

James R. Hawkins, SBN 192925
Isandra Fernandez, SBN 220482
isandra@jameshawkinsaplc.com
Anthony L. Draper, SBN 344391
anthony@jameshawkinsaplc.com
JAMES HAWKINS APLC
9880 Research Drive, Suite 200
Irvine, CA 92618
Telephone: (949) 387-7200
Facsimile: (949) 387-6676

Attorneys for Plaintiff, TIFFANY SOLIMAN,
on behalf of herself and all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

TIFFANY SOLIMAN, MARIA CARRALEZ,
and EUGENE BAUTISTA on behalf of
themselves and all others similarly situated

Plaintiff,

vs.

SATELLITE HEALTHCARE, INC., a
California corporation, and DOES 1 through 50,
inclusive,

Defendants.

Case No. 21CV387218
ASSIGNED FOR ALL PURPOSES TO:
JUDGE: Hon. Theodore Zayner
DEPT: 19

**NOTICE OF UNOPPOSED MOTION AND
MOTION FOR FINAL APPROVAL OF
CLASS ACTION AND PAGA
SETTLEMENT; [PROPOSED] ORDER**

[Declarations of Anthony Draper, Tiffany
Soliman, Maria Carralez, Eugene Bautista,
and Robert Wasserman, Concurrently Filed
Herewith]

Date: January 8, 2025
Time: 01:30 p.m.
Dept.: 19

///

///

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

I. INTRODUCTION1

II. LITIGATION AND SETTLEMENT.....1

 A. Pleadings.....1

 B. Discovery and Mediation2

 C. The Preliminary Approved Settlement.....3

 D. Dissemination of Class Notice.....5

 E. The Settlement Provides Reasonable Compensation to Class Members.....5

III. FINAL SETTLEMENT APPROVAL IS APPROPRIATE.....7

 A. This Court Preliminarily Found This Settlement To Be Fair, Reasonable And
 Adequate And Nothing Has Changed To Disturb That.....7

 B. The Settlement Resulted From Non- Collusive, Arms- Length Negotiations.....8

 C. The Settlement is Supported by Substantial Investigative Discovery Efforts.....8

 D. Class Counsel is Experienced in Similar Litigation.....9

 E. The Class Members’ Positive Reaction to the Settlement Favors Final
 Approval.....9

IV. CLASS REPRESENTATIVES’ ENHANCEMENT PAYMENTS ARE
REASONABLE.....10

V. CLASS COUNSEL’S REQUEST FOR FEES IS REASONABLE.....11

 A. Class Counsel’s Requested Fees Are Reasonable Under Lodestar/Multiplier
 Analysis Although One Is Not Required.....12

 1. Time and Effort.....13

 2. Extent Litigation Precluded Other Employment.....13

 3. Contingent Nature of the Agreement.....14

 4. Experience, Reputation, and Ability of Plaintiff’s Counsel.....14

 5. Result Obtained On Behalf of the Class by Plaintiff’s Counsel...14

 6. Reaction of Putative Class Members.....15

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

B. Class Counsel’s Requested Fees Are Reasonable Under the Percentage of the
Benefit Method.....16

1. Attorneys’ Fees Should Be Based Upon the Total Benefit to the
Class.....16

2. The Contingent Nature of Class Counsel’s Representation
Supports The Requested Fees Based on One Third of the MSA...16

3. Additional Factors Re: Contingency Market Rate Justify The
Requested Fee Award.....18

4. Counsel’s Requested Fee Award Is Within California’s Benchmark
Awards and Thus Reasonable18

VI. CLASS COUNSELS’ REQUESTED COSTS ARE REASONABLE.....19

VII. THE SETTLEMENT ADMINISTRATOR’S EXPENSES ARE REASONABLE....19

VIII. CONCLUSION.....20

TABLE OF AUTHORITIES

CASES

<i>7-Eleven Owners for Fair Franchising v. Southland Corp.,</i>	
(2000) 85 Cal. App. 4th 1135.....	7
<i>Bell v Farmers Ins. Exchange,</i>	
(2004) 115 Cal App 4th 715.....	10
<i>Birch v. Office Depot, Inc.,</i>	
USDC Southern District, Case No. 06cv1690 DMS (WMC).....	19
<i>Boyd v. Betchel Corp</i>	
(D.C. Cal 1976) 485 F. Supp 610.....	9
<i>Cellphone Fee Termination Cases</i>	
(2010) 186 Cal. App. 4 th 1380.....	10
<i>Chavez v. Netflix, Inc.</i>	
(2008) 162 Cal. App 4 th 43.....	16
<i>Clark v. American Residential Services, LLC,</i>	
(2009) 175 Cal App 4th 785.....	10
<i>Class Plaintiffs v. City of Seattle</i>	
955 F.2d 1276.....	7
<i>Consumer Cause, Inc. v. Mrs. Gooch’s Natural Food Markets, Inc.,</i>	
(2008) 162 Cal. App. 4 th 43.....	16
<i>Deposit Guaranty Nat. Bank, Jackson, Miss. v. Roper,</i>	
(1980) 445 U.S. 326.....	18
<i>Dunk v. Ford Motor Company</i>	
(1996) 48 Cal.App.4th 1794.....	7,9,12
<i>Earley v. Superior Court,</i>	
(2000) 79 Cal.App.4th 1420.....	10,11
<i>Fair Franchising v. Southland Corp.,</i>	
(2000) 85 Cal. App. 4 th 1135.....	7

III

TABLE OF CONTENTS AND AUTHORITIES

1	<i>Gentry v. Superior Court</i> ,	
2	42 Cal. 4th 443.....	18
3	<i>Graham v. Daimler Chrysler Corp.</i> ,	
4	(2008) 34 Cal. 4th 553.....	17
5	<i>Hensley v. Eckerhart</i> ,	
6	(1983) 461 U.S. 424.....	12,14
7	<i>In re Activision Sec. Litig.</i> ,	
8	(N.D. Cal. 1989) 723 F. Supp. 1373.....	16
9	<i>In Re Bluetooth</i> ,	
10	654 F.3d at 942.....	12
11	<i>In Re Four Seasons Secs. Laws Litig.</i> ,	
12	58 F.R.D. 19 (W.D. Okla.1972).....	6
13	<i>In re Omnivision Techs., Inc.</i> ,	
14	559 F. Supp. 2d 1036 (N.D. Cal. 2008).....	6
15	<i>In re Quantum Health Resources, Inc.</i>	
16	(C.D.Cal. 1997) 962 F. Supp. 1254.....	16
17	<i>In re Wash. Pub. Power Supply System Sec. Litig.</i>	
18	(D. Ariz. 1989) 720 F. Supp. 1379.....	9
19	<i>Ketchum v. Moses</i>	
20	(2001) 24 Cal. 4th 1122.....	14,17
21	<i>Kullar v. Foot Locker Retail, Inc.</i>	
22	(2008) 168 Cal. App. 4 th 116.....	7,8
23	<i>Laffitte v Robert Half Intern, Inc.</i>	
24	(2016) 1 Ca. 4th 480.....	12,15,16
25	<i>Lealao v. Beneficial California, Inc.</i>	
26	(2000) 82 Cal. App 4 th 19.....	passim
27	<i>Maria P. v. Riles</i> ,	
28	(1987) 43 Cal.3d 1281.....	11

IV
TABLE OF CONTENTS AND AUTHORITIES

1	<i>Martin v. AmeriPride Servs.,</i>	
2	2011 U.S. Dist. LEXIS 61796, 23 (S.D. Cal. June 9, 2011).....	19
3	<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles,</i>	
4	(2010) 186 Cal. App. 4th 399.....	7
5	<i>People ex rel. Dept. of Transportation v. Yuki,</i>	
6	31 (1995)Cal. App. 4th 1754.....	11
7	<i>Potter v Pacific Coast Lumber Company,</i>	
8	(1951) 37 Cal. 2d. 592.....	7
9	<i>Rader v. Thrasher,</i>	
10	(1962) 57 Cal. 2d 244.....	17
11	<i>Reed v. General Motors</i>	
12	(5th Cir. 1983) 703 F.2d 170.....	9
13	<i>Salton Bay Marina v. Imperial Irrig. Dist.,</i>	
14	(1985) 172 Cal. App. 3d 914.....	11,17
15	<i>Sav-On Drug Stores, Inc. v. Superior Court,</i>	
16	(2004) 34 Cal. 4th 319.....	18
17	<i>Serrano v. Priest (Serano III),</i>	
18	(1977) 20 Cal.3d 25, 48.....	13
19	<i>Serrano, supra,</i>	
20	20 Cal. 3d at 49.....	12,13
21	<i>Staton v. Boeing,</i>	
22	327 F.3d 938, 977 (9th Cir. 2003).....	11
23	<i>Thayer v. Wells Fargo Bank, supra,</i>	
24	92 Cal. App. 4th at 839.....	18
25	<i>Wash. Pub. Power Supply System Sec. Litig.</i>	
26	(D. Ariz. 1989) 720 F. Supp. 1379.....	9
27	<i>Westside Cmty. for Indep. Living, Inc. v. Obledo,</i>	
28	(1983) 33 Cal.3d 348.....	11

1	<i>Wershba v. Apple Computer, Inc.</i>	
2	(2001) 91 Cal. App. 4th 224.....	11,12,16

STATE RULES AND STATUTES

6	California Code of Civil Procedure § 382.....	7
7	California Code of Civil Procedure § 1021.5(a).....	7
8	California Labor Code § 2802.....	11
9	California Rules of Court 3.769.....	1
10	California Rules of Court 3.769(g).....	7

SECONDARY SOURCES

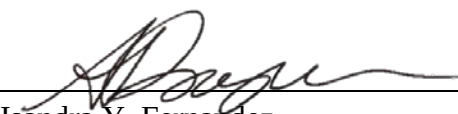
14	Manual For Complex Litigation 4th ed. § 14.121 (2004).....	16
15	Newberg §11.41.....	7

1 **PLEASE TAKE NOTICE THAT** on January 8, 2025 at 01:30 p.m. in Department 19 of
2 the above-entitled court located at _____, Plaintiffs Tiffany Soliman, Maria Carralez, and
3 Eugene Bautista will and hereby do move the Court for an Order (1) granting final approval of
4 the Stipulation of Class Action and PAGA Settlement; 2) approving the “Gross Fund” of
5 \$2,425,000.00; (3) approving all Individual Settlement Payments and PAGA Settlement
6 Payments; (4) allocating a Class/PAGA Representative Enhancement Payment of \$10,000 each
7 to Plaintiffs Tiffany Soliman, Maria Carralez, and Eugene Bautista; (5) approving \$50,000 in
8 PAGA penalties; (6) approving costs of administering the Settlement to the Settlement
9 Administrator, Atticus Administration, LLC. in the amount of \$22,718; (7) approving payment
10 of \$808,333.33 (or one-third of the Gross Fund) in attorneys’ fees and total attorneys’ costs
11 \$30,514.75 (a full \$4,485.75 less than was preliminarily approved).

12 This unopposed motion is made pursuant to California Rules of Court Rule 3.769, which
13 requires court approval of the settlement of a putative class action. Further, this Motion will be
14 based on the following: the Memorandum of Points and Authorities set forth herein; the
15 Stipulation of Class Action and PAGA Settlement and Addendum, attached to the Declaration of
16 Robert Wassermann as Exhibits 1 and 2, respectively; the Declarations of Anthony L. Draper,
17 Robert Wassermann, Tiffany Soliman, Maria Carralez, Eugene Bautista, and Brynn Bridley
18 [Declarations of James Hawkins and Robert Wassermann previously filed in support of
19 Plaintiff’s Motion for Preliminary Approval], and upon the oral arguments of counsel (should
20 there be any) and upon the complete records and file herein.

21 Dated: December 9, 2024

JAMES HAWKINS, APLC

22
23 
24 Isandra Y. Fernandez
25 Anthony L. Draper
26 Attorneys for Plaintiff Tiffany Soliman
27
28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Tiffany Soliman, Maria Carralez, and Eugene Bautista (“Plaintiffs”), seek final
4 approval of the Class Action and PAGA Settlement Agreement reached with Defendant Satellite
5 Healthcare, Inc. (“Satellite”), (Plaintiff and Satellite collectively, the “Parties”).

6 On July 23, 2024, this Court preliminarily approved the settlement amount of
7 \$2,425,000.00 as being fair, adequate, and reasonable. Further, this Court preliminarily
8 appointed Plaintiffs’ counsel, James Hawkins APLC and Mayall Hurley P.C., as Class Counsel,
9 the named Plaintiffs Tiffany Soliman, Maria Carralez, and Eugene Bautista as Class
10 Representatives, and preliminarily certified the Class defined as: All current and former non-
11 exempt California employees of Satellite who worked during the Class Period. The Court also
12 preliminarily approved Atticus Administration, LLC (“Atticus”) as the Settlement Administrator.

13 On August 30, 2024, the Parties notified the Class Members about the settlement through
14 the Atticus. (Declaration of Bryn Bridley (“Bridley Decl.” ¶ 7.) As previously set forth in
15 Plaintiffs’ Motion for Preliminary Approval (“Preliminary Approval Motion”), this is a cash
16 settlement with no reversionary aspect. Every Class Member who has not opted out of the
17 Settlement will automatically be mailed an individual settlement payment.

18 Most importantly, the Settlement and all its terms received overwhelming support from
19 99.92% of the Class. Specifically, out of the 2,586 class members there are only two (2) requests
20 for exclusion and zero (0) objections to the settlement. (Bridley Decl. ¶¶ 9-10.) Therefore,
21 Plaintiffs respectfully requests the Court grant final approval of the Settlement, Class Counsel’s
22 requested Attorney Fees and Costs amounts, Class Representative Service Awards payments,
23 Settlement Administrator Costs payment, and the PAGA Penalties in the amounts preliminarily
24 approved by the Court and as fully disclosed to Class Members.

25 **II. LITIGATION AND SETTLEMENT**

26 **A. Pleadings**

27 On September 29, 2021, Plaintiff Soliman filed a putative wage and hour class action
28 complaint against Satellite alleging the following causes of action: (1) Failure to Pay Lawful

1 Wages; (2) Failure to Provide Lawful Meal Periods or Compensation in Lieu Thereof; (3) Failure
2 to Provide Lawful Rest Periods or Compensation in Lieu Thereof; (4) Failure to Reimburse
3 Employee Expenses; (5) Failure to Pay Correct Sick Pay Wages (6) Failure to Timely Pay
4 Wages During Employment; (7) Failure to Timely Pay Wages at Termination; (8) Knowing and
5 Intentional Failure to Comply with Itemized Employee Wage Statement Provisions; and (9)
6 Violations of the Unfair Competition Law. (Declaration of Anthony Draper (“Draper Decl.”) ¶
7 2.)

8 In September 2022, Plaintiff Carralez sent written notice to the LWDA and Satellite
9 regarding alleged PAGA violations and the facts and theories supporting the same. In September
10 2022, Plaintiff Carralez also filed a class action in the United States District Court for the
11 Eastern District of California, *Carralez v. Satellite Healthcare, Inc.*, Case No. 2:22-AT-00946
12 (hereinafter the “Carralez Action”), alleging substantially similar Labor Code violations. (Draper
13 Decl. ¶ 3.)

14 **B. Discovery and Mediations**

15 As discussed in the Preliminary Approval Motion, Class Counsel conducted a thorough
16 investigation into the factual and legal issues implicated by Plaintiffs’ claims and was able to
17 objectively assess the settlement’s reasonableness through exchange of informal discovery.
18 Specifically, through exchange of informal discovery, Satellite produced to Plaintiffs several
19 hundred thousand lines of data, each consisting of multiple individual data points, and
20 approximately one thousand (1,000) pages of documents, including all of its pertinent policies,
21 handbooks, the time and wage records for hundreds of putative class members dating back as far
22 as 2017. (Draper Decl. ¶ 4.) In December 2022, Mayall Hurley, P.C. propounded 24 special
23 interrogatories, 17 requests for admission, and 54 requests for production of documents on
24 Satellite. It also prepared, but did not send, a Belaire-West Notice. In January 2023, after the
25 Parties agreed to mediation, Mayall Hurley, P.C. apprised Satellite of exactly what documents
26 and data it would require to engage in a productive mediation. In March 2023, Mayall Hurley,
27 P.C. retained an expert, Econ One Research, Inc., to analyze and evaluate the data to be produced
28

1 by Satellite for the Parties' mediation. (Declaration of Robert Wassermann ("Wassermann
2 Decl.") ¶¶ 15-20.)

3 From these documents and data, Class Counsel and their expert created a damages model
4 for use during the mediation. This included fully evaluating all of the data furnished by Satellite
5 and determining Satellite's potential exposure during Class Period. Prior to the mediation, Class
6 Counsel had multiple discussions with their retained expert to ensure the parameters of the data
7 were as represented, that the data was usable and reliable (including cross-checking to ensure the
8 same), and the analysis was accurate. Plaintiffs' counsel also spot-checked a number of
9 calculations to ensure their accuracy. (Draper Decl. ¶ 5; Wassermann Decl. ¶ 15-22)

10 After the Parties reached a settlement in principle in the instant case, their counsel spent
11 months in continued negotiations about the settlement terms and in the process exchanged
12 additional detailed information pertinent to the settlement. Beginning in early August 2023, the
13 Parties exchanged numerous drafts of the long-form Settlement Agreement and notice and had
14 multiple calls and e-mail communications regarding the terms of the documents and revisions
15 thereto. The principal terms and provisions of the settlement were finally approved by the Parties
16 in approximately October 2023, and the Settlement Agreement was fully executed as of
17 November 3, 2023. (Draper Decl., ¶ 6; Wasserman Decl. ¶ 23-28)

18 It is the preliminarily approved Settlement Agreement and the Parties' Amendment
19 thereto which is now before this Court for final approval. (Wasserman Decl. ¶ 28., Exh. 1 and 2.)

20 **C. The Preliminarily Approved Settlement**

21 On December 29, 2023, Plaintiffs filed the Preliminary Approval of Class Action and
22 PAGA Settlement. On July 23, 2024, the Court entered the Order granting preliminary approval
23 and preliminarily appointed Class Counsel (James Hawkins APLC and Mayall Hurley P.C.), the
24 Class Representatives (Tiffany Soliman, Maria Carralez, and Eugene Bautista), and the
25 Settlement Administrator (Atticus Administration LLC.). The Court also approved the proposed
26 Notice of Class Action and PAGA Settlement. Now that administration has been completed,
27 subject to the Court's final approval, the fees and expenses will be paid from the Gross Fund of
28 \$2,425,000 as follows:

1 1. Subject to Court approval, Class Counsel shall be paid up to \$808,333.33 in
2 attorneys' fees (i.e., one-third of the Gross Fund) and total actual costs of \$30,514.25.

3 2. Subject to Court approval, the Named Plaintiffs Soliman, Carralez, and Bautista
4 shall each be paid a Class Representative Service Award of \$10,000 for their time and effort in
5 bringing and presenting the Action despite the risks of such litigation, serving as class
6 representatives and releasing their Released Claims. (Exh. 1, p. 8, ¶ 38.)

7 3. Subject to Court approval, \$22,718 will be set aside from the Gross Fund to cover
8 the Atticus's costs of administering this Settlement ("Administrator Expenses Payment").¹ (Exh.
9 1, p. 9, ¶ 39.)

10 4. Subject to Court approval, \$50,000 will be set aside from the Gross Fund for the
11 PAGA Penalties, out of which 75% (\$37,500) will be paid to the LWDA and 25% (\$12,500) will
12 be distributed among the Aggrieved Employees ("Individual PAGA Payment"). (Exh. 1, pp.9-10,
13 ¶ 41.)

14 5. Individual PAGA Payments to each Class Member: Each Participating Class
15 Member will be entitled to a *pro rata* share of the portion of the PAGA Payment allocated to
16 aggrieved employees. Atticus shall divide a 25% portion of the PAGA Payment amount by the
17 total number of Compensable pay periods during the PAGA Period. ("Pay Period Value").
18 Atticus shall then multiply the number of Compensable pay periods for each Aggrieved
19 Employee by the Pay Period Value. (Exh. 1, pp. 10-11, ¶¶ 43(a-d).)

20 6. Tax allocation of Individual Class Payments shall be: thirty-three percent (33%)
21 as wages subject to all applicable tax withholdings, and sixty-seven percent (67%) as non-wage
22 penalties not subject to payroll tax withholdings. Atticus shall issue an IRS Form W-2 to each
23 Class Member for the portion of each Individual Settlement Payment allocated as wages and
24 subject to all applicable tax withholdings. Atticus shall issue an IRS Form 1099 to each Class
25 Member for the portions of each Individual Settlement Payment allocated as non-wage penalties
26 and interest and not subject to payroll tax withholdings. (Exh. 1, p. 15, 60.)

27
28

¹ This amount is less than the \$25,000 maximum amount set forth in the Settlement Agreement. (Ex.1,¶ 39)

1 **D. Dissemination of Notice Packet**

2 On August 26, 2024, Satellite’s counsel provided Atticus a Class List containing data for
3 2,586 individuals (full names, last known mailing addresses, social security numbers, and such
4 other formation as was necessary for Atticus to calculate workweeks during the Class Period and
5 PAGA pay periods during the PAGA. (Bridley Decl. ¶¶ 5-6.) The mailing addresses contained in
6 the Class List were processed and updated utilizing the National Change of Address Database
7 (“NCOA”). (Bridley Decl. ¶ 6.) On August 30, 2024, the Class Notice was mailed to all 2,586
8 Class Members. (Bridley Decl. ¶ 7.)

9 Of the 2,586 Class Notices mailed, 151 were returned as undeliverable or with a
10 forwarding address. The 16 with forwarding addresses were immediately re-mailed. One
11 hundred twenty-four (124) undeliverable records were sent to IDI for address tracing. Updated
12 addresses were found for 115 Class Members and Class Notices were promptly re-mailed to the
13 updated addresses. Eight (8) of the re-mailed Notices were returned as undeliverable a second
14 time. Updated addresses were not found for the other nine (9) undeliverable records that were
15 sent to IDI. Eleven (11) undeliverable records returned to Atticus after the exclusion and
16 objection deadline were not sent to IDI for address tracing. In total, 28 Notices were deemed
17 undeliverable. Thus, 2,558 Class Members or 98.92% of the Settlement Class were successfully
18 noticed through mail. (Bridley Decl. ¶ 8.)

19 **E. The Settlement Provides Reasonable Compensation to the Class Members**

20 Even without the presumption of fairness and reasonableness, the Settlement is clearly
21 well within the range of reasonableness. All Settlement Class Members will be paid their portion
22 of the Net Settlement Fund “NSF”. Subject to Court approval, the NSF amount available to pay
23 the Settlement Class is approximately \$ 1,491,448.67. (Bridley Decl. ¶ 13.) 2,584 Class
24 Members are to be paid Individual Settlement Payments out of the NSF. (Bridley Decl. ¶ 13.)
25 The *average* estimated Individual Settlement Payment to Class Members is more than \$574.308
26 with a Workweek Value in excess of \$6.23 (*Id.*) The *average* estimated Individual PAGA
27 Payment is more than \$5.07 (Bridley Decl. ¶ 14.)
28

As explained at preliminary approval, accounting for the risks of continued litigation, Plaintiffs determined that a settlement amounting to \$2,425,000 was fair and reasonable. The specific details of the claims and their valuations addressed in the Motion for Preliminary Approval and are set forth in the Declaration of Robert Wasserman (“Wasserman Decl.” ¶¶ 41-70). This is a fair and reasonable recovery and aligned with settlements previously approved by Courts. *See, e.g., In re Warfarin Sodium Antitrust Litig.*, 212 F.R.D. 231, 256-58 (D. Del. 2002) (recognizing that a reasonable settlement amount can be 1.6% to 14% of the total estimated damages); *In Re Armored Car Antitrust Litig.*, 472 F. Supp. 1357, 1373 (N.D. Ga. 1979) (settlements with a value of 1% to 8% of the estimated total damages were approved); *In Re Four Seasons Secs. Laws Litig.*, 58 F.R.D. 19, 37 (W.D. Okla.1972) (approving 8% of damages); *Balderas v. Massage Envy Franchising, LLP*, 2014 WL 3610945, at *5 (N.D. Cal. July 21, 2014) (finding that settlement which amounted to 8% of maximum recovery “[fell] within the range of possible initial approval based on the strength of plaintiff’s case and the risk and expense of continued litigation.”); *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2008) (approving settlement of 6% to 8% of estimated damages).¹ (Id.)

Through their counsel, Plaintiffs took into consideration the significant risks that class certification could be denied on the central claim and/or that a merits decision on the central claim would not favor the Class. (Draper Decl. ¶ 7.) Plaintiffs’ counsel also considered the expense and length of continued proceedings necessary to continue the Action against Satellite

¹ *See also In re Uber FCRA Litig.*, No. 14-cv-05200-EMC, 2017 U.S. Dist. LEXIS 101552, at *23- 24 (N.D. Cal. June 29, 2017) (granting preliminary approval to class action settlement where gross settlement fund, prior to deducting attorneys’ fees and services awards, was valued at 7.5% or less of total possible verdict); *Viceral v. Mistras Grp., Inc.*, No. 15-cv-02198-EMC, 2016 U.S. Dist. LEXIS 140759, at *21 (N.D. Cal. Oct. 11, 2016) (granting preliminary approval to class action settlement representing “8.1% of the full verdict value” with net settlement amount representing approximately 5.3% of full verdict value); *Stovall-Gusman v. W.W. Granger, Inc.*, No. 13-cv-02540-HSG, 2015 WL 3776765, at *4 (N.D. Cal. June 17, 2015) (granting final approval to settlement with net recovery to Plaintiffs valued at 7.3% of potential maximum recovery); *Cruz v. Sky Chefs, Inc.*, No. 12-cv-02705-DMR, 2014 WL 7247065, at *5 (N.D. Cal. Dec. 19, 2014) (granting final approval where gross settlement amount represented 8.6% of the maximum potential recovery from the class claims and estimated amount distributable to class after accounting for attorneys’ fees and other deductions represented approximately 6.1% of maximum potential recovery); *In re LDK Solar Sec. Litig.*, No. 07-cv-05182-WHA, 2010 WL 3001384, at *2 (N.D. Cal. July 29, 2010) (granting final approving where “[t]he proposed settlement amount is [. . .] only about five percent of the estimated damages before fee and costs—even before any reduction thereof for attorney’s fees and costs.”).

1 through trial and any possible appeals and the difficulties in establishing the alleged damages.
2 (*Id.*) The settlement is fair, reasonable, and adequate, given the significant risks to Plaintiffs and
3 Class Members of prevailing on class certification or at trial, and thus leaving employees with no
4 recovery. (*Id.*; Wassermann Decl ¶ 64-65)

5 **III. FINAL SETTLEMENT APPROVAL IS APPROPRIATE**

6 The law favors settlement, particularly in class actions and other complex cases in which
7 substantial resources can be conserved by avoiding the time, cost and rigors of formal litigation.
8 *City of Seattle* 955 F.2d at 1276; *Potter v Pacific Coast Lumber Company*, (1951) 37 Cal. 2d.
9 592, 602-603.; 4 NEWBERG §11.41. When faced with a motion for final approval of a class
10 action settlement under *Code of Civil Procedure* §382, a court inquires whether the settlement is
11 “fair, adequate, and reasonable.” *See e.g., Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*,
12 (2010) 186 Cal. App. 4th 399, 407-408; *Kullar v. Foot Locker Retail, Inc.* (2008) 168
13 Cal.App.4th 116, 129-30; *Dunk v. Ford Motor Company* (1996) 48 Cal.App.4th 1794, 1801.

14 **A. This Court Preliminarily Found This Settlement to be Fair, Adequate and** 15 **Reasonable and Nothing Has Changed to Disturb That**

16 Before granting final approval of a class action settlement, courts must determine that the
17 proposed settlement is fair, reasonable, and adequate — and not a product of fraud, overreaching,
18 or collusion. Cal. R. Ct. 3.769 (g); Cal. Civ. Pro. Code § 382; *Dunk v. Ford Motor Co.*, supra, 48
19 Cal.App.4th at 1801. Courts must presume that a settlement is fair, reasonable, and adequate, and
20 thus appropriate for Final approval when the following three factors are satisfied: (1) the Parties
21 reached settlement via arms-length negotiations; (2) counsel conducted sufficient investigation
22 and discovery to allow themselves and the court to act intelligently; and (3) counsel is
23 experienced in similar litigation *Id.* at 1802. *See also 7-Eleven Owners for Fair Franchising v.*
24 *Southland Corp.*, (2000) 85 Cal. App. 4th 1135, 1146. Further, as discussed below, although not
25 determinative, courts consider the percentage of objectors in determining whether a presumption
26 of fairness exists. (*Id.*) There is no question that these factors are satisfied here. The Parties
27 conducted a sufficient amount of discovery, participated in private mediation, and numerous
28

1 conferences of counsel that ultimately led to an arms-length settlement that provides for
2 substantial recovery. Moreover, out of 2,586 Class Members there were only two requests for
3 exclusion from, and zero objections to, the Settlement (Bridley Decl. ¶¶ 9-10.)

4 **B. The Settlement Resulted From Non-Collusive, Arms-Length Negotiations**

5 There certainly was no collusion between the Parties. As discussed in the Preliminary
6 Approval Motion, the Parties participated in a full day mediation with retired Judge Sabraw.
7 (Draper Decl. ¶ 8.) Following an unsuccessful mediation, the Parties received and accepted a
8 mediator's proposal from Judge Sabraw for resolution of all claims. (*Id.*) In sum, armed with all
9 of the relevant information and the help of a highly experienced mediator and former judge,
10 counsel for the Parties engaged in lengthy, serious, and meaningful negotiations which has
11 resulted in the Settlement.

12 The involvement of a neutral third-party mediator is a factor that favors approval and
13 evidences the presumptive fairness of the arms-length negotiations. Indeed, courts should give
14 considerable weight to the competency and integrity of counsel and the involvement of a neutral
15 mediator in assuring themselves that a settlement represents an arms-length transaction entered
16 without self-dealing or other potential misconduct. *Kullar v. Foot Locker, supra*, 168 Cal. App.
17 4th at 129. Here, the Parties engaged in a mediation session with a knowledgeable wage and hour
18 mediator and former judge, Hon. Judge Sabraw (Draper Decl. ¶ 8.)

19 **C The Settlement is Supported by Substantial Investigative and Discovery**
20 **Efforts**

21 As discussed in the preliminary approval papers, supporting declaration and herein, Class
22 Counsel analyzed a significant amount of information that Satelitte produced in informal
23 discovery requests and requests in preparation for mediation (Draper Decl. ¶¶ 4-5.) The Parties
24 have conducted significant investigation of the facts and law during the prosecution of the
25 Action. Class Counsel's research enabled them to pinpoint the relevant issues and claims and to
26 assess potential liability and damages. These efforts resulted in the parties having a clear view of
27 the strengths and weaknesses of their respective cases and achieving a resolution on favorable
28

terms, as was evidenced during mediation and negotiations leading to Settlement (Draper Decl. ¶ 5; Wassermann Decl. ¶ 15-22)

D Class Counsel is Experienced in Similar Litigation

The endorsement of qualified and well-informed counsel of the settlement as fair is entitled to significant weight. *See Dunk, supra*, 48 Cal.App.4th at 1802. As discussed in the preliminary approval papers and set forth in the declaration of Class Counsel, Class Counsel have represented, mediated, and settled other employee class actions in wage and hour litigation and have knowledge of the strengths and weaknesses of the claims against Defendant and the benefits of the proposed settlement under the circumstances of the case. (Draper Decl. ¶¶ 15-20; Wasserman Decl. ¶¶ 98-101.) Class Counsel contends that the Settlement is fair, adequate, reasonable, and in the best interests of the Class as a whole.

E. Class Members' Positive Reaction to the Settlement Favors Final Approval

Finally, courts look at the reaction of class members to determine if a settlement that directly affects their interests should be approved as fair, adequate, and reasonable. As noted above, out of 2,586 Class Members presumed to have received the Class Notice, there were two requests for exclusion and no objections (Bridley Decl. ¶¶ 9-10.)

A court may appropriately infer that a class action settlement is fair, adequate, and reasonable even when class members object to it. Indeed, a court may approve a class action settlement as fair, adequate, and reasonable even over the objections of a significant percentage of class members. *See Boyd v. Betchel Corp.* (D.C. Cal 1976) 485 F. Supp. 610, 624. *Reed v. General Motors* (5th Cir. 1983) 703 F.2d 170, 174; *In re Wash. Pub. Power Supply System Sec. Litig.* (D. Ariz. 1989) 720 F. Supp. 1379, 1394. In this case, there were no objections to the Settlement. The Court should construe this as a further indication of Class Members' support for the Settlement as fair, adequate, and reasonable.

1 **IV. CLASS REPRESENTATIVES ENHANCEMENT PAYMENTS ARE**
2 **REASONABLE**

3 The settlement provides for Class Representative Service Awards to be paid to the Class
4 Representatives. The purpose is to provide an additional incentive payment, taking into
5 consideration the risks, time and effort in coming forward to fulfill all the duties associated with
6 being a Class Representative. Awarding incentive awards to compensate named plaintiffs in
7 class actions has been specifically recognized. See, e.g., *Clark v. American Residential Services,*
8 *LLC*, (2009) 175 Cal App 4th 785, 804 (incentive awards to named Plaintiffs appropriate for
9 participation in class action); *Bell v Farmers Ins. Exchange*, (2004) 115 Cal App 4th 715, 726
10 (upholding "service payments" to named plaintiffs for their efforts in bringing class case).

11 As stated by the Court of Appeal in the *Cellphone Termination Fee Cases*: incentive
12 awards are "intended to compensate class representatives for work done on behalf of the class, to
13 make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to
14 recognize their willingness to act as a private attorney general." *Cellphone Termination Fee*
15 *Cases*, (2010) 186 Cal. App. 4th 1380, 1394 (approving an incentive award of \$10,000).

16 The Class Representative Service Awards are intended to compensate named Plaintiffs
17 Tiffany Soliman, Maria Carralez, and Eugene Bautista as Class Representatives for their
18 willingness to accept the responsibility of representing the interests of all Class Members. The
19 purpose is to provide an incentive payment, taking into consideration the risks, time, and effort
20 expended by their coming forward to provide invaluable information and to litigate this matter
21 on behalf of all Class Members. (Draper Decl. ¶ 9; Wassermann Decl. ¶ 76-79) The
22 Enhancement Payments are also in consideration for executing a general release of all their
23 claims against Defendant (Exh. 1, p. 8, ¶ 38).

24 Plaintiffs also risked potential judgment against them if this case had been unsuccessful.
25 In class action losses, class representatives are deemed the losing party that is liable for the
26 prevailing party's costs *Earley v. Superior Court*, (2000) 79 Cal. App. 4th 1420, 1433-1434.
27 Finally, Plaintiffs also risked this lawsuit having a negative impact on future employment
28 opportunities, as prospective employers may be less inclined to hire an employee who has served

1 as a class representative. Indeed a Google search for Plaintiffs’ names reveals – on the first page
2 of results – that they have been engaged in employment-related litigation against their former
3 employer. (Wassermann Decl. ¶ 78, Exh. 4-6; Soliman Decl. ¶ 7; Carralez Decl. ¶ 10; Bautista
4 Decl. ¶ 10.) *See, e.g. Staton v. Boeing*, 327 F.3d 938, 977 (9th Cir. 2003). As such, Plaintiffs
5 respectfully request that this Court approve the Class Representative Service Awards in the
6 amounts of \$10,000 each to Plaintiffs Soliman, Carralez, and Bautista.

7 **V. CLASS COUNSEL’S REQUEST FOR FEES IS REASONABLE**

8 Subject to court approval, this settlement amount of \$2,425,000 includes an allocation of
9 \$808,333.33 in Class Counsel Fees. Plaintiffs and class members are entitled to recover their
10 attorneys’ fees and costs. (Labor Code §2802; Code Civ. Proc. §1021.5(a); *Earley v. Super. Ct.*,
11 (2000) 79 Cal.App.4th 1420. A fee award is justified when class benefits are obtained via
12 settlement. *Maria P. v. Riles*, (1987) 43 Cal.3d 1281, 1290-91; *Westside Cty. for Indep. Living,*
13 *Inc. v. Obledo*, (1983) 33 Cal.3d 348, 352-53. Fee awards may be based on (1) the percentage-of-
14 the-benefit method; or (2) the lodestar plus multiplier method. *See Wershba v. Apple Computer,*
15 *Inc.* (2001) 91 Cal. App. 4th 224, 254; *Lealao v. Beneficial California, Inc.* (2000) 82
16 Cal.App.4th 19, 27. Both methods are proper in California, with courts often only using a
17 lodestar-multiplier method as a check against the reasonableness of a percentage fee award. (*See,*
18 *e.g., Serrano v. Priest (Serano III)*, (1977) 20 Cal.3d 25, 48-49 fn. 23; *People ex rel. Dept. of*
19 *Transportation v. Yuki*, 31 (1995) Cal. App. 4th 1754, 1769-1772; *Salton Bay Marina, Inc. v.*
20 *Imperial Irrigation Dist.*, (1985) 172 Cal. App. 3d 914, 954.)

21 Here, the requested fee amount is approximately 1.6 times the lodestar, which is well
22 within the lodestar-multiplier range routinely approved. The amount requested constitutes a
23 “percentage of the fund” deemed reasonable in similar wage and hour settlements of this size and
24 approved by California courts. This is not only warranted based on the contingency risk
25 Plaintiffs’ counsel agreed to incur for the benefit of the class members and aggrieved employees,
26 but also based on the hard fought and beneficial results achieved.

27 **A. Class Counsels’ Requested Fees Are Reasonable Under the**
28 **Lodestar/Multiplier Analysis Although One Is Not Required**

1 When fees are allocated by percentage method, courts have discretion to “cross-check”
2 the fees awarded through the lodestar method. However, the Supreme Court in *Laffitte v. Robert*
3 *Half Internat. Inc.*, 1 Cal. 5th at 505, “emphasize[d] [that] the lodestar calculation, when used in
4 this manner, does not override the trial court’s primary determination of the fee as a percentage
5 of the common fund and thus does not impose an absolute maximum or minimum on the
6 potential fee award.”

7 Courts have defined reasonable multipliers on a lodestar cross-check to “range from 2 to
8 4 or even higher.” *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 255 (2001). In
9 determining the outcome of a fee award in a class action matter, one of the main benchmarks to
10 consider is the result for the class. The Supreme Court has said that in an award of attorney’s
11 fees the “most critical factor is the degree of success obtained.” *Hensley v. Eckerhart*, 461 U.S.
12 424, 436 (1983). The “benefit obtained for the class” is considered the “foremost” consideration
13 in determining the appropriate fee in a common fund case. *In Re Bluetooth*, 654 F.3d at 942.

14 The lodestar-multiplier method begins with a calculation of time spent and reasonable
15 hourly compensation of each attorney and paralegal who worked on the case. Then to
16 compensate counsel for risk, quality, and result, courts commonly apply a "multiplier" to the
17 lodestar in awarding attorneys' fees. California courts often increase the base lodestar with a
18 multiplier after considering: (1) the continuing obligation of Plaintiffs’ counsel to devote time
19 and effort to the litigation; (2) the extent to which the litigation precluded other employment by
20 the attorneys; (3) the contingent nature of the fee agreement, both from the point of view of
21 eventual success on the merits and securing an award; (4) the experience, reputation, and ability
22 of the attorneys who performed the services, and the skill they displayed in litigation; (5) the
23 amount involved and the results obtained on behalf of the class by Plaintiffs ’s counsel; and (6)
24 the reaction of the class members. *See, e.g. Serrano, supra*, 20 Cal. 3d at 49; *Dunk v. Ford Motor*
25 *Co., supra*, 48 Cal. App. 4th at 1810 n.21. However, no rigid formula applies, and each factor
26 should be considered only “where appropriate.” *See Dept. of Transp. v. Yuki*, (1995) 31 Cal.
27 App. 4th 1754, 1771; *See also Serrano, supra*, 20 Cal.3d at 49.

1 **1. Time and Effort**

2 Class Counsel, who are experienced wage and hour class action attorneys, have put a
3 significant number of hours in this case. Class Counsel had to conduct substantial investigation,
4 research numerous issues, engage in motion practice, review and analyze policies, independently
5 analyze time records, and wage statements, as well as dedicate substantial time to analyze data,
6 time records and payroll records (Draper Decl. ¶ 17.) Those efforts, along with negotiating
7 settlement, attempting to obtain preliminary approval, preparing and filing the final approval
8 papers, required a significant amount of time and labor (*Id.*)

9 Since on or about April 30, 2021, prior to the inception of the filing of this lawsuit on
10 September 29, 2021, the total amount of attorney time estimated to have been expended thus far,
11 and estimated to be expended in finalizing this matter is 255 hours and Class Counsel's total
12 lodestar is \$165,700, (Draper Decl. ¶ 18.) Additionally, Mayall Hurley P.C.'s total hours are
13 more than 358 and its total lodestar exceeds \$338,700. Class Counsel's total lodestar amount is a
14 more than of \$504,400. (Wassermann Decl. ¶ 89-91)

15 Here, the tasks and work performed by Class Counsel were reasonable and necessary to
16 the prosecution of this case and justified, particularly in light of the result achieved. Accordingly,
17 Class Counsel respectfully submits that the fee request of \$808,333.33 is reasonable, fair, and
18 should be awarded.

19 **2. Extent Litigation Precluded Other Employment**

20 Inherent to class action litigation is the amount of time and labor required to properly
21 adjudicate the case. From start to settlement, judgment or verdict, class action litigation
22 commands commitment, an extensive amount of time, labor and resources to successfully
23 litigate. Although this litigation did not conclusively preclude other employment it did impact
24 Class Counsels' ability to take on other class action cases. Class Counsel work at boutique law
25 firms with few attorneys and staff. (Draper Decl. ¶ 16; Wassermann Decl. ¶ 86)

26 **3. Contingent Nature of the Agreement**

27 In *Ketchum v. Moses* (2001) 24 Cal. 4th 1122, 1132, the court noted, the economic
28 rationale for contingency cases has been explained as follows: "A contingent fee must be higher

1 than a fee for the same legal services paid as they are performed. As discussed further below, the
2 contingent fee compensates the lawyer not only for the legal services he renders but also for the
3 loan of those services. The implicit interest rate on such a loan is higher because the risk of
4 default (the loss of the case, which cancels the debt of the client to the lawyer) is much higher
5 than that of conventional loans.” (Posner, *Economic Analysis of Law* (4th ed. 1992) pp. 534,
6 567.) “A lawyer who both bears the risk of not being paid and provides legal services is not
7 receiving the fair market value of his work if he is paid only for the second of these functions. If
8 he is paid no more, competent counsel will be reluctant to accept fee award cases.” *Id.* Here,
9 Class Counsel took the matter on a contingent basis (Draper Decl. ¶ 23.)

10 **4. Experience, Reputation, and Ability of Plaintiff’s Counsel**

11 Class Counsel also has considerable experience and has demonstrated competence with
12 litigating wage and hour class actions. Class Counsel’s skill and experience in litigating wage
13 and hour class actions, in state and federal forums, contributed to the results obtained on behalf
14 of the putative class members (Draper Decl. ¶¶ 15-20; Wassermann Decl., ¶¶ 98-101)

15 **5. Results Obtained on Behalf of the Class by Plaintiff’s Counsel**

16 The award of attorney fees should reflect the successful outcome of the case *Hensley v.*
17 *Eckerhart*, (1983) 461 U.S. 424,440. As already discussed herein and in the preliminary approval
18 motion, this case involves numerous and difficult issues largely precluding a clear-cut outcome
19 as to liability. Here, there were significant class certification issues stemming from the fact
20 concerning whether individual issues predominate and whether class member declarations and
21 statistical samplings can support certification. (Wassermann Decl. ¶¶ 51-50.) Satellite recognized
22 the uncertainty of Plaintiffs’ claims and vigorously disputed liability, Class Counsels’ ability to
23 obtain certification, and the amount of damages. (*Id.*) Nevertheless, despite the obstacles as
24 already discussed in the preliminary approval motion and herein, Class Counsel obtained
25 favorable financial compensation for the class members. All Class Members who did not opt out
26 of the Settlement will receive payments. The *average* estimated Individual Settlement Payment
27 to Class Members will be more than \$572.35^[AD1]^[RW2]. (Bridley Decl. ¶ 14.)

1 Despite the complexity of the case, Class Counsel have, through the investment of
2 substantial effort, and the resources of their boutique law firms, been able to secure
3 compensation on behalf of the Class Members where the risk could potentially leave employees
4 with no recovery. (Wassermann Decl. ¶ 64.)

5 **6. Reaction of Putative Class Members**

6 As already discussed herein, the reaction of the Class Members has been positive.
7 Specifically, not one of the Class Members objected to Class Counsel’s request for attorneys’
8 fees and only three requested exclusion which also provides compelling evidence that the request
9 is fair, adequate, and reasonable.

10 In sum, based on the six factors discussed above, Class Counsel’s lodestar in this action
11 should be enhanced by the application of a multiplier which, as applied here, is approximately
12 1.6 times the lodestar and therefore well within, and at the lowest end of, the multiplier range
13 applied to these types of settlements in California. Additionally, by settling this case prior to trial
14 rather than continuing to litigate issues that remain somewhat unsettled, counsel obtained
15 favorable results for the class at far less expense to the parties, the counsel and to this Court.

16 **B. Class Counsels’ Requested Fees Are Reasonable Under the Percentage of the**
17 **Benefit Method.**

18 **1. Attorney’s Fees Should be Based Upon the Total Benefit to the Class.**

19 Under California law, courts have the discretion to award fees under the percentage
20 method when fees are drawn from an ascertainable fund. *See Laffitte v. Robert Half Int’l*, 1 Cal.
21 5th 480, 503 (2016) (“*Laffitte II*”) (“We join the overwhelming majority of federal and state
22 courts in holding that when class action litigation establishes a monetary fund for the benefit of
23 the class members, and the trial court in its equitable powers awards class counsel a fee out of
24 that fund, the court may determine the amount of a reasonable fee by choosing an appropriate
25 percentage of the fund created.”). The common fund method “better approximates the workings
26 of the marketplace than the lodestar approach” in setting the price of contingent fees. *See Lealao*
27 *v. Beneficial Cal. Inc.* 82 Cal. App. 4th 19, 48 (2000) (“*Lealao*”). The percentage method
28

1 “provide[s] incentives roughly comparable to those negotiated in the private bargaining that
2 takes place in the legal marketplace.” (*Id.*)

3 The primary benefit of the percentage method is that it focuses on the benefit conferred
4 on the class as a result of the efforts of Class Counsel. Awarding Class Counsel fees based on a
5 percentage of the recovery has the advantages of eliminating the incentive for attorneys to
6 increase hours unnecessarily, encouraging early settlement of disputes, and preserving judicial
7 resources otherwise used to monitor attorneys’ billable hours. See *In re Activision Sec. Litig.*,
8 (N.D. Cal. 1989) 723 F. Supp. 1373, 1378-79; *MANUAL FOR COMPLEX LITIGATION* 4th ed.
9 §14.121 (2004) (“in practice, the lodestar method is difficult to apply, time consuming to
10 administer, inconsistent in result. . . capable of manipulation,... [and] creates inherent incentive
11 to prolong the litigation”); See also *In re Quantum Health Resources, Inc.* (C.D.Cal. 1997) 962
12 F.Supp. 1254, 1256 (noting that lodestar “creates an incentive to keep litigation going in order to
13 maximize the number of hours included in the court’s lodestar calculation”).

14 The percentage of the fund method survives in California class action cases. *Laffitte v*
15 *Robert Half Intern, Inc.* (2016) 1 Ca. 4th 480, 506. [See also. *Chavez v. Netflix, Inc.*, (2008) 162
16 Cal. App. 4th 43 at 65, 66; *Consumer Cause, Inc. v. Mrs. Gooch's Natural Food Markets, Inc.*,
17 (2005) 127 Cal. App. 4th 387, 397 [the common fund doctrine is “frequently applied in class
18 actions when the efforts of the attorney for the named class representatives produce monetary
19 benefits for the entire class”]; *Wershba v. Apple Computer, Inc.*, *supra*, 91 Cal. App. 4th at 254.

20 **2. The Contingent Nature of Class Counsel’s Representation Supports the**
21 **Requested Fees Based on Percentage of the MSA.**

22 Further, the contingent nature of Class Counsels’ representation also warrants the
23 requested attorney fees based on the percentage of the Gross Fund. The risks in taking on any
24 class action are enormous especially in regards to wage-and-hour class actions because the wage
25 laws are still developing and a change in the law could wipe out a Plaintiffs’ recovery. Litigating
26 a class action through trial takes years and requires the investment of hundreds of thousands of
27 dollars. Attorneys willing to undertake this risk deserve appropriate compensation. As elaborated
28 by the California Supreme Court in *Graham v. Daimler Chrysler Corp.*, (2008) 34 Cal. 4th 553,

1 579-580, counsel should be awarded a fee enhancer for taking on contingent cases because a
2 "contingent fee compensates the lawyer not only for the legal services he renders but for the loan
3 of those services. The implicit interest rate on such a loan is higher because the risk of default
4 (the loss of the case, which cancels the debt of the client to the lawyer) is much higher than that
5 of conventional loans."

6 As the California Supreme Court specifically explained:

7 A contingent fee must be higher than a fee for the same legal services paid as they
8 are performed. The contingent fee compensates the lawyer not only for the legal
9 services he renders but for the loan of those services. The implicit interest rate on
10 such a loan is higher because the risk of default (the loss of the case, which
11 cancels the debt of the client to the lawyer) is much higher than that of
12 conventional loans. A lawyer who both bears the risk of not being paid and
13 provides legal services is not receiving the fair market value of his work if he is
14 paid only for the second of these functions. If he is paid no more, competent
15 counsel will be reluctant to accept fee award cases.

16 *Id.* at 580. (citing *Ketchum v. Moses*, (2001) 24 Cal. 4th 1122, 1132-33).

17 In the legal marketplace, an attorney whose compensation is entirely dependent on
18 success – who takes a significant risk – should and does expect a significantly higher fee than an
19 attorney who is paid a market rate as the case goes along, win or lose. *See, e.g., Rader v.*
20 *Thrasher*, (1962) 57 Cal. 2d 244, 253 (“[a] contingent fee contract, since it involves a gamble on
21 the result, may properly provide for a larger compensation than would otherwise be reasonable”
22 (citation omitted); *Salton Bay Marina v. Imperial Irrig. Dist.*, (1985) 172 Cal. App. 3d 914, 955
23 (contingent nature of the litigation is a relevant factor in determining a reasonable attorney fee
24 award).

25 Class Counsel represented the Class Members in this matter and has borne the entire risk
26 and costs of litigation on a pure contingency basis. To date, Class Counsel has not received any
27 compensation and expended litigation costs on behalf of the class. Class action contingency
28 cases are inherently risky. Upon retention, Class Counsel makes a commitment to litigate the
case through trial. These types of cases can take years, hundreds of hours of work and cost an
enormous amount of money; these risks are known upon retention. The risks involved coupled

1 with the contingency basis of this case further support Class Counsel's request for attorneys' fees
2 and costs (Draper Decl. ¶ 19.)

3 **3. Additional Factors re: Contingency Market Rate Justify the Requested**
4 **Fee Award**

5 Further, important public policies underlie a court's determination of a motion for
6 attorneys' fees in class actions. Employees who are wronged by an employer's violation of state
7 and federal labor laws should have access to counsel with the ability and resources necessary to
8 litigate complex cases. *See e.g., Say-On Drug Stores, Inc. v. Superior Court*, (2004) 34 Cal. 4th
9 319, 340 (enforcement of labor laws and class action device both matters of public policy); Our
10 legal system places unique reliance on private litigants to enforce substantive provisions of
11 employment law through class actions. *See e.g. Gentry v. Superior Court*, 42 Cal. 4th 443, 450-6
12 (2007) (confirming the public importance of private enforcement of overtime laws through class
13 actions); *Lealao*, 82 Cal. App. 4th (legal system relies on private litigants to enforce substantive
14 provisions of law through class and derivative actions; attorneys providing the essential
15 enforcement services must be provided incentives roughly comparable to those negotiated in the
16 private bargaining that takes place in the legal marketplace).

17 As the California Court of Appeal recognized in *Thayer v. Wells Fargo Bank, supra*, 92
18 Cal. App. 4th at 839: "Adequate fee awards are perhaps the most effective means of achieving
19 [the] salutary goal [of encouraging `private attorney general actions and] [c]ourts should not be
20 indifferent to the realities of the legal marketplace or unduly parsimonious in the calculation of
21 such fees." *See also Lealao*, 82 Cal.App.4th at 53 (cautioning against fee awards that are too
22 small and therefore "chill the private enforcement essential to vindication of many rights..."). At
23 a minimum, attorneys providing these substantial benefits should be paid an award equal to the
24 amount negotiated in private bargaining that take place in the legal marketplace. *Deposit*
25 *Guaranty Nat. Bank, Jackson, Miss. v. Roper*, (1980) 445 U.S. 326, 338; *Lealao*, 82 Cal. App. 4th
26 at 49-50.

27 **4. Counsel's Requested Fee Award is Within California's Benchmark**
28 **Awards and Thus Reasonable**

1 In addition to the forgoing, Class Counsel's request for attorneys' fees in the amount of
2 \$808,333.33, or not more than 33% of the \$2,425,000.00 Gross Fund is within the "zone of
3 reasonableness." The fee amount presently sought is not extraordinary, but actually falls at the
4 "average" fee deemed reasonable under California State court authority, as it is recognized that
5 "courts may award attorney's fees in the 30-40% range in wage and hour class actions that result
6 in recovery of a common fund under \$10 million." See e.g. *Martin v. AmeriPride Servs.*, 2011
7 U.S. Dist. LEXIS 61796, 23 (S.D. Cal. June 9, 2011). *Birch v. Office Depot, Inc.*, USDC
8 Southern District, Case No. 06cv1690 DMS (WMC) (awarding 40% fee on a \$16 million wage
9 and hour class action settlement); *Rippee v. Boston Mkt. Corp.*, USDC Southern District, Case
10 No. 05cv1359 BTM (JMA) (awarding a 40% fee on a \$3.75 million wage and hour class action
11 settlement).

12 Class Counsel's attorneys' fee request is fair and reasonable and is consistent with the
13 awards in California. It is also reasonable given the history of the Action, the time and effort
14 expended by Class Counsel and Intervenor's Counsel, and the results obtained.

15 **VI. COUNSEL'S REQUESTED COSTS ARE REASONABLE**

16 Class Counsel has not only expended substantial time in diligently prosecuting this
17 Action, but have also expended considerable resources during litigation with no guarantee that
18 their costs would be reimbursed. The Settlement provides for reasonable actual costs of up to
19 \$35,000.00 (Exh. 1, p. 1, ¶ 3.) Counsel's total actual costs amount is \$30,514.25 (\$3,850.12 to
20 counsel for Soliman, (Draper Decl. ¶ 21., Exh. 1) and \$26,664.13 to counsel for Carralez and
21 Bautista (Wassermann Decl. ¶ 94, Ex. 7) [AD3][RW4] Thus, Class Counsel respectfully requests that
22 the Court approve the requested cost amount as per the Settlement Agreement.

23 **VII. THE SETTLEMENT ADMINISTRATOR'S EXPENSES ARE**
24 **REASONABLE**

25 Atticus was retained to administer the notice and claims process. Atticus' duties included,
26 but were not limited to: (a) printing and mailing the Court Approved Notice of Class Action and
27 PAGA Settlement ("Class Notice") (b) receiving undeliverable Notices; (c) receiving any
28 requests for exclusion; and (d) answering questions from Class Members. Should the Court grant

1 final approval of this Settlement, Atticus will be responsible for further duties, including but not
2 limited to: (e) calculating Individual Settlement Payments, (f) calculating Individual PAGA
3 Payments, (g) distributing funds, (h) tax-reporting following final approval; (i) mailing
4 Settlement checks; (j) and for such other tasks as the Parties mutually agree or the Court orders
5 Atticus to perform (Bridley Decl. ¶ 16.) Class Counsel respectfully requests that, as per the
6 Settlement Agreement, that Atticus be awarded costs in the amount of \$22,718.00. (Settlement
7 Agreement, p.9, ¶ 39; Bridley Decl. ¶¶ 13, 16.)

8 **VIII. CONCLUSION**

9 For all of the foregoing reasons, Plaintiff respectfully request that the Court: (1) grant
10 final approval of the Settlement, including the gross settlement amount of \$2,425,000; (2)
11 confirm James R. Hawkins, Isandra Fernandez, and Anthony L. Draper, of James Hawkins
12 APLC, and Robert Wassermann of Mayall Hurley P.C. as Class Counsel; (3) approve
13 distribution of payments to the Settlement Class; (4) approve (\$50,000) in PAGA penalties; (5)
14 approve Class Representative Service Awards of \$10,000 to Plaintiffs Tiffany Soliman, Maria
15 Carralez, and Eugene Bautista; (6) approve costs of administering the Settlement to the
16 Settlement Administrator, Atticus Administration, LLC. in the amount of \$22,718.00; (7)
17 approve payment of \$808,333.33 in attorneys' fees and total attorney costs of \$30,514.25.

18 Finally, Plaintiff respectfully request that the Court enter the [Proposed] Order and
19 Judgement Granting Final Approval of Class Action and PAGA Settlement, filed concurrently
20 herewith).

21
22 Dated: December 9, 2024

Respectfully submitted,
JAMES HAWKINS, APLC

23 
Isandra Fernandez, Esq.
24 Anthony L. Draper, Esq.

25 DATED: December 9, 2024

MAYALL HURLEY P.C.

26
27 By 
28 Robert J. Wassermann
Attorneys for Plaintiffs