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Attorneys for Plaintiff MAICHEL BENTTON,
individually and on behalf of all other similarly situated

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

MAICHEL BENTTON individually and on
behalf of all others similarly situated,

Plaintiff,

v.

SEVITA HEALTH, formerly known as Mentor
Network, Inc.; MENTOR MANAGEMENT,
INC., a business form unknown; THE
MENTOR NETWORK, INC., a business form
unknown; FIRST STEP INDEPENDENT
LIVING PROGRAM, INC, a California
Corporation; and DOES 1-50, inclusive,

Defendants.

Case Nos. 22STCV06236

ASSIGNED FOR ALL PURPOSES TO:

Hon. Elihu M. Berle

Dept. 6

**NOTICE OF MOTION AND MOTION FOR
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT; ATTORNEYS' FEES,
COSTS, CLASS REPRESENTATIVE
SERVICE AWARD AND
ADMINISTRATION COSTS;
MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATION OF
JAMES HAWKINS.**

Date: February 29, 2024

Time: 10:00 a.m.

Dept.: 6

1 **TO THE HONORABLE COURT, ALL PARTIES, AND COUNSEL OF RECORD:**
2 **NOTICE IS HEREBY GIVEN** that on February 29, 2024 at 10:00 a.m. or as soon thereafter as
3 the matter may be heard in Department 6 of the above captioned Court, before the Honorable Elihu
4 M. Berle, Plaintiff MAICHEL BENTTON (“Plaintiff”), by and through Plaintiff’s counsels of
5 record, will and hereby do move the Court for Final Approval of the Class Action and Private
6 Attorneys General Act Settlement, awarding Attorneys’ Fees and Costs, Class Representative
7 Service Award, Settlement Administration Costs, and entering final approval and judgment.

8 This Motion is made pursuant to Rule 3.769 of the California Rules of Court and Labor Code
9 section 2699(1). This Motion is based on this Notice of Motion and Motion, the attached
10 Memorandum of Points and Authorities, the accompanying Declarations of James R. Hawkins, Irvin
11 Garcia of CPT GROUP, Inc., and Plaintiff Bentton. Attached to the “Hawkins” Declaration is the
12 Amended Stipulation of Settlement (the “Settlement Agreement”), argument of counsel, all papers
13 and pleadings filed in the action, and upon any further information or evidence requested by the
14 Court at the time of hearing on this Motion.

15 Dated: December 29, 2023

16 **JAMES HAWKINS APLC**

17 

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20 MICHAEL CALVO
21 LAUREN FALK
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23 Attorneys for Plaintiff Bentton, the Putative
24 Class, and the Aggrieved Employees
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26
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This Court preliminary approved the settlement on or about October 26, 2023. (James
4 Hawkins Decl. “Hawkins”, **Exhibit A** - Preliminary Approval Order). Plaintiff Bentton
5 (“Plaintiff”) now respectfully requests that this Court grant final approval of the settlement
6 attached to the Hawkins Declaration as **Exhibit B**, which seeks to resolve claims against
7 Defendants First Step Independent Living Program, Inc. and Mentor Management, Inc
8 (collectively “Defendants”) in exchange for a non-reversionary Gross Settlement Amount of
9 (“GSA”) of One Million Forty-Two Thousand Five Hundred Dollars and Zero Cents
10 (\$1,042,500.00).¹ To date, the Class Members overwhelmingly supported the Settlement, as there
11 are zero objections and zero requests for exclusion from the Settlement thus far. The proposed
12 Settlement is projected to pay an estimated average gross payment \$673.41 per Class Member,
13 with the highest estimated gross payment at \$4,694.47. (Administrator Decl. of Irvin Garcia-
14 hereinafter “Garcia”, ¶ 8).²

15 A total of 417 PAGA Group Members will be paid their portion of the PAGA Fund. Each
16 PAGA Group Member’s share of the PAGA Fund will be proportional to the number of Pay
17 Periods he or she worked during the period PAGA Period. According to Defendant’s records,
18 PAGA Group Members in aggregate worked a total of 8,600 Pay Periods during the PAGA
19 Period. Each Pay Period is accordingly valued at \$1.45. The average estimated payment from the
20 PAGA Fund is \$13.98 and the highest is \$91.57. (Id. at ¶ 9).

21 Plaintiff also moves for final approval of attorneys’ fees in the amount of \$347,500.00
22 which is 33.33% percent of GSA. As will be demonstrated herein, Class Counsel’s attorney fee
23

24 ¹ In advance of mediation, Defendants represented that there were approximately 480 Settlement Class Members
25 during the Class Period, thus the GSA was \$600,000 at the time of the settlement agreement’s execution. The
26 escalator clause in paragraph 3(E) states that “If the number of Settlement Class members through the end of the Class
27 Period has increased by more than 12.5% (i.e., if there are more than 540 Settlement Class members), then Defendants
28 agree to increase the Maximum Settlement Amount on a proportional basis (i.e., if the actual class size were 14.5%
greater than 480 Settlement Class members, Defendants agree to increase the Maximum Settlement Amount by 2%).
Therefore, the settlement amount has increased here accordingly.

² The class notice period expires on January 29, 2024. A supplemental declaration will be provided to the court after
the close of the notice period.

request is supported using the percentage fee method and the lodestar method. Second, Plaintiff moves for final approval of payment of the litigation costs in the amount of \$22,975.65, all of which was incurred in litigating this matter. Third, Plaintiff moves for final approval of the Class Representative Service Award to Plaintiff in the sum of \$7,500.00, to compensate the Class Representative for her service as a Class Representative and providing a general release of their claims against Defendants – a release significantly greater than the Class Members provided – and for the risks absorbed and time spent litigating the case. Plaintiff played a vital role in representing Class Members in this case and spearheading the lawsuit to seek monetary relief on behalf of all Class Members. Fourth, Plaintiff moves for final approval of the payment of \$12,500.00 in administrative costs to CPT Group, Inc. Fifth, Plaintiff moves for final approval of the \$50,000.00 PAGA Payment and the payment to the Labor and Work Development Agency (“LWDA”) for its share of the PAGA Payment (\$37,500.00, which is 75% of \$50,000.00; with the remaining \$12,500.00 payable to Aggrieved Employees).

This case required many hours of attorney time from Class Counsel and sought relief on behalf of 894 potential class members within the State of California: All current and former non-exempt employees employed by Defendants in their California facilities at any time from February 17, 2018 through July 8, 2023. (Settlement at ¶ 1)

This litigation involved the review and analysis of documents, policies, and practices, as well as a full day of mediation. Most importantly, the Settlement and all its terms received overwhelming support from Class Members, as there were no objections and no requests for exclusion. Therefore, Plaintiff respectfully requests the Court grant final approval of the Settlement, attorneys’ fees, litigation costs, Class Representative Service Award, Settlement Administration Costs, and payment to the LWDA in the amounts preliminarily approved by the Court and as fully disclosed to Class Members.

II. BACKGROUND, INVESTIGATION, DISCOVERY

On February 17, 2022 Plaintiff filed a putative Class action complaint entitled *Maichel Bentton v. Sevita Health et al.*, Los Angeles County Superior Court No. 22STCV06236 seeking damages for Defendants’ alleged failure to: (1) Failure to Pay Wages including Overtime; (2) Failure

1 to Provide Meal Periods; (3) Failure to Provide Rest Periods; (4) Failure to Pay Timely Wages; (5)
2 Failure to Provide Accurate Itemized Wage Statements; (6) Failure to Indemnify Necessary Business
3 Expenses; and (7) Violation of Unfair Competition Law; (Hawkins Decl. ¶¶ 3-7).

4 On April 24 2022, Plaintiff filed a related PAGA Action entitled *Maichel Bentton v. Sevita*
5 *Health et al.*, Los Angeles County Superior Court No. 22STCV13818 alleging violations of
6 PAGA related (1) Failure to Pay Wages including Overtime; (2) Failure to Provide Meal Periods;
7 (3) Failure to Provide Rest Periods; (4) Failure to Pay Timely Wages; (5) Failure to Provide
8 Accurate Itemized Wage Statements; (6) Failure to Indemnify Necessary Business Expenses; (7)
9 Violation of Unfair Competition Law; and (8) civil penalties under the Labor Code Private
10 Attorneys General Act of 2004, California Labor section 2698 et seq. (*Id.*).

11 On or about October 10, 2023, Plaintiff filed a First Amended Complaint
12 consolidating the class and PAGA claims. (*Id.*).

13 On March 8, 2023, the Parties engaged in private mediation with a well-respected wage and
14 hour class action mediator, Tripper Ortman. Prior to mediation, Plaintiff requested and Defendants
15 produced extensive documentation including time and pay data records for approximately 95
16 employees which equaled approximately 20% of the class, policy documents applicable to the class
17 during the Class Period, class size information, hire and term dates, information on the number of
18 pay periods and workweeks, and information regarding the hourly rates and workweek. In short,
19 Defendants provided discovery sufficient to enable the Plaintiff and Class Counsel to rigorously
20 evaluate the strengths and risks of the case and perform an analysis of the potential damages arising
21 from the claims made in this case. As a result of the mediation and subsequent settlement efforts,
22 the Parties agreed to settle this matter for the Gross Settlement Amount of \$1,042,500.00 for
23 approximately 894 class members and the terms of which are fully memorialized in the Settlement
24 Agreement. (Hawkins Decl. ¶ 8)

25 The Class Representative has vigorously prosecuted this case, and Defendants have vigorously
26 contested it. The Parties engaged in sufficient investigation and informal discovery to assess the
27 relative merits of the claims of the Class and of Defendants' defenses to them. *Id.* Defendants have
28 denied all of Plaintiff's allegations in their entirety and any liability or wrongdoing of any kind. *Id.*

1 1. The Settlement Provides Reasonable Compensation to Class Members

2 As a result of the mediation, the parties agreed to settle this matter for a Gross Settlement
3 Amount (“GSA”) of \$1,042,500.00 (Hawkins Decl., Ex. B-Settlement Agreement at ¶ 3, 3(E);
4 Garcia Decl. at ¶10). Based on their own respective independent investigations and evaluations,
5 and after taking into account the sharply disputed factual and legal issues involved in this matter,
6 the risks attending further prosecution of the case, and the monetary benefits received under the
7 Settlement despite the questionable nature of the claims, Plaintiff’s counsel is of the opinion that
8 Settlement for the consideration and on the terms set forth in the Settlement Agreement is fair,
9 reasonable and adequate and is in the best interests of the Class Members. (Hawkins Decl. ¶ 5-10).

10 Even without the presumption of fairness and reasonableness, the settlement is
11 within the range of reasonableness as thoroughly discussed in detail in the motion for preliminary
12 approval, and as considered by the Court in granting preliminary approval, (Hawkins Decl. ¶¶ 11-
13 16; Ex. A- Order Granting Preliminary Approval).

14 Accounting for the risks of continued litigation and impediments to discovery, Plaintiff determined
15 that a settlement amounting to \$1,042,500.00 was fair and reasonable, and accounts for an approximate
16 14-29% of total possible recovery and courts have routinely approved settlements that provided a similar
17 discounted range of the maximum potential recovery. (Hawkins Decl. ¶¶ 11-16). *See, e.g., In re Warfarin*
18 *Sodium Antitrust Litig.*, 212 F.R.D. 231, 256-58 (D. Del. 2002) (recognizing that a reasonable settlement
19 amount can be 1.6% to 14% of the total estimated damages); *In Re Armored Car Antitrust Litig.*, 472 F.
20 Supp. 1357, 1373 (N.D. Ga. 1979) (settlements with a value of 1% to 8% of the estimated total damages
21 were approved); *In Re Four Seasons Secs. Laws Litig.*, 58 F.R.D. 19, 37 (W.D. Okla.1972) (approving 8%
22 of damages); *Balderas v. Massage Envy Franchising, LLP*, 2014 WL 3610945, at *5 (N.D. Cal. July 21,
23 2014) (finding that settlement which amounted to 8% of maximum recovery “[fell] within the range of
24 possible initial approval based on the strength of Plaintiff’s case and the risk and expense of continued
25 litigation.”); *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2008) (approving
26 settlement of 6% to 8% of estimated damages).³ (Id.)

27 _____
28 ³ *See also In re Uber FCRA Litig.*, No. 14-cv-05200-EMC, 2017 U.S. Dist. LEXIS 101552, at

1 **III. THE PROPOSED SETTLEMENT AND THE CLASS MEMBERS’**
2 **RESPONSE**

3 **A. Terms of the Settlement**

4 The GSA is One Million Forty-Two Thousand Five Hundred Dollars and Zero Cents
5 (\$1,042,500.00). This amount includes, the Settlement Administration Costs of \$12,500.00; the
6 Class Representative Service Award of up to \$7,500.00 to Plaintiff; Court-approved attorneys’ fees
7 up to \$347,500.00, litigation costs to Class Counsel in the amount of \$22,975.65; and penalties
8 paid pursuant to PAGA of \$50,000.00 with 75% paid to the LWDA. The Net Settlement Amount
9 (“NSA”) is approximately \$614,524.35. (Garcia Decl. ¶ 10).

10 **B. Released Claims**

11 Subject to approval by this Court, and in exchange for the consideration recited in the
12 Settlement Agreement, the Released Claims are limited to the wage and hour claims and facts
13 asserted in the operative complaint. (Hawkins Decl., Ex. B- Settlement Agreement ¶ 2).

14 **C. The Timing of the Release Is Appropriate**

15 While the effective date for the release precedes the date that payment is due to Class
16 Members, the Agreement, and all obligations therein by all parties, become effective and are
17 triggered on the date a signed order granting final approval is filed with the Court, assuming no
18 objections to the Agreement have been lodged by Class Members. (Hawkins Decl., Ex B ¶

19 _____
20 *23- 24 (N.D. Cal. June 29, 2017) (granting preliminary approval to class action settlement where
21 gross settlement fund, prior to deducting attorneys’ fees and services awards, was valued at 7.5%
22 or less of total possible verdict); *Viceral v. Mistras Grp., Inc.*, No. 15-cv-02198-EMC, 2016 U.S.
23 Dist. LEXIS 140759, at *21 (N.D. Cal. Oct. 11, 2016) (granting preliminary approval to class
24 action settlement representing “8.1% of the full verdict value” with net settlement amount
25 representing approximately 5.3% of full verdict value); *Stovall-Gusman v. W.W. Granger, Inc.*,
26 No. 13-cv-02540-HSG, 2015 WL 3776765, at *4 (N.D. Cal. June 17, 2015) (granting final
27 approval to settlement with net recovery to Plaintiff valued at 7.3% of potential maximum
28 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.”).

3(B)). This puts all parties, including Class Members, in the same position that they would have been had Plaintiff prevailed at trial. At final approval, and as part of the final approval order, judgment is entered consistent with the terms of the Agreement. See Cal. Rules of Court, 3.769(h). Just as in the case of judgment after trial, judgment by consent or stipulation has res judicata affects, preventing litigation of claims covered by the settlement. See *Johnson v. Am. Airlines, Inc.*, 157 Cal.App.3d 427, 431 (1984); *Villacres v. ABM Indus. Inc.*, 189 Cal.App.4th 562, 583 (2010). The Court retains jurisdiction to enforce the judgment to ensure compliance. See Cal. Rules of Court, 3.769(h); (Hawkins Decl., Ex B ¶ 10.7). To the extent Defendants do not comply with its contractual obligations and Court judgment, Plaintiff will utilize the Enforcement of Judgments Law (“EJL”), which is the comprehensive scheme governing the enforcement of all civil judgments in California. See Cal. Civ. Proc. Code §§ 680.010-724.260. These are the exact same mechanisms any Plaintiff would be subject to, and utilize, to the extent a Defendant did not pay as required after trial. The proposed Agreement with release and payment timing that mirrors what would apply after trial is fair, reasonable, and adequate to all involved, which is the appropriate standard of review. See *North County Contr.’s Assn., Inc. v. Touchstone Ins. Svcs.*, 27 Cal.App.4th 1085, 1089-1090 (1994); *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 133 (2008).

Failing to treat all parts of the Agreement as effective raises serious enforcement questions that would undermine Class Counsel’s ability to enforce Defendants’ obligation to pay. To the extent a provision delaying the applicability of waivers is meant to preserve Class Members’ ability to bring individual claims, so long as the Court grants final approval there is a judgment and all Class Member’s claims would be extinguished under res judicata as a matter of law. See *Johnson*, 157 Cal.App.3d at 431; *Villacres*, 189 Cal.App.4th at 583; Cal. Rules of Court, 3.769(h). The same is true for any claims under the PAGA. Attempting to circumvent that calls into question whether the judgment is actually final. If not, Class Counsel would not be able to utilize the EJL to secure payment from a recalcitrant Defendant. Furthermore, the potential for such individual actions would raise questions of set-offs to the gross settlement amount yet to be funded. This scenario also raises a potential conflict between any Class Member who attempts to

bring their own claim and those wish to wait and utilize the ELJ rather than relitigate the merits. To the extent that there is any pending bankruptcy, Class Members would have an increased likelihood of getting *some* recovery where there is a judgment, and the only remaining obligation is payment by Defendants. *See In re Marciano*, 459 B.R. 27, 53 (B.A.P. 9th Cir. 2011), *aff'd*, 708 F.3d 1123 (9th Cir. 2013).

For these reasons, the timing of the waivers and payment dates under the Agreement are appropriate.

D. The Class Members Support the Settlement – Zero (0) Objections and Zero (0) Opt-Outs

On October 26, 2023, the Court granted Preliminary Approval of the Settlement, conditionally certified the class for settlement purposes, appointed CPT Group, Inc. to act as the administrator, approved the Notice to be sent to the Class, and directed that the Notice be mailed to the Class via U.S. First Class Mail. (Hawkins Decl., Ex. A- Order Granting Preliminary Approval). On November 29, 2023, CPT Group, Inc. mailed the Notices to 894 Class Members. (Garcia Decl. ¶4). As of December 28, 2023 Out of the 894 Notices, only 41 were returned by the post office. Of those 41 packets, as a result of performing a computerized skip trace, 37 updated addresses were obtained and the Notice Packets were promptly re-mailed to those Settlement Class Members, via U.S First Class Mail. (Garcia Decl. ¶¶ 4-8). CPT has received 1 Request for Inclusion. Defense Counsel is currently reviewing the request to determine if the Potential Class Member will be added to the class. (*Id.*).⁴ As a result of the mailing, CPT Group, Inc. will report a total of 894 Participating Claimants, representing 100% of the 894 Settlement Class Members. (*Id.*).

Each member of the Settlement Class who receives an Individual Settlement Payment must cash that check within 180 days from the date the Settlement Administrator mails it. Any funds payable to Settlement Class members whose checks were not cashed within 180 days after mailing shall be sent to the California State Controller pursuant to the Unclaimed Property Law in the name of the Settlement Class Member (Settlement at ¶ 4(E)).

⁴ The Parties intend to resolve whether to include this individual as a class member prior to the Final Approval hearing.

1 **IV. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE**

2 **A. The Settlement Satisfies the Standard for Final Approval**

3 California Rule of Court, Rule 3.769, requires court approval for class action settlements.
4 Cal. R. Ct. 3.769(g). California courts favor settlement. *Stambaugh v. Superior Court* (1976) 62 Cal.
5 App. 3d 231, 236, *Potter v. Pacific Coast Lumber Co. of Cal.* (1951) 37 Cal. 2d 592, 602 (“[T]he
6 law wisely favors settlements”). Accordingly, the Court must give “[due] regard to what is otherwise
7 a private consensual agreement between the parties.” *Wershba v. Apple Computer, Inc.* (2001) 91
8 Cal. App. 4th 224, 245.

9 In deciding whether to approve a class settlement, a court evaluates whether the proposed
10 settlement is “fair, adequate, and reasonable.” *Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794,
11 1801 (citing *Officers for Justice v. Civil Serv. Comm’n of City & Cnty. Of S.F.* (9th Cir. 1982) 688
12 F.2d 615, 625). A court enjoys broad discretion to make its fairness determination. *Dunk*, 48 Cal.
13 App. 4th at 1801. However, “a presumption of fairness exists where: (1) the settlement is reached
14 through arms-length bargaining; (2) investigation and discovery are sufficient to allow counsel and
15 the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage
16 of objectors is small.” *Id.* at 1802; accord *Wershba*, 91 Cal. App. 4th at 245. In addition, a court
17 should consider additional relevant factors, including the strength of the Plaintiff’s case compared
18 to the settlement amount; the risk, expenses, complexity, and likely duration of further litigation;
19 and the fair treatment of class members in relation to each other. *Dunk*, 48 Cal. App. 4th at 1802.

20 At the time of preliminary approval, the Court was provided with sufficient information to
21 satisfy three of the four *Dunk* factors, leaving the fourth factor, the number of objectors, unknown
22 until after the Class had an opportunity to respond to the Settlement as explained in the Notice.
23 Subject only to the Class’s reaction to the Settlement, the Court preliminarily presumed the
24 Settlement was fair, adequate, and reasonable. Following dissemination of the Notice, and adequate
25 time provided to the Class to object to the Settlement, no class member submitted objections and no
26 class members submitted any opt outs of the settlement. (Garcia Decl. ¶ 6-7). Thus, the proposed
27 Settlement is entitled to the presumption that it is fair and in all other respects proper and should be
28 finally approved.

1 **V. THE COURT SHOULD APPROVE THE REQUESTED FEES AND COSTS**
2 **A. The Requested Fee Award is Fair and Reasonable, Calculated as a Percentage**
3 **of a Common Fund**

4 Class Counsel applies for an award of attorneys’ fees in the sum of \$347,500.00 of the GSA,
5 and litigation costs of \$22,975.65 (Hawkins Decl. ¶¶ 23-26). When a settlement results in a common
6 fund for the benefit of a class, class counsel may be awarded fees as a percentage of the common
7 fund. *See Wershba, supra*, 91 Cal.App.4th at 254 (recognizing the “percentage of recovery”
8 method). The California Supreme Court confirmed in *Laffitte v. Robert Half Int’l, Inc.* that “[t]he
9 percentage of fund method survives in California class action cases.” 1 Cal.5th 480, 506 (2016), in
10 stating:

11 The recognized advantages of the percentage method—including relative ease of
12 calculation, alignment of incentives between counsel and the class, a better
13 approximation of market conditions in a contingency case, and the encouragement it
14 provides counsel to seek an early settlement and avoid unnecessarily prolonging the
litigation—convince us the percentage method is a valuable tool that should not be
denied our trial courts.

15 *Id.* at 503 (internal citation omitted); *see also e.g., Serrano v. Priest*, 20 Cal.3d 25, 34 (1977)
16 (“when a number of persons are entitled in common to a specific fund, and an action brought by a
17 Plaintiff or Plaintiff for the benefit of all results in the creation or preservation of that fund, such
18 Plaintiff or Plaintiff may be awarded attorney’s fees out of the fund.”); *Serrano v. Unruh*, 32 Cal.3d
19 621, 627 (1982) (in awarding a fee from the common fund obtained for the benefit of all parties, the
20 trial court acts within its equitable power to prevent the other parties’ unjust enrichment.); *Rawlings*
21 *v. Prudential-Bache Properties, Inc.*, 9 F.3d 513, 516 (6th Cir. 1993) (the percentage of the fund
22 method for calculating attorney’s fees more accurately reflects the results achieved for the putative
23 class than the lodestar method and “establishes reasonable expectations on the part of Plaintiff’s
24 attorneys as to their expected recovery; and it encourages early settlement, which avoids protracted
25 litigation.”); *In re Rite Aid Corp. Securities Litigation*, 396 F.3d 294, 300 (3d Cir. 2005) (“The
26 percentage-of-recovery method is generally favored in common fund cases because it allows courts
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1 to award fees from the fund ‘in a manner that rewards counsel for success and penalizes it for
2 failure.’).⁵

3 The purpose of the common fund/percentage approach is to “spread litigation costs
4 proportionally among all the beneficiaries so that the active beneficiary does not bear the entire
5 burden alone.” *Vincent, supra*, 557 F.2d at 769. In *Quinn v. State of California* (1995) 15 Cal.3d
6 162, 167, the Court stated: “[O]ne who expends attorneys’ fees in winning a suit which creates a
7 fund from which others derive benefits may require those passive beneficiaries to bear a fair share
8 of the litigation costs.” Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th
9 105, 110, the California Supreme Court recognized that the common fund doctrine has been applied
10 “consistently in California when an action brought by one party creates a fund in which other persons
11 are entitled to share.” The reasons for applying the common fund doctrine include: “...fairness to
12 the successful litigant, who might otherwise receive no benefit because his recovery might be
13 consumed by the expenses; correlative prevention of an unfair advantage to the others who are
14 entitled to share in the fund and who should bear their share of the burden of its recovery;
15 encouragement of the attorney for the successful litigant, who will be more willing to undertake and
16 diligently prosecute proper litigation for the protection or recovery of the fund if he is assured that
17 he will be properly and directly compensated should his efforts be successful.” *Id.* Because there is
18 a defined and clearly traceable benefit to the Class, the Court can base an award of attorneys’ fees
19 using a ‘common fund’ approach to compensate Class Counsel.

20 **1. The Requested Attorneys’ Fee is Within the Range of Fees Approved in**
21 **Comparable Common Fund Cases**

22 Assessing an appropriate fee based on a percentage of the fund involves considering “all of
23 the circumstances of the case.” Appellate cases addressing fees arise almost exclusively where
24 awards were challenged by Defendants or objectors – the only parties with standing to appeal.

25 _____
26 ⁵ *Laffitte* also held trial courts have discretion to assess reasonableness of fee awards with tools such
27 as the lodestar cross-check, although they need not do so. *Laffitte*, 1 Cal.5th at 506 (“We hold further
28 that trial courts have discretion to conduct a lodestar cross-check on a percentage fee . . . they also
retain the discretion to forgo a lodestar cross-check and use other means to evaluate the
reasonableness of a requested percentage fee”).

1 Wershba, 91 Cal.App.4th at 236.

2 The requested fee falls in the mid-range of percentage class fee awards, which generally
3 range from 20% to 50% of a common fund, and it constitutes fair compensation for undertaking
4 complex, risky, expensive, and time-consuming litigation on a contingent basis and compensates
5 Class Counsel for their efforts, as well as the result achieved for the benefit of the Class. Numerous
6 courts in California routinely approve fee requests equal to or greater than 35% of the common fund.
7 See *Martin v. Ameripride Servs.*, 2011 U.S. Dist. LEXIS 61796, *22-23 (S.D. Cal. 2011) (collecting
8 cases); *Birch v. Office Depot, Inc.*, USDC Southern District, Case No. 06cv1690 DMS (WMC)
9 (awarding 40% fee on a \$16 million wage and hour class action settlement); *Rippee v. Boston Mkt.*
10 *Corp.*, USDC Southern District, Case No. 05cv1359 BTM (JMA) (awarding a 40% fee on a \$3.75
11 million wage and hour class action settlement).

12 In short, Class Counsel's fee request of \$347,500.00 (33.33% of the common fund) is in line
13 with awards in similar cases in California and demonstrates that Class Counsel's fee request is
14 consistent with market rates and is reasonable.

15 **2. A Lodestar Cross-Check Confirms the Reasonableness of the Requested Fee**

16 Class Counsel's fee request is reasonable when calculated using the lodestar method.
17 Under the lodestar method, a base fee amount is calculated from a compilation of time reasonably
18 spent on the case and the reasonable hourly compensation of the attorney. *Serrano*, 20 Cal. 3d at 48.
19 The court then may enhance this lodestar figure by a "multiplier" to account for a range of factors,
20 such as the novelty and difficulty of the case, its contingent nature, and the degree of success
21 achieved. *Id.* at 49; see also *Ketchum v. Moses*, 24 Cal.4th 1122, 1132-36 (2001); *Thayer v. Wells*
22 *Fargo Bank*, 92 Cal.App.4th 819, 834 (2001), ["[t]here is no...rule limiting the factors that
23 may justify an exercise of judicial discretion to [adjust the] lodestar"].

24 As of the date of filing, Class Counsel worked approximately 315.2 combined documented
25 hours on this case. Thus, the total lodestar for Class Counsel is approximately \$252,535.00 which
26 is in excess of the fees Class Counsel is requesting. Given that Plaintiff's counsel's lodestar is
27 slightly less than the requested fees, Plaintiff respectfully requests a modest multiplier of
28

1 approximately 1.4. All of the work and tasks performed by Class Counsel were reasonable and
2 necessary to the prosecution of this case. (Hawkins Decl. ¶¶ 23-25).

3 **3. Class Counsel's Hourly Rates are Reasonable**

4 Class Counsel's hourly rates are between \$200 and \$950 and are in line with rates typically
5 approved in wage and hour class action litigation and which rates have been approved by Courts in
6 California in the Los Angeles, Sacramento, San Francisco, Alameda, Orange and San Diego County
7 Superior Courts. (Hawkins Decl. ¶ 20; *Children's Hosp. and Med. Ctr. v. Bonta*, 97 Cal.App.4th
8 740, 746 (2002) (noting rates were reasonable where they were "within the range of reasonable rates
9 charged by and judicially awarded comparable attorneys for comparable work").

10 A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and
11 experience in the relevant community. *PLCM Group, Inc v. Drexler* (2000) 22 Cal. 4th 1084, 1095.
12 When determining a reasonable hourly rate, courts may consider factors such as skill and
13 experience, the nature of the work performed, the relevant area of expertise and the attorney's
14 customary billing rates. *Flannery v. California Highway Patrol* (1998) 61 Cal. App. 4th 629, 632.
15 Class Counsel's skill and experience support their hourly rates. Their practices are limited
16 exclusively to litigation, focusing on the representation of employees in wage and hour and
17 consumer class action matters. (Hawkins Decl. ¶ 22). As prominent attorneys in the field of wage
18 and hour class action litigation, Class Counsel continually monitors the prevailing market rates
19 charged by both defense and Plaintiff law firms and set the billing rates of their attorneys and
20 paralegals to be consistent with the prevailing market rates in the private sector for attorneys and
21 staff of comparable skill, qualifications and experience. Other wage and hour attorneys working as
22 class counsel before California courts charge comparable if not higher rates. Therefore, as they are
23 in line with those of the relevant community, Class Counsel's hourly rates are reasonable.

24 **4. Class Counsel's Total Hours are Reasonable**

25 In determining a lodestar fee, reasonable hours include, in addition to time spent during
26 litigation, the time spent before the action was filed, including time spent interviewing clients,
27 investigating the facts and the law, and preparing the initial pleadings. *See New York Gaslight Club,*
28 *Inc. v. Carey* (1980) 447 U.S. 54, 62. The fee award should include fees incurred to establish and

1 defend the attorneys' fee claim. *Serrano v. Priest* (1982) 32 Cal.3d 621, 639.

2 Class Counsel expended a total of approximately 315.20 hours on this case. The work
3 performed to achieve a settlement that will provide valuable consideration to the Class, is
4 summarized by Class Counsel in the declaration submitted herewith. (Hawkins Decl. ¶¶ 18-24);
5 *Syers Props. III, Inc. v. Rankin*, 226 Cal.App.4th 691, 699 (2014) ("Because time records are not
6 required under California law ... , there is no required level of detail that counsel must achieve.")
7 (internal quotations omitted). All tasks and work performed were reasonable and necessary to the
8 prosecution of this case. The work performed was justified in light of the result achieved.

9 **5. Costs of Litigation are Reasonable**

10 Class Counsel seeks reimbursement of the litigation costs and expenses of \$22,975.65.
11 These costs were reasonable and necessary to prosecute this case and the results achieved and are
12 fair, and reasonable. (Hawkins Decl. ¶ 25, attached to the Hawkins Declaration as **Exhibit C**).

13 **VI. THE CLASS REPRESENTATIVE'S SERVICE AWARD IS**
14 **REASONABLE**

15 Class Counsel seeks approval of a \$7,500.00 Class Representative Service Award to
16 Plaintiff. The requested Class Representative Service Award is reasonable in light of the general
17 releases of all claims Plaintiff agreed to, greater than the release given by Class Members, the
18 benefits Plaintiff conferred upon the entire Class resulting in payments to all Class Members, the
19 time spent assisting counsel with the investigation and prosecution of these claims, commitment to
20 responding to discovery and depositions, and consenting to the proposed Settlement. Furthermore,
21 in pursuing this action on behalf of the Class, Plaintiff risked a judgment for attorneys' fees and
22 costs in the event this matter had been lost. (Hawkins Decl. ¶¶ 27-28; See also declaration of Plaintiff
23 Bentton filed concurrently herewith)

24 Courts routinely approve service payments, or incentive awards, to compensate named
25 Plaintiff for the services they provide and the risks they incur during class litigation. *See In re*
26 *Cellphone Fee Termination Cases* (2010) 186 Cal. App. 4th 1380, 1393; *see also Bell v. Farmers*
27 *Ins. Exch.* (2004) 115 Cal. App. 4th 715, 725-26 (upholding service payments to class
28 representatives); Manual § 21.62 n.971 (noting that service payments are warranted). Based on the

foregoing, the total \$7,500.00 Class Representative Service Award to Plaintiff continues to be fair, appropriate, and justified as part of the overall settlement.

VI. THE SETTLEMENT ADMINISTRATION COSTS ARE REASONABLE

The Parties agreed to hire CPT Group, Inc. as the administrator, and the Court approved this choice. The Administrator was responsible for formatting, printing and mailing the Notice. It was also responsible for updating addresses and re-mailing Notices returned as undeliverable, responding to Class Member inquiries, answering questions from Counsel for the Parties, and providing a declaration to document its duties and responsibilities under the settlement. Plaintiff now request that the Court approve the \$12,500.00 fee to CPT Group, Inc. for services rendered and to be rendered. (Garcia Decl. ¶¶ 3-11). Following the grant of final approval, the Administrator's duties will continue in order to calculate and mail the Individual Settlement Payment checks to Class Members, perform tax reporting obligations, disburse other payments as ordered by the Court, and perform such other duties as set forth in the Settlement Agreement. The fee of \$12,500.00 for services rendered and to be rendered is fair and reasonable and should be granted.

VII. THE SETTLEMENT PENALTIES UNDER PAGA ARE REASONABLE

The payment of \$37,500.00 (75% of \$50,000.00) to the LWDA for its share of the applicable penalties claimed under the California Labor Code's Private Attorney general Act of 2004, as amended ("PAGA"), is reasonable under the circumstances. The Parties negotiated a good faith amount to the LWDA. The sum to be paid to the LWDA was not the result of self-interest at the expense of other Class Members. The LWDA was provided notice of the Settlement concurrently with the filing of the preliminary approval motion and the instant motion. Plaintiff did not receive a response or objection to the Settlement from the LWDA. Thus, Plaintiff requests the Court finally approve the sum of \$37,500.00 for payment to the LWDA.

VIII. CONCLUSION

Based on the foregoing, Class Counsel respectfully requests the Court grant final approval of the Class Action Settlement, award (1) Class Counsel's fees in the sum of \$347,500.00 and litigation costs of \$22,975.65; (2) award the Plaintiff an Class Representative Service Award payment in the sum of \$7,500.0; (3) award \$12,500.00 to CPT Group, Inc., for settlement

1 administration services, and (4) approve the PAGA Payment of \$50,000.00 with a payment to the
2 LWDA in the amount of \$37,500.00 and payment to Aggrieved Employees in the amount of
3 \$12,500.00.

4
5 Dated: December 29, 2023

JAMES HAWKINS API


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7 JAMES R. HAWKINS
8 GREGORY MAURO
9 MICHAEL CALVO
10 LAUREN FALK
11 AVA ISSARY

12 Attorneys for Plaintiff MAICHEL
13 BENTTON, the Putative Class, and the
14 Aggrieved Employees
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On December 29, 2023, I served on the interested parties in this action the following document(s) entitled:

DECLARATION OF IRVIN GARCIA ON BEHALF OF CPT GROUP, INC. THE SETTLEMENT ADMINISTRATOR

[XX] BY ELECTRONIC SERVICE: Via electronic filing service provider- electronically transmitting the documents listed above to CaseAnywhere, an electronic filing service provider, at www.caseanywhere.com pursuant to the Court's Order Authorizing Electronic Service. The transmission(s) was reported as complete and without error to the addresses as stated on the service list below.

(Service List Attached)

Executed on December 29, 2023, at Irvine, California

PROOF OF SERVICE

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