decl.") ¶ 15.

Only one Class Member has objected to the Settlement, and only four Class Members have opted out. *See id*. ¶¶ 8, 9.

The Labor & Workforce Development Agency ("LWDA") shall be paid $113,250 (75%) of the $151,000 total allocated to settle the Class's claims brought pursuant to Labor Code § 2698 *et seq.*, the Private Attorneys General Act of 2004 ("PAGA"), and the remaining 25%, or $37,750, will be included in the Net Settlement Amount to be distributed among PAGA Members based on their total Qualifying Work Weeks during the PAGA Period. Settlement at ¶ C(1)(d).

Because the Settlement achieves outstanding results for the Settlement Class and the State and Aggrieved Employees, Plaintiffs respectfully request that the Court approve their request for attorneys' fees and costs, service payments for serving as the class representatives, and the Settlement Administrator's fees.

Plaintiffs seek the Court's approval of an attorneys' fee award of $1,008,565.80, plus the reimbursement of $14,788.06 in litigation costs. The attorney fee request equals 33 1/3% of the Gross Settlement Amount of $3,026,000. Class Counsel's request for an award of attorneys' fees and costs is reasonable and appropriate in light of the outstanding work performed by Class Counsel in the case, the contingent nature of this action, and the results achieved under the Settlement. *Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19.

Plaintiffs also requests the Court confirm the amount of the service payment awards agreed to be paid to the named Plaintiffs in the amount of $20,000 each. The amount proposed to be awarded to the representative Plaintiffs is fair and reasonable. Courts approve incentive awards to plaintiffs when justified and appropriate to compensate plaintiffs for their time, effort, and inconvenience. *See e.g.*, *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F. Supp. 294, 299.

Finally, Plaintiffs request that the Court approve the payment of $67,500 to CPT as compensation for the claims administration services it has and will provide in connection with this settlement.

II. STATEMENT OF FACTS

A. Case Summary and Procedural History

On June 17, 2024, Plaintiff Medina served a PAGA notice letter to the LWDA and Defendant and thus exhausted the pre-filing requirements of the PAGA. Declaration of Evan S. Gaines ("Gaines Decl.") at ¶ 8. On or about August 30, 2024, Plaintiff Medina initiated the Action by filing a Representative Action Complaint for Penalties, pursuant to PAGA, on behalf of herself and all other aggrieved employees. Gaines Decl. at ¶ 9.

On October 23, 2024, Plaintiffs Desiree Cumpian and Evelyn Pasquel-Herrera (collectively, the *Cumpian* plaintiffs") filed a Class Action Complaint against Defendant 24 Hour Fitness USA, LLC in the California Superior Court, County of Los Angeles, captioned *Desiree Cumpian and Evelyn Pasquel-Herrera v. 24 Hour Fitness, USA, LLC*, Los Angeles County Superior Court, Case No. 24STCV27774 (the "*Cumpian* Action"). Declaration of John G. Yslas ("Yslas Decl.") at ¶ 4. The Class Action Complaint in *Cumpian* alleges class claims on behalf of all of Defendant's current and former non-exempt employees in California based on: (1) failure to pay minimum and straight time wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to authorize and permit rest periods; (5) failure to pay final wages at termination; (6) failure to provide accurate itemized wage statements; (7) failure to indemnify employees for expenditures; (8) violation of California Equal Pay Act; and (9) unfair business practices.

On November 6, 2024, the *Cumpian* plaintiffs served a PAGA notice letter to the LWDA and Defendant and thus exhausted the pre-filing requirements of the PAGA. On January 21, 2025, the *Cumpian* plaintiffs filed a First Amended Class Action Complaint that adds a cause of action for civil penalties under PAGA on behalf of themselves, the state of California, and Defendant's non-exempt employees in California based on the same underlying alleged Labor Code violations. Yslas Decl. at ¶ 5.

On November 4, 2024, Plaintiff Bruno Cruz filed a Class Action Complaint against Defendant 24 Hour Fitness USA, LLC in the California Superior Court, County of San Bernardino, captioned *Bruno Cruz v. 24 Hour Fitness, USA, LLC, San Bernardino County Superior Court,* Case No. CIVSB2433321 (the "*Cruz* Action"). The Class Action Complaint in *Cruz* alleges class claims on behalf of all of Defendant's current and former non-exempt employees in California based on: (1) failure to pay minimum wages; (2) failure to pay wages and overtime; (3) non-compliant meal-breaks; (4) non-compliant rest-breaks; (5) failure to pay vacation wages; (6) failure to provide paid sick time; (7) failure to reimburse for necessary expenditures; (8) failure to provide accurate itemized wage statements; (9) failure to keep required payroll records; (10) failure to pay final wages at termination; (11) and violation of Business and Professions Code. Declaration of Roman Shkodnik ("Shkodnik Decl.") at ¶ 9. Also, on November 4, 2024, Cruz served a PAGA notice letter to the LWDA and Defendant and thus exhausted the pre-filing requirements of the PAGA. Shkodnik Decl. at ¶ 10. On January 8, 2025, the plaintiff in *Cruz* filed a First Amended Class Action Complaint adding a cause of action for civil penalties pursuant to the PAGA on behalf of himself, the state of California, and Defendant's non-exempt employees in California based on the same underlying alleged Labor Code violations. Shkodnik Decl. at 11

On July 9, 2025, Plaintiff Medina served an Amended PAGA Notice that includes the factual allegations, causes of action, Labor Code violations, and applicable theories of liability alleged in the operative complaints and LWDA letters in the *Cumpian* Action and *Cruz* Action. Gaines Decl. at ¶ 10.

Thereafter, in conjunction with the Parties Settlement, on October 21, 2025, Plaintiffs collectively filed a First Amended Complaint, which added the *Cumpian* and *Cruz* plaintiffs as named plaintiffs and incorporated standalone class action and PAGA claims and allegations that had been alleged in *Cumpian* and *Cruz*. The First Amended Complaint alleges class and PAGA representative action claims against Defendant for (1) Failure To Pay All Minimum, Regular, And Overtime Wages Due (Labor Code §§ 204, 210, 218.5, 218.6, 226.7, 227.3, 245, 246, 246(1), 246(i), 510, 512, 1194, 1194.2, 1197.1, 1198 and 1199); (2) Failure To Provide Meal Periods Or Compensation In Lieu Thereof (Labor Code §§ 210, 226.7, and 512; IWC Wage Order 4-2001); (3) Failure To Provide Rest Periods Or Compensation In Lieu Thereof (Labor Code §§ 210 and 226.7; IWC Wage Order 4-2001); (4) Failure To Reimburse All Business-Related Expenses (Labor Code §§ 1198, 2802, 2802(a), 2802(b), and 2802(c)); (5) Failure to Pay Sick Pay Wages (Labor Code §§ 201-203, 233, 245, 246); (6) Failure to Pay Vacation Wages (Labor Code § 227.3); (7) Failure To Comply With Itemized Employee Wage Statement Provisions (Labor Code §§ 226, 226(s), 226(e)(1), 226(e)(2)(b)(iii), 226(h) 226.3, 1174, 1174.5 1198, 1198.5, and 1199); (8) Failure To Timely Pay Wages Due At Separation Of Employment (Labor Code §§ 201-204, 210, 218.5, 218.6, 1194, 1197, 1197.5, 1198, 1199, 2926, and 2927); (9) Violation Of Business and Professions Code § 17200 *et seq*.; (10) Penalties Pursuant To Labor Code § 2699(f) Violations Of Labor Code §§ 201, 201.3, 202, 204, 218.5, 218.6, 226(a), 226(e)(1), 226(e)(2)(b)(iii), 226(h), 226.7, 227.3, 245, 246, 246(1), 246(i), 510, 512, 1174, 1174.5, 1194, 1194.5, 1197, 1197.1, 1197.5, 1198 , 1198.5, 1199, 2926, and 2927 and Pursuant To Labor Code § 2699(a) For Violations Of Labor Code §§ 210, 226.3, 558, and 558(a)(1)-(3); and (11) Violation of California Equal Pay Act (Labor Code § 1197.5(A)) (the "First Amended Complaint"). Gaines Decl. at ¶ 11.

B. <u>Investigation and Settlement Discussions</u>

Class Counsel represent that they have conducted a thorough investigation into the facts and law during the prosecution of this class action case, including the exchange of extensive informal discovery and the review and verification of statistical data and other facts and information provided by Defendant. Counsel for the Parties also represent that they have investigated the applicable law as applied to the facts discovered regarding the alleged claims of Plaintiffs and potential defenses thereto, and the damages and other losses claimed by Plaintiffs. Gaines Decl. at ¶ 14.

The Parties engaged in extensive discussions about the respective strengths and weaknesses of their claims and defenses. On May 2, 2025, following their exchange of information and documents regarding the Settlement Class and the claims and defenses asserted by the Parties, the Parties engaged in arm's-length negotiations with the assistance of mediator Michael Ludwig, Esq., through which they were able to reach the resolution of the Action set forth herein. The Parties agreed, subject to approval by the Court, to the Settlement of the lawsuit. The Parties further agreed to enter into their Settlement Agreement to memorialize their settlement of the lawsuit. Gaines Decl. at ¶ 15.

The settlement discussions were conducted at arm's-length. Based on their own independent investigation and evaluation, Class Counsel is of the opinion (and will so represent to the Court) that settlement for the consideration and on the terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best interest of the Settlement Class in light of all known facts and circumstances, including the risk of significant delay, the risk the Settlement Class will not be certified by the Court, and the defenses asserted by Defendant. Defendant and its counsel also agree (and will so represent to the Court) that this settlement is fair and in the best interests of the Defendant and the Settlement Class. Gaines Decl. at ¶ 16; Yslas Decl. at ¶ 6; Shkodnik Decl. at ¶ 12.

The Parties thereafter jointly prepared the Settlement. Gaines Decl. at ¶ 17; Ex. B.

C. Summary of Settlement Terms

1. Benefits to the Class and the Public

The Settlement provides that (a) the Court may certify the Settlement Class as described in the Settlement on a provisional, non-mandatory basis for the purposes of this settlement only, conditioned upon the Court granting final approval of the Settlement; and (b) Defendant shall pay the total, non-reversionary sum of $3,026,000 (the "Gross Settlement Amount"). The Gross Settlement Amount includes all attorneys' fees and costs/expenses petitioned by Class Counsel; an service awards; costs of administration of the Settlement; and payment for settlement of Plaintiffs' representative PAGA claims asserted in their letters to the LWDA. In no event shall Defendant be liable for the payment of any amounts exceeding the Gross Settlement Amount with the exception of the employer's share of payroll taxes due and payable as a result of the Settlement, which shall be paid separately from the Gross Settlement Amount. Settlement at ¶ C(1)(a).

The Parties have agreed upon a settlement class: "all hourly or non-exempt current and former employees employed by Defendant in the State of California during the Class Period." Gaines Decl. at ¶ 19; Settlement at ¶ 2.2.2. The Class Period is defined as May 2, 2021 through and including July 1, 2025.

2. Preliminary Approval, Notice, and the Claims Process

By Order dated March 6, 2025, this Court granted Plaintiffs' unopposed motion for preliminary approval of the Settlement and provisionally certified the Settlement Class, finding that the Settlement appeared to be within the range of reasonableness of settlements that could ultimately be given final approval. *See* Gaines Decl. at ¶ 20; Ex. C. The Court approved the distribution of the amended Notice of Proposed Class Action Settlement and set the Final Fairness and Approval Hearing. *Id.*

Pursuant to the Court's Order, on April 10, 2026, CPT mailed Notice packets containing the notice of the terms of the Settlement — including the terms relating to attorneys' fees and costs — to 15,185 Class Members. Gaines Decl. at ¶ 21; O'Connor Decl. at ¶ 7; Exhibit A to the O'Connor Decl. Class Members were given 45 days after the Notice was mailed to submit their opt out form or objection to the Settlement. Gaines Decl. at ¶ 22. As of the date of this motion, all Class Members will be issued their share of the Settlement and they will be paid, on average, approximately $111.91 each; the highest-paid participating Class Member will be paid approximately $468.08. Gaines Decl. at ¶ 23; O'Connor Decl. at ¶ 15. Only one Class Member has objected to the Settlement, and only four Class Members have opted out. Gaines Decl. at ¶ 24; O'Connor Decl. at ¶¶ 10-11.

D. Compliance with Procedural Requirements of PAGA

On February 9, 2026, in compliance with Labor Code § 2699(l)(2), Plaintiffs' counsel submitted copies of the Settlement, and preliminary approval papers, to the LWDA through its online submission interface. These final approval papers are also being submitted to the LWDA concurrently with their submission to the Court, as evidenced on the attached proof of service. The LWDA has not objected or otherwise responded to any of the submissions thus far. Gaines Decl. at ¶ 70; Ex. F.

III. ARGUMENT

A. Class Counsel Request an Award Under the Common Benefit Doctrine

1. A 33 1/3% Fee Award Is Reasonable Here

Class Counsel respectfully requests that this Court approve the fees and costs to be paid in this action. This Application is made pursuant to California Rules of Court, Rule 3.769 which requires court approval of the fees paid through settlement in a class action.

Class Counsel seeks attorneys' fees of $1,008,565.80, representing 33 1/3% of the settlement consideration under the "common fund" doctrine. Courts have long recognized the "common fund" or "common benefit'" doctrine, under which attorneys who create a common fund or benefit for a group of persons may be awarded their fees and costs to be paid out of the fund. *Serrano v. Priest* ("*Serrano III*") (1977) 20 Cal.3d 25, 34, quoting *D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1; *Glendale City Employees' Association v. City of Glendale* (1975) 15 Cal.3d 328, 341 fn.19; *Quinn v. State of California* (1995) 15 Cal.3d 162, 167; *see also Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Mills v. Electric Auto-Lite Co*. (1970) 396 U.S. 375, 391-392.

The California Supreme Court has held that, "when a number of persons are entitled in common to a specific fund, and an action brought by a plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs may be awarded attorneys' fees out of the fund." *Serrano III*, *supra*, 20 Cal.3d at 34, quoting *D'Amico*, 11 Cal.3d 1; *see also Boeing*, *supra*, 444 U.S. at 478 ("[A] lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole."); *Mills*, *supra*, 396 U.S. at 391-392 (United States Supreme Court endorsing the common fund approach in class actions). California Practice Guide: Civil Trials and Evidence (The Rutter Group) at § 17:172.3 explains the common fund doctrine as follows:

> Where the lawsuit results in the recovery of a fund or property benefiting others as well as plaintiff (e.g., a class action), the court has inherent equitable power to order Plaintiffs' attorney fees paid out of the common fund or property [citations]. Such fee spreading assures that all of those benefited by the litigation pay their fair share of obtaining the recovery.

The percentage-of-the-fund approach appears to be the preferred method of awarding fees in traditional common fund cases, such as this case. Where the settlement amount is a "certain or easily calculable sum of money," use of the percentage-of-the-fund method is appropriate. *Serrano III*, 20 Cal. 3d at 35.

In *Glendale City Employees' Association v. City of Glendale* (1975) 15 Cal.3d 328, 341 fn.19, the California Supreme Court upheld an attorneys' fee award based on a percentage of the common benefit obtained in a lawsuit by a city employees' association for retroactive wages:

> It is not necessary to find this suit a proper class action in order to uphold the portion of the judgment awarding counsel for plaintiffs 25 percent of all retroactive salaries and wages received. That award may be sustained under the rule that a litigant who creates a fund in which others enjoy beneficial rights may require those beneficiaries to pay their fair share of the expense of litigation. (*See Sprague v. Ticonic National Bank* (1939) 307 U.S. 161, 159; *Estate of Stauffer* (1959) 53 Cal.2d 124, 132).

In *Quinn v. State of California* (1995) 15 Cal.3d 162, 167, the California Supreme Court stated: "[O]ne who expends attorneys' fees in winning a suit which creates a fund from which others derive benefits may require those passive beneficiaries to bear a fair share of the litigation costs." Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, 110-111, the California Supreme Court recognized that the common benefit doctrine has been applied "consistently in California when an action brought by one party creates a fund in which other persons are entitled to share."

Numerous appellate courts have similarly found. *See e.g.*, *Knoff v. City and County of San Francisco* (1969) 1 Cal.App.3d 184, 203-204 (court upheld a "contingent percentage" award of attorneys' fees in a representative action as the proper exercise of the court's broad equitable powers); *Rider v. County of San Diego* (1992) 11 Cal.App.4th 1410, 1423 (attorneys' fees and expenses properly awarded from common benefit composed of illegally imposed sales and use tax); *Bank of America v. Cory* (1985) 164 Cal.App.3d 66, 89-92 (fees awarded from common benefit created by action compelling state to claim dormant bank accounts); *Parker v. Los Angeles* (1974) 44 Cal.App.3d 556, 567-568 (court upheld fee award equal to one-third of the damages to owners of residential property in an inverse condemnation action).

Moreover, at least eight federal courts of appeal-the First, Third, Sixth, Seventh, Ninth, Tenth, Eleventh and the D.C. Circuit-have endorsed the "percentage fee" method for determining reasonable attorneys' fees in common benefit cases. *See e.g.*, *In re Sumitomo Copper Litig.* (S.D.N.Y. 1999) 74 F. Supp. 2d 393, 396-398 (describing the overwhelming weight of federal authority in favor of the percentage fee method); *see also*, *Lealao*, *supra*, 82 Cal.App.4th at 30-31 (describing same).

Attorneys' fees awards in line with the amount sought here are frequently upheld. *See e.g.*, *In re Activision Sec. Litig.* (9th Cir. 1989) 723 F. Supp. 1373, 1375.

The requested fee falls well within the percentages awarded in other class action litigation by this Court and numerous California trial courts. As the cases cited above demonstrate, attorneys' fee awards in the amount sought here are well-established by California law and practice. Accordingly, Class Counsel's fee request is fair and reasonable and is consistent with the awards in California and the Ninth Circuit. It is also reasonable given the history of this action and the results obtained by Class Counsel.

2. ***The Circumstances of this Case Support a 33 1/3% Fee Award***

Given the significant results achieved under the circumstances of this litigation, the requested fee award is reasonable. As discussed in *Sumitomo Copper Litigation*, *supra*, 74 F. Supp. 2d at 396:

> No one expects a lawyer whose compensation is contingent on the success of his services to charge, when successful, as little as he would charge a client who in advance of the litigation has agreed to pay for his services, regardless of success. Nor, particularly in complicated cases producing large recoveries, is it just to make a fee depend solely on the reasonable amount of time expended.

In that vein, this Court should consider the contingent nature of this case, the uncertainty of the outcome, the quality of the counsel, and the preclusion from other employment.

a. The Contingent Nature of This Case

From the outset of the case to the present, prosecution of this action has involved significant financial risk for Class Counsel. Class Counsel undertook this matter solely on a contingent basis, with no guarantee of recovery. Class Counsel has placed their own resources at risk to prosecute this action with no guarantee of success. Gaines Decl. at ¶¶ 58 and 62. The risks of this case are apparent in that class certification would likely have been a hard-fought issue, especially given the uncertainty regarding certification of cases such as this. Moreover, even if class certification was granted over Defendant' opposition, there was no assurance that Plaintiffs would succeed at trial. Despite such challenges, Class Counsel was able to persuade Defendant that they faced significant liability exposure such that they were willing to pay $3,026,000 to settle the Class Members' claims.

b. The Experience, Reputation, and Ability of Counsel, and the Skill They Displayed in Litigation

Class Counsel has substantial experience in wage-and-hour and other class action litigation, including litigation involving the novel legal issues in this action. *See e.g.*, Gaines Decl. at ¶¶ 2-5. Class Counsel's skill in developing a factual record and convincing Defendant of its litigation exposure under California law were essential to achieving the Settlement. Through their skill and reputation, Class Counsel was able to obtain a settlement that provides an outstanding result for Class Members. Gaines Decl. at ¶¶ 6-7, 14-17.

c. The Results Achieved

The excellent results achieved by the Settlement support Class Counsel's request for attorneys' fees. Class Members' support for the results achieved by Class Counsel is demonstrated by the merely one objection to the Settlement and no objections to Class Counsel's request for fees, both of which were described clearly in the Notice. As of the date of this application, Class Members will be paid, on average, approximately $2,458.99 each, which is intended to compensate them for a host of alleged wage and hour violations. This is a significant benefit for the Class Members here – it represents a recovery for highly disputed claims. Gaines Decl. at ¶¶ 43-44.

Furthermore, the efficiency with which this litigation was conducted and resolved should be rewarded. After preparing and investigating the case prior to filing the complaint, Class Counsel litigated and resolved the case in an efficient manner. The Class Members directly benefited from the prompt and fair resolution of their claims. They will be receiving a significant award in a short period of time as opposed to waiting years to recover some undetermined amount if they succeeded at trial, which is an uncertainty in itself.

d. Preclusion of Other Employment

As California law recognizes, Class Counsel's commitment to this litigation should not be assessed in a vacuum. *See Serrano*, *supra*, 20 Cal.3d at 49. A relevant factor in determining attorneys' fees is whether the litigation required Class Counsel to forego other employment. *See id*. Additional work was available that Class Counsel had to forego to devote the time necessary to pursue this litigation. *See* Gaines Decl. at ¶ 67.

B. <u>The Requested Fees are Also Justified Under the Lodestar Method</u>

Fee calculations under the lodestar method would result in a similar, if not greater, award, demonstrating the fairness of Class Counsel's percentage fee request. Under the lodestar method, a base fee amount is calculated from a compilation of time reasonably spent on the case and the reasonable hourly compensation of the attorney. The base amount is then adjusted by use of a multiplier in light of various factors. *Serrano III*, *supra*, 20 Cal.3d at 48.

Class Counsel's hourly rate are summarized in their respective Declarations. Their collective lodestar totals $290,202.50. Gaines Decl. at ¶ 61; Kent Decl. at ¶ 36; **Exhibit A** to the Kent Decl.; Shkodnik Decl. at ¶ 17; Yslas Decl. ¶ 24.

One difficulty in determining the hourly rate of attorneys of similar skill and experience in the relevant community is the scarcity of hourly fee-paying clients in class action litigation. As a practical matter, few if any employees or consumers pay attorneys' fees on an hourly basis for such extensive litigation, and thus retainer agreements in such cases are based on a stepped-up contingency fee (with the percentage increasing to forty percent or more if the case goes to trial). Therefore, there is no customary hourly billing rate for work that is routinely based on a contingent fee relationship, but the nature of class action work should be strongly considered by the Court. In addition, wage and hour work presents a difficult area of law that is not within the knowledge of many lawyers. This kind of class action work requires specialized learning and the willingness to take large risks. Gaines Decl. at ¶ 62.

Class Counsel has spent approximately 371.5 collective hours litigating this case to date.[1] Gaines Decl. at ¶ 58; **Exhibit D** to the Gaines Decl.; Yslas Decl. at ¶ 24; **Exhibit 3** to the Yslas Decl; Shkodnik Decl. at ¶ 16; **Exhibits A, B, C,** and **D** to the Shkodnik Decl.; Declaration of Ayse Kent ("Kent Decl.") at ¶ 36; **Exhibit A** to the Kent Decl. Class Counsel expects to spend another 7.5 hours preparing for and attending the Final Approval Hearing and dealing with claims administration issues. *Id.* Reasonable hours include, in addition to time spent during litigation, the time spent before the action was filed, including time spent interviewing the client, investigating the facts and the law, preparing the initial pleadings and litigating the case. *Webb v. Board of Educ*. (1985) 471 U.S. 234. Further, the fee award should include fees incurred to establish and defend the attorneys' fee claim. *Serrano v. Priest* (1982) 32 Cal.3d 621, 639 ("*Serrano IV*").

In cases where a common fund analysis is not used, once the court establishes the lodestar amount, it must adjust the fee award by a multiplier in order to make an appropriate fee award.

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[1] In *Martino v. Denevi* (1986) 182 Cal.App.3d 553, 559, the court addressed the issue of what evidence is required in California to support a fee application. The court held: "Testimony of an attorney as to the number of hours worked on a particular case is sufficient evidence to support an award of attorney fees, even in the absence of detailed time records." *Id* There is no need to attach the voluminous invoices prepared in a case as a basis for an award of fees and costs. *Id.* Through Class Counsel's declarations in support of this application, however, Plaintiffs present a thorough breakdown of all hours spent, and costs incurred, in prosecuting this class action. Pursuant to *Martino*, *supra*, this presentation is more than sufficient to support the amount sought.

Serrano III, *supra*, 20 Cal.3d at 48. In applying the multiplier, *Newberg on Class Actions* states that "[m]ultiples ranging from one to four frequently are awarded in common fund cases when the lodestar method is applied. A large common fund award may warrant an even larger multiplier." 4 *Newberg on Class Actions* 4th (4th ed. 2002) § 14.6. If the class members paid the fees that the market would bear, they would pay a fee of anywhere from one-third to forty percent of any recovery. Since this is the market rate, the lodestar calculation should be enhanced to reflect what the class members would pay on the open market. *Lealao*, *supra*, 82 Cal.App.4th at 47-48.

In *Lealao*, the court held that trial courts should award lodestar fees by examining the percentage-of-the-benefit and adjusting the lodestar calculation accordingly. *Id*. at 49, 53. The court indicated that this is an upward adjustment and should be akin to a contingency fee recovery; the court stated, "[a]n adjustment reflecting the amount of the class recovery is not significantly different from an adjustment reflecting a percentage of that amount; and California courts have evaluated a lodestar as a percentage of the benefit." *Id*. at 46. The *Lealao* method appears particularly appropriate because class actions generally are contingency fee cases for plaintiffs – and the class action clients do not expect to pay an hourly fee.

The rationale of *Lealao* comports with the purpose of the multiplier. The multiplier is "primarily to compensate the attorney for the prevailing party at a rate reflecting the risk of nonpayment in contingency cases." *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1138. The *Lealao* court reasoned:

> Given the unique reliance of our legal system on private litigants to enforce substantive provisions of law through class and derivative actions, attorneys providing the essential enforcement services must be provided incentives roughly comparable to those negotiated in the private bargaining that takes place in the legal marketplace, as it will otherwise be economic for Defendant to increase injurious behavior. It has therefore been urged (most persistently by Judge Richard Posner) that in defining a reasonable fee' in such representative actions the law should mimic the market.
>
> In the class action context, that would mean attempting to award the fee that informed private bargaining, if it were truly possible, might have reached. The simplest way for the law to duplicate the bargain that informed parties would reach if agency costs were low is to look to fee award levels in actions brought by sophisticated private parties under the same or comparable statutes.

Lealao, 82 Cal.App.4th at 47 – 48 (internal citations and quotations omitted). The court added:

> [T]rial judges need the flexibility *Serrano III* provides, as it enables them to relate fee awards to the economic realities that determine the efficacy of the private enforcement contemplated by our civil justice system.
>
> Accordingly, we hold that, in cases in which the value of the class recovery can be monetized with a reasonable degree of certainty and it is not otherwise inappropriate, a trial court has discretion to adjust the basic lodestar through the application of a positive or negative multiplier where necessary to ensure that the fee awarded is within the range of fees freely negotiated in the legal marketplace in comparable litigation.

Id. at 49-50.

In looking at similar cases, including those set forth above, Class Counsel's requested fee comports to the market. Based on the reasonable hourly rates suggested by Class Counsel, the requested fee award would represent a multiplier of 3.45 above the collective lodestar of $290,202.50 – an amount well within the accepted range for class action cases. In this regard, decisions of other courts in awarding attorneys' fees in class action litigation is persuasive evidence of the fair market value of the services provided.

C. No Class Member Objected to the Attorney Fee Award

Counsel's intention to request payment of attorneys' fees was clearly disclosed to each Class Member in the Court-approved Notice of Class Action Settlement. *See* Exhibit A to **Exhibit B** to the Gaines Decl.; *see also*, O'Connor Decl., **Exhibit A** to the O'Connor Decl. As of the filing of this brief, there has been not one single objection to the request for attorneys' fees (the objection was only to the settlement amount). O'Connor Decl. at ¶ 10. Clearly, the Class approves of the award of attorneys' fees. Class Counsel requests $1,008,565.80 in attorneys' fees – representing 33 1/3% of the $3,026,000 Gross Settlement Amount.

D. Class Counsel's Request for Costs is Reasonable

In the course of this litigation, Class Counsel had to (and will) incur substantial out-of-pocket costs of more than $14,788.06. *See* Gaines Decl. at ¶ 69; **Exhibit E** to the Gaines Decl.; Yslas Decl. at ¶ 26; **Exhibit 2** to the Yslas Decl; Shkodnik Decl. at ¶ 18; **Exhibit E** to the Shkodnik

Decl; Kent Decl. at ¶ 45; **Exhibit B** to the Kent Decl. Pursuant to the terms of the Settlement and the class notice, the requested cost award would not exceed $20,000.

As demonstrated in the Gaines Declaration submitted herewith, the incurred costs included among other things filing fees, photocopy charges, mediation expenses, expert fees, service of process fees, and mailing charges. *See* Gaines Decl. at ¶ 69; **Exhibit E** to the Gaines Decl.; Yslas Decl. at ¶ 26; **Exhibit 2** to the Yslas Decl; Shkodnik Decl. at ¶ 18; ; **Exhibit E** to the Shkodnik Decl; Kent Decl. at ¶ 45; **Exhibit B** to the Kent Decl. Such costs are appropriate for cost reimbursement in these types of cases. *See e.g.*, *In re United Energy Corp. Sec. Litig.* (C.D. Cal. 1989) 1989 WL 7321 1, *6 (quoting *Newberg*, Attorney Fee Awards, § 2.19 (1987)); *see also*, *In re GNC Shareholder Litigation* (W.D. Pa. 1987) 668 F. Supp. 450, 452.

The costs incurred by Class Counsel in this litigation benefited Class Members. In light of the litigation costs that Class Counsel needed to incur to prosecute this action and the positive reaction of Class Members, Plaintiffs' cost request is reasonable and should be granted.

E. <u>The Class Representative's Service Payment is also Reasonable</u>

Plaintiffs seek a service payment in the amount of $20,000 each. Gaines Decl. ¶ 54.

The service payments are intended to recognize the time and efforts that the named Plaintiffs spent on behalf of the Class and also in exchange for a general release of all claims against Defendant, including termination-related claims. Gaines Decl. at ¶¶ 54-56; *see also*, Declarations of Yulissa Medina, Desiree Cumpian, and Evelyn Pasquel-Herrera, submitted herewith.

When determining whether incentive awards are appropriate, courts consider a variety of non-exclusive factors such as:

> [T]he actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefitted from those actions, and the amount of time and effort the plaintiff expended in pursuing the litigation . . . the risk to the class representative in commencing suit, both financial and otherwise, the notoriety and personal difficulties encountered by the class representative, the duration of the litigation, and the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation.

Clark v. American Residential Services LLC (2009)175 Cal.App.4th 785, 804 (internal quotations omitted), *citing Cook v. Niedert* (7th Cir. 1998) 142 F.3d 1004, 1016 and *Van Vranken*, *supra*, 901 F.Supp. at 299.

Plaintiffs' proposed $20,000 service award falls within a range deemed acceptable by California courts. *See also In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1395.

As a result of the named Plaintiffs' efforts, Class Members will receive significant monetary settlement payments – approximately $111.91, on average, per Class Member who participates in the Settlement.

In this case, the named Plaintiffs performed the following tasks, among others: (1) assisted Counsel in investigating and substantiating the claims alleged in this action, including multiple interviews with counsel to review facts, documents, and Defendant' policies; (2) assisted in the preparation of the complaint; (3) produced evidentiary documents to Counsel; and (4) assisted in the settlement of this litigation. Gaines Decl. at ¶¶ 54-56; *see generally*, Declarations of Yulissa Medina, Desiree Cumpian, and Evelyn Pasquel-Herrera, as with any plaintiff who files a civil action, the named Plaintiffs undertook the financial risk that, in the event of a judgment in favor of Defendant in this action, they could have been personally responsible for any attorneys' fees and costs awarded in their favor.

The award of a service payment to the named Plaintiffs is especially warranted in a case like this one. Service payments are necessary to ensure that employees, like Plaintiffs, continue to bring claims like those brought here to enforce the rights of employees. Individuals like the named Plaintiffs (and most Class Members) would have little, if any, recourse without the class action device. Most Class Members – like the named Plaintiffs – would be fearful of retaliation in response to filing any lawsuit, much less a class action one. Plaintiffs must be commended for pursuing their claims; service payments like that sought here are an appropriate means of doing so. Moreover, Plaintiffs are each giving a general release to Defendant barring them from bringing any other claims, including termination-related claims.

Not a single Class member objected to the service payments requested on behalf of the named Plaintiffs, who brought this litigation on their behalf and who secured a benefit for them worth $3,026,000. In light of the work that the named Plaintiffs performed on behalf of Class Members and the broad release they are giving Defendant, and the Class Members' response to the Settlement, the requested service payments are reasonable and appropriate. Gaines Decl. at ¶ 54.

F. <u>Approval of the Fees Incurred by the Claims Administrator</u>

As part of the preliminary approval process, the Court approved the hiring of CPT as the Claims Administrator. *See* **Exhibit C** to the Gaines Decl. In preliminarily approving the Settlement, the Court also tentatively approved a payment of up to $70,000 to CPT to perform all of the duties required to administer the Settlement. *Id.* CPT has performed all of its required duties to date and is committed to completing the claims administration process. *See generally* O'Connor Declaration. CPT's fees are $67,500. O'Connor Decl. at ¶ 18. Plaintiffs request that the Court approve the payment of $67,500 to CPT to account for the costs of administration as part of its final order approving the Settlement.

IV. <u>CONCLUSION</u>

For all the foregoing reasons, Plaintiff requests that the Court (1) approve Class Counsel's request of $1,008,565.80 as an award of attorneys' fees, (2) approve the requested award of $14,788.06 in litigation costs to Class Counsel, (3) approve the request of $20,000 as service payments to the named Plaintiffs, and (4) approve payment of $67,500 in administration costs to CPT.

DATED: June 29, 2026

Respectfully submitted,

GAINES LAW CORPORATION

By: ______________________

EVAN S. GAINES
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