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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

ALBERTO RAMOS, individually and on behalf of other persons similarly situated and similarly aggrieved employees, Plaintiffs,
v.

LIBERTY CONTAINER CORP., an active California Limited Liability Company; and DOES 1 through 10, Defendants.

ROGER RODRIGUEZ on behalf of himself and on behalf of all persons similarly situated and similarly aggrieved employees,

Plaintiff,

v.

LIBERTY CONTAINER COMPANY, a California Corporation (aka Key Container Company); and DOES 1-50, Inclusive,

Defendants.

Case No.: 20STCV06560 (lead);
20STCV13959

CLASS AND REPRESENTATIVE ACTION

[Assigned to Hon. Lawrence Riff in Dept. SS-7]

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT, CLASS REPRESENTATIVES' ENHANCEMENT AWARDS, CLASS COUNSEL ATTORNEYS' FEES AND COSTS, SETTLEMENT ADMINISTRATION COSTS, AND LWDA PAYMENT

[FILED CONCURRENTLY WITH DECLARATION OF HAIK HACOPIAN; DECLARATION OF ZORIK MOORADIAN; DECLARATION OF JEREMY ROMERO; DECLARATION OF JEAN-CLAUDE LAPUYADE; DECLARATION OF SHANI O. ZAKAY; DECLARATION OF ALBERTO RAMOS; DECLARATION OF ROGER RODRIGUEZ; AND [PROPOSED] ORDER]

Date: October 7, 2022

Time: 11:00 a.m.

Dept.: SS-7

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Attorneys for Plaintiff Roger Rodriguez on behalf of himself and on behalf of all persons similarly situated and similarly aggrieved employees

1 **PLEASE TAKE NOTICE** that, pursuant to Cal. Rules of Court, rule 3.769, on
2 October 7, 2022 at 11:00 a.m. or as soon thereafter as the matter may be heard in Department
3 SS-7 of the above-entitled Court located at 312 North Spring Street, Los Angeles, California
4 90012, Plaintiffs Alberto Ramos and Roger Rodriguez, ("Plaintiffs"), individually and on
5 behalf of a similarly-situated class of individuals, will and hereby do move this Court for entry
6 of an Order pursuant to California Code of Civil Procedure § 382 and California Rules of
7 Court, rule 3.769:

8 1. Confirming the certification of the Settlement Class for settlement purposes
9 under Section 382 of the California Code of Civil Procedure, defined as follows:

10 All non-exempt Union production employees (covered by the Collective
11 Bargaining Agreement) who are or previously were employed by Defendant
12 in California during the period of February 20, 2016 through July 28, 2021
13 (“Class Period”);

14 2. Confirming the appointment of Plaintiffs, Alberto Ramos and Roger
15 Rodriguez, as Class Representatives;

16 3. Confirming the appointment of Zorik Mooradian and Haik Hacopian of
17 Mooradian Law, APC, Shani O. Zakay of Zakay Law Group, APLC, and Jean-Claude
18 Lapuyade of JCL Law Firm, APC, as Class Counsel;

19 4. Granting final approval of the Amended Stipulated Settlement Agreement
20 (“Settlement Agreement” or “S.A.”);

21 5. Approving an award of \$131,666.66 in Attorneys’ Fees to Class Counsel;

22 6. Approving an award of \$16,632.07 in litigation costs and expenses to Class
23 Counsel;

24 7. Approving an award of \$8,000 in Settlement Administration Costs to CPT
25 Group;

26 8. Approving an allocation of \$10,000 for Private Attorneys General Act
27 (“PAGA”) claims with respective division and payments as follows: 75% (\$7,500.00) to the
28 California Labor and Workforce Development Agency (“LWDA”) and 25% (\$2,500.00) to

1 Aggrieved Employees; and

2 9. Approving an Enhancement Awards totaling \$10,000 to each Plaintiff for their
3 services as Class Representatives.

4 This Motion is made on the following grounds: (1) the Settlement Class continues to
5 meet the requirements for class certification for settlement purposes only under Code of Civil
6 Procedure § 382; (2) Plaintiffs, Ramos and Rodriguez, and previously appointed Class
7 Counsel continue to be adequate representatives of the Settlement Class; (3) the Settlement is
8 a fair, adequate, and reasonable compromise of disputed wage and hour claims; (4) the
9 requested awards of Class Counsel Attorneys' Fees, Class Counsel Costs, Enhancement
10 Award, and Settlement Administration Costs, are all fair, adequate, and reasonable; and (5) in
11 light of the foregoing, the [Proposed] Order Granting Final Approval of Class Action
12 Settlement submitted herewith should be entered so as to give finality to, and allow for
13 disbursements from the Settlement.

14 This motion is based on this Notice, the attached Memorandum of Points and
15 Authorities, the supporting declarations of Haik Hacopian, Zorik Mooradian, Jeremy Romero,
16 Jean-Claude Lapuyade, Shani O. Zakay, Alberto Ramos, Roger Rodriguez, and the exhibits
17 attached thereto; the [Proposed] Order Granting Plaintiff's Motion for Final Approval of Class
18 Action Settlement; the Settlement Agreement; all other pleadings and papers on file in this
19 action; and on any further oral or documentary evidence or argument presented at the time of
20 hearing.

21
22 Dated: September 14, 2022

MOORADIAN LAW, APC

23 By: /s/Haik Hacopian

24 Zorik Mooradian, Esq.,
25 Haik Hacopian, Esq.,
26 Attorneys for Plaintiff Alberto Ramos,
27 individually and on behalf of other persons
28 similarly situated and other aggrieved
employees,

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs, Alberto Ramos and Roger Rodriguez (hereinafter “Plaintiffs” or “Class
4 Representatives”), hereby request final approval of the non-reversionary class action
5 settlement entered into with Defendant Liberty Container Corp. (hereinafter “Liberty” or
6 “Defendant”) which resolves the subject consolidated class and representative actions on
7 behalf of the Settlement Class defined as follows:

8 All non-exempt Union production employees (covered by the Collective
9 Bargaining Agreement) who are or previously were employed by Defendant
10 in California during the period of February 20, 2016 through July 28, 2021
11 (“Class Period”)

12 This settlement has been received positively by the Settlement Class with a 100%
13 participation rate by 102 Settlement Class Members. There are zero objections and zero
14 exclusion requests. This settlement, if approved, will pay an average of \$2,037.58 to
15 Participating Settlement Class members. Liberty will pay a gross settlement of \$395,000.00
16 to fund the settlement, plus the employer’s share of payroll taxes on the portion of the net
17 settlement that is allocated to wages.

18 As explained below, the Court should grant Plaintiffs’ Motion in its entirety because:
19 (1) the Settlement Class continues to meet the requirements for class certification for
20 settlement purposes only under Code of Civil Procedure § 382; (2) the Settlement warrants
21 final approval because it is a fair, adequate, and reasonable compromise of the disputed claims
22 in this case; and (3) the amounts requested for Class Counsel’s Attorneys’ Fees, Class
23 Counsel’s Costs, Plaintiffs’ Enhancement Awards, and Settlement Administration Costs are
24 all fair, adequate, and reasonable. In light of the foregoing, this Court should enter the
25 [Proposed] Order Granting Final Approval of Class Action Settlement submitted concurrently
26 herewith.

1 Given the risks of this litigation and the amount of the settlement, the result here is
2 laudable. As detailed below, the work performed by Plaintiffs and Class Counsel was
3 significant. Among other things, Class Counsel:

- 4 • Conducted an initial investigation of this case and developed the theories and
5 facts to support Plaintiffs' claims;
- 6 • Conducted informal discovery including review and analysis of significant
7 document and wage related electronic records including employee time and payroll records;
- 8 • Prepared a detailed mediation brief and damages analysis in connection with a
9 mediation session with Jeffrey Krivis;
- 10 • Engaged in arm's length settlement negotiations with Defendant at the
11 mediation which resulted in this Settlement;
- 12 • Worked with Defendant to further perfect the Settlement, to prepare the
13 Settlement Agreement, related forms, and approval motions; and
- 14 • Incurred a minimum of \$16,632.07 in costs pursuing this case on behalf of
15 Settlement Class Members that would not have been recoverable had Plaintiffs lost.

16 Moreover, in pursuing this case against Defendant, Plaintiffs and Class Counsel faced
17 serious risks, including but not limited to:

- 18 • The risk of being unable to establish class-wide liability on the meal and rest
19 period claims in light of the defense that all breaks were properly provided under *Brinker*
20 *Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004;
- 21 • The risk of being unable to establish class-wide liability on the wage statement
22 and waiting time claims in light of the burden of proving that any violations were "knowing
23 and intentional";
- 24 • The risk of being denied the ability to proceed on a class basis in view of the
25 U.S. Supreme Court's decisions in *Wal-Mart Stores, Inc. v. Dukes* (2011) 131 S.Ct. 2541, and
26 *Comcast Corp. v. Behrend* (2013) 133 S.Ct. 1426, and the California Supreme Court's
27 decision in *Duran v. U.S. Bank* (2014) 59 Cal.4th 1;

- The risk of a potentially prolonged and expensive trial;
- The risk of Plaintiffs being held liable for Defendant's attorneys' fees and/or costs if this case had been unsuccessful;
- The risk of lengthy appeals; and
- The risk that Plaintiffs' future employment prospects would be adversely affected by filing the instant lawsuits.

Despite the many risks faced by Plaintiffs and Class Counsel, and the difficulty in prosecuting such a complex case, they nevertheless achieved a positive result for the Settlement Class. Accordingly, Class Counsel's request for attorneys' fees of \$131,666.66, or one-third of the Settlement Amount, is fair, adequate and reasonable. This amount is well-earned, supported by controlling case law, and is squarely within the range awarded by California courts in similar complex cases. Such an award is reasonable and supported by the California Supreme Court's ruling in *Laffitte v. Robert Half Intern., Inc.* (2016) 1 Cal 5th 480. Plaintiff's collective lodestar is \$136,478.33, which exceeds the requested fee award. The incurred expenses totaling \$16,632.07 were reasonable and necessary to the prosecution of this action and the administration of this Settlement and are less than the \$20,000 maximum contemplated by the Settlement Agreement.

Likewise, it is fair that the Settlement Administrator be paid its reasonable fee of \$8,000 and a payment for \$7,500 to the LWDA, for its share of PAGA penalties, be approved.

Finally, Plaintiffs' requested Enhancement Awards for \$10,000.00 each also warrant approval because they are fair and reasonable in view of Plaintiffs' efforts in these cases and the risks they have undertaken, especially considering that they jeopardized their future job prospects and exposed themselves to the risk of awards for attorneys' fees and costs against them (which could have potentially totaled several hundred thousand dollars).

Accordingly, this Court should grant this Motion in its entirety and finally approve the settlement.

1 **II. FACTUAL AND PROCEDURAL BACKGROUND**

2 **A. The Subject Lawsuits**

3 On February 20, 2020, Plaintiff Alberto Ramos filed a class action complaint against
4 Defendant (“Ramos Action”) and Plaintiff Roger Rodriguez filed a separate class action
5 complaint on April 9, 2020 (“Rodriguez Action”). Prior to filing suit, each Plaintiff had
6 communicated a notice letter pursuant to the Private Attorneys General Act (“PAGA”) to
7 Defendant and to the Labor and Workforce Development Agency (“LWDA”). S.A. ¶¶2.1 and
8 2.2. Declaration of Haik Hacopian (hereinafter “HH Decl.”), ¶7.

9 On September 18, 2020, the Ramos Action and the Rodriguez action were
10 consolidated through the filing of a Consolidated Complaint and which added a representative
11 PAGA cause of action in accordance with the notices communicated by both Plaintiffs. On
12 October 19, 2020, Defendant filed its Answer to the Consolidated Complaint. S.A. ¶2.3. HH
13 Decl., ¶8.

14 **B. Discovery and Mediation**

15 The Parties have conducted investigation of the operative facts and applicable law
16 during the pendency of the case through informal discovery. The defenses have been assessed
17 into and the parties have engaged in a meaningful exchange of records re same. Additionally,
18 Plaintiffs have reviewed and examined class data and have retained the services of an expert
19 who has analyzed the damages and evaluated the potential class wide exposure. The Parties’
20 mediation was preceded by the production of a significant number of documents and wage
21 related electronic records for Plaintiffs and the putative class which included a class list with
22 hire and separation dates, relevant policies, time and pay records for a sample of 25
23 employees, final wage statements for 38 former employees, a union contract, and time cards
24 and personnel files for both Plaintiffs. HH Decl., ¶9.

25 On July 28, 2021, Plaintiffs and Defendant participated in a full-day mediation before
26 Mr. Jeffrey Krivis. The Parties were able to reach a resolution at the mediation with the
27 assistance of Mr. Krivis. Ultimately, a written settlement agreement was entered into. HH
28

Decl., ¶10.

C. Grant of Preliminary Approval

This Court granted preliminary approval of the Settlement on May 19, 2022 and entered the Preliminary Approval Order after holding a hearing on that date. Prior to the hearing, on December 3, 2021, Plaintiffs filed their Motion for Preliminary Approval. On March 11, 2022, the Court issued a Minute Order wherein clarifications and changes to the settlement were requested. On April 28, 2022, Plaintiffs filed a Response addressing each point raised by the Court's Minute Order in turn and which included a copy of the operative Amended Stipulated Settlement Agreement. A true and correct copy of the Court's Preliminary Approval Order is attached as **Exhibit "1"** to the Declaration of Haik Hacopian HH Decl., ¶11, Exh. 1.

Preliminary Approval Motion filings were submitted to the LWDA online, proofs for which were provided with each respective filing. These submissions were in addition to the PAGA Notice Letters communicated to Defendant and the LWDA. HH Decl., ¶12.

III. SUMMARY OF THE SETTLEMENT AND NOTICE PROCESS

A. Monetary Terms

This Settlement provides for Liberty to pay the non-reversionary settlement amount of \$395,000 ("Settlement Amount"), in addition to the employer share of payroll taxes on the wage component of this Settlement. S.A. ¶¶1.18, 3.5. The Net Settlement Amount is the amount remaining from the Settlement Amount after deducting Class Counsel fees (\$131,666.66 or one-third of the Settlement Amount), Class Counsel costs (\$16,632.07), the Enhancement Awards to named Plaintiffs (\$20,000.00), settlement administration costs (\$8,000.00), and LWDA payment (\$7,500.00). S.A. ¶1.11. The foregoing deductions from the Settlement Amount result in an estimated Net Settlement Amount of \$211,201.27. HH Decl. ¶13.

Individual Settlement Payments shall be determined by the number of Workweeks Worked attributable to a Settlement Class Member during the Class Period. In addition,

1 Settlement Class Members whose employment has ended during the Class Period will be
2 allocated an additional 0.25 Workweeks Worked for each Workweek Worked, up to a
3 maximum of 6 additional Workweeks Worked credit to compensate them for their waiting
4 time penalty claims. S.A. ¶4.3. Settlement Class Members who were employed at anytime
5 from February 21, 2019 to July 28, 2021 (“PAGA Period”) will be paid a proportionate share
6 of the 25% PAGA allocation (\$2,500.00) based on the proportionate number of weekly pay
7 periods worked by the Settlement Class Member during that period. S.A. ¶3.9.

8 The average approximate Settlement Payment is \$2,037.58, the highest is \$3,325.37,
9 the lowest is \$19.85, Plaintiff Ramos’ share is \$1,683.65, and Plaintiff Rodriguez’s share is
10 \$2,417.89. Declaration of Jeremy Romero (“Romero Decl.”) ¶¶12-14. Settlement Awards will
11 be allocated twenty-five percent (20%) to wages and seventy five percent (80%) to interest
12 and penalties. S.A. ¶4.9(b-c).

13 **B. Summary of Notice Process and Response from the Settlement Class**

14 CPT received the Court-approved text for the Class Notice from Counsel on June 2,
15 2022 and translated same into Spanish. Romero Decl. ¶¶3 & 4, Exh. A. Between June 2, 2022
16 and June 21, 2022, CPT received the data files containing the Class List for purposes of
17 mailing the Class Notice to Class Members. *Id.* at ¶5. The finalized list contained 102 Class
18 Members. *Id.* at ¶6.

19 On July 6, 2022, the Notice Packets were mailed via U.S. first class mail to all
20 Settlement Class Members after conducting a National Change of Address (NCOA) search to
21 update addresses. *Id.* at ¶¶6 & 7. Ultimately, zero Notice Packets were undeliverable. *Id.* at
22 ¶8.

23 Class Members had until September 6, 2022 to submit objections, disputes, and/or
24 requests for exclusion. *Id.* at ¶7. As of September 14, 2022, CPT has not received any
25 objections, disputes to the settlement, or requests for exclusion. *Id.* at ¶9.

26 One Hundred and Two (102) Participating Class Members are part of this class action
27 settlement, representing a 100% participation rate and who will be receiving 100% of the Net
28

1 Settlement Amount. *Id.* at ¶¶10 & 11. The average payment to each Participating Class
2 Member is estimated at \$2,037.58, the highest payment is estimated at \$3,325.37, and the
3 lowest at \$19.85. *Id.* at ¶12.

4 **C. Timing of Payments and Uncashed Checks**

5 Defendant shall deliver the Settlement Amount to the Settlement Administrator within
6 thirty (30) days after the Effective Date. S.A. ¶4.12. The Settlement Administrator shall
7 distribute not later than fourteen (14) days after receiving the Settlement Amount from
8 Defendant. S.A. ¶4.13. The Effective Date will be date after ten (10) calendar days have
9 passed since the Court has entered a Final Approval Order and Judgment. S.A. ¶1.11.

10 All checks for Individual Settlement Payments shall remain valid and negotiable for
11 180 days from the date of their issuance. Any checks not cashed during the 180 day period
12 after distribution shall be void, and the Participating Settlement Class Member's release shall
13 remain valid. After the 180 day period, all uncashed Individual Settlement Payments shall be
14 paid to CASA ("Court Appointed Special Advocates") of Los Angeles, which is a non-profit
15 501(c)(3) advocacy group for children. S.A. ¶4.15. The Parties submitted eight (8)
16 declarations from Parties and Counsel with their supplemental brief reflecting no interest in
17 the governance or work of the proposed cy pres beneficiary.
18

19 **IV. THIS COURT SHOULD CONFIRM ITS CONDITIONAL**
20 **CERTIFICATION OF THE SETTLEMENT CLASS FOR SETTLEMENT**
21 **PURPOSES BECAUSE IT MEETS ALL OF THE REQUIREMENTS FOR**
22 **CLASS CERTIFICATION UNDER CODE OF CIVIL PROCEDURE § 382**

23 Under Code of Civil Procedure § 382, a class may be certified if: (1) it is ascertainable
24 and its members are too numerous for joinder to be practical; (2) the representative(s) and
25 absent class members share a community of interest and questions of law and fact common to
26 the class predominate over questions unique to individual class members; (3) the
27 representative's claims are typical of the class's claims; and (4) the representatives will fairly
28 and adequately represent the class's interests. See *Richmond v. Dart Industries, Inc.* (1981)
29 Cal.3d 462, 470. Here, this Court found that the Settlement Class meets all the requirements

1 for class certification for settlement purposes when it granted preliminary approval of the
2 Settlement on May 19, 2022. No new circumstances have cast any doubt on the propriety of
3 the preliminary approval determination. HH Decl., ¶14. In fact, the reaction of the Settlement
4 Class Members to the notice of the Settlement has been entirely in support of the Settlement,
5 with not a single Class Member objecting or requesting exclusion. Romero Decl., ¶9.
6 Accordingly, this Court should confirm its conditional certification of the Settlement Class.

7
8 **A. This Court Should Finally Approve the Settlement Because It Is a Fair,**
9 **Adequate, and Reasonable Compromise of Disputed Wage and Hour**
10 **Claims**

11 California courts have a strong policy in favor of settlement. See e.g., *Stambaugh v.*
12 *Superior Court* (1976) 62 Cal.App.3d 231, 236. Unlike individual settlements, class action
13 settlements involve a court approval process that exists to prevent fraud, collusion, and
14 unfairness to class members. *Malibu Outrigger Bd. of Governors v. Superior Court* (1980)
15 103 Cal.App.3d 573, 578-79. This approval process consists of preliminary settlement
16 approval, notice being given to class members, and a final fairness and approval hearing at
17 which class members have the opportunity to be heard with respect to the settlement. *Id.* Now
18 that notice has been provided to the Settlement Class Members, and the notice process is
19 complete, Plaintiff respectfully requests that the Court finally approve the Settlement as fair,
20 adequate, and reasonable.

21 **1. *The Settlement Was Reached Via Arm's-Length Bargaining***
22 ***Through Experienced Counsel and an Experienced Mediator and***
23 ***Was Based on Sufficient Information to Intelligently Negotiate a***
24 ***Fair Settlement in Light of the Claims Asserted and Risks of***
25 ***Continued Litigation***

26 A settlement is presumptively fair where it is reached through arm's-length bargaining,
27 based on sufficient discovery and investigation to allow counsel and the court to act
28 intelligently, counsel is experienced in similar litigation, and the percentage of objectors to
the settlement is small. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802. In
deciding whether to approve a proposed settlement, a trial court has broad powers to determine

1 if the proposed settlement is fair under the circumstances of the case. *Mallick v. Superior*
2 *Court* (1979) 89 Cal.App.3d 434, 438. In exercising these powers, the overriding concern is
3 to ensure that a proposed settlement is “fair, adequate, and reasonable.” *Dunk, supra*, 48
4 Cal.App.4th at 1801 (internal quotations omitted). Relevant factors for the Court to consider
5 include, but are not limited to:

6 [T]he strength of Plaintiff’s case, the risk, expense, complexity and
7 likely duration of further litigation, the risk of maintaining class
8 action status through trial, the amount offered in settlement, the
9 extent of discovery completed and the stage of the proceedings, the
10 experience and views of counsel, the presence of a governmental
participant, and the reaction of the class members to the proposed
settlement.

11 *Id.* These factors require balancing, are non-exhaustive and, as such, trial courts should tailor
12 the factors to each case and give due regard to “what is otherwise a private consensual
13 agreement between the parties.” *Id.*

14 “In the context of a settlement agreement, the test is not the maximum amount Plaintiff
15 might have obtained at trial on the complaint, but rather whether the settlement is reasonable
16 under all of the circumstances.” *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224,
17 250. Because settlements inherently involve compromise, even settlements providing for
18 substantially narrower relief than likely would be obtained if the suit were successfully
19 litigated can be reasonable because “the public interest may indeed be served by a voluntary
20 settlement in which each side gives ground in the interest of avoiding litigation.” *Id.* (quoting
21 *Air Line Stewards, etc., Local 550 v. American Airlines, Inc.* (7th Cir. 1972) 455 F.2d 101,
22 109). In addition, courts review the discovery process and information received through it to
23 aid them in assessing whether the parties sufficiently developed the claims and their
24 supporting factual bases before reaching settlement. See *Kullar v. Foot Locker Retail Inc.*
25 (2008) 168 Cal.App.4th 116, 129-31. Information is sufficient where it allows the parties and
26 the court to form “an understanding of the amount that is in controversy and the realistic range
27 of outcomes of the litigation.” See *Clark v. American Residential Services LLC* (2009) 175
28 Cal.App.4th 785, 801. This requirement exists so that the parties can provide the court with

1 “a meaningful and substantiated explanation of the manner in which the factual and legal
2 issues have been evaluated.” *Kullar, supra*, 168 Cal.App.4th at 132.

3 Here, the Settlement resulted from extensive arm’s-length settlement negotiations
4 between and among qualified and experienced counsel, with the assistance of a well-respected
5 mediator, and is fair, adequate, and reasonable for all Settlement Class Members. As
6 discussed, the parties participated in a mediation session before Mr. Jeffrey Krivis. HH Decl.,
7 ¶10. While Plaintiffs steadfastly maintain that their claims are meritorious, they also
8 appreciate that there are tremendous risks that continued litigation would entail thereby
9 resulting in a loss in value under the maximum exposure analysis, as extensively briefed in
10 Plaintiffs’ briefing in support of Preliminary Approval.

11 First, there are risks with respect to obtaining, and maintaining, class certification for
12 trial purposes that support the fairness of the Settlement. For example, in the case of *Koval v.*
13 *Pacific Bell Telephone Co.* (2014) 232 Cal.App.4th 1050, the plaintiffs were unable to certify
14 claims for failure to provide meal and rest periods due to their inability to show that managers
15 applied allegedly illegal policies consistently on a class-wide basis. See also *Ali v. U.S.A. Cab,*
16 *Ltd.* (2009) 176 Cal.App.4th 1333, 1350. Moreover, the California Supreme Court’s decision
17 in *Duran v. U.S. Bank* (2014) 59 Cal.4th 1, makes class certification even less certain given
18 its antipathy towards using “sampling” as a basis for ascertaining class-wide liability and/or
19 damages. Accordingly, Plaintiffs would likely encounter extreme difficulty in certifying most
20 of the claims in this case because, while they may present substantial common liability issues,
21 they also give rise to individual damages issues. HH Decl., ¶15. Thus, there is a significant
22 risk that this case would not proceed to completion as a class action absent the Settlement.

23 Second, there are substantial risks with respect to establishing the merits of Plaintiffs’
24 claims. As explained in the briefing in support of the Motion for Preliminary Approval,
25 Defendant vigorously disputed Plaintiffs’ claims. Defendant contended that despite an
26 automatic meal period deduction, employees were generally afforded the opportunity to take
27 breaks as they maintained a bell system, machines were shut down to accommodate breaks,
28 and employees acknowledged proper break provision. Moreover, engaging in the inquiry of

1 whether any late, short, or missed break was a result of employee choice or employer coercion
2 would entail significant individualized inquiries affecting class treatment of the claims.
3 Moreover, as to the claim for rounding and off-the-clock work, individualized inquiry will be
4 necessary to determine whether Defendant, or any manager, ordered or was aware of instances
5 of off-the-clock work. Defendant vehemently denied that it engaged in any unlawful activity,
6 failed to comply with the law in any respect, or has any liability to any person or entity under
7 the claims asserted in the lawsuit. HH Decl., ¶15.

8 Third, Defendant's defenses and the uncertainty surrounding the merits of Plaintiffs'
9 underlying claims could potentially preclude most of the penalties sought in this case. For
10 instance, Labor Code § 203 requires proof of "willful" or "knowing and intentional" Labor
11 Code violations for liability to be imposed. Thus, the existence of a good faith dispute that
12 could preclude any recovery of wages (even if the plaintiff ultimately prevails) can preclude
13 such penalties from being awarded. 8 Cal. Code Regs. §13520(a); *Road Sprinkler Fitters*
14 *Local Union No. 669 v. G&G Fire Sprinklers, Inc.* (2002) 102 Cal.App.4th 765, 782; see also
15 *Choate v. Celite Corp.* (2013) 215 Cal.App.4th 1460 (reversing award of waiting time
16 penalties based on employer's good faith defense notwithstanding that the plaintiffs prevailed
17 on the underlying wage claims). Additionally, gross wages earned (as unpaid hourly and
18 premium wages are potentially here) are not included in the list of faults for which an
19 employee is deemed to suffer injury under Lab. Code. Sec. 226(e)(2)(B).

20 Each of these considerations bore heavily on the negotiations allowing for the
21 Settlement, and furthermore confirm that the Settlement is a fair, adequate, and reasonable
22 compromise in view of the risks of further litigation. HH Decl., ¶16. As detailed in the Motion
23 for Preliminary Approval, Plaintiffs carefully vetted the claims at issue by reviewing policies,
24 records and data regarding the size and makeup of the class. Thus, while the risks discussed
25 herein are far from exhaustive, they demonstrate that the Settlement is fair, adequate, and
26 reasonable in view of them.

27 //

28 //

2. ***The Settlement Fairly, Reasonably, and Adequately Compensates Settlement Class Members Because Each Participating Class Member Will Be Paid Based on the Extent of His or Her Injury as Compared to Other Class Members***

The Net Settlement Amount will be paid to all Participating Settlement Class Members based on the number of workweeks worked during the Class Period plus an additional allocation to employees whose employment ended during the Class Period to compensate them for their waiting time claim. S.A. ¶4.3. Such an allocation method is fair, adequate, and reasonable because it correlates to the extent of harm allegedly suffered based on the asserted claims. HH Decl. ¶17. All checks not cashed within 180 days will be paid to CASA (“Court Appointed Special Advocates”) of Los Angeles, which is a non-profit 501(c)(3) advocacy group for children. S.A. ¶4.15.

3. ***The Absence of Any Objections or Exclusion Requests Further Confirms That the Settlement Is a Fair, Adequate, and Reasonable Compromise of the Disputed Claims at Issue***

The response of class members to a settlement is relevant in evaluating whether it merits final approval. *Dunk, supra*, 48 Cal.App.4th at 1801. Notably, the absence of objections or exclusion requests supports a fairness presumption. In *7-Eleven Owners for Fair Franchising v. Southland Corp.*, it was found that 9 objections and 80 opt-outs, from a class of 5,454, showed a “particularly impressive” favorable response from class members supporting final approval. (2000) 85 Cal.App.4th 1135, 1152-53. Here, none of the 102 Settlement Class Members opted out of the settlement. Romero Decl., ¶9. Notably, not even a single member of the Settlement Class filed an objection to the Settlement. *Id.* Thus, the favorable response of the Settlement Class is completely positive and further confirms that the Settlement is fair, adequate, and reasonable and merits final approval.

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1 **V. AN AWARD OF ATTORNEYS' FEES SHOULD BE APPROVED**

2 **A. Class Counsel's Fees Should be Approved as a Percentage of the**
3 **Total Common Fund Created for the Class**

4 Class Counsel seeks a fee award calculated as a percentage of the total value of the
5 settlement for successful prosecution and resolution of all existing claims. Both California
6 State and Federal Courts have recognized that an appropriate method in determining an
7 attorney fee award may be based on the percentage on the total value of the benefits the class
8 members receive from the settlement. *Serrano v. Priest* (1997) 20 Cal. 3d 25-34 [*Serrano III*];
9 *Boeing Company v. Van Gemert* (1980) 344 U.S. 472, 478; *Vincent v. Hughes Airwest, Inc.*
10 (9th Cir. 1977) 557 F.2d 759, 769. The purpose of this equitable doctrine is to avoid unjust
11 enrichment and to "spread litigation costs proportionately among all the beneficiaries so that
12 the active beneficiary does not bear the entire burden alone." *Id.* at 768. The monetary benefits
13 will then be paid from a common fund.

14 The California Supreme Court endorsed a fee award as a percentage of the common
15 fund; the Court clarified "that when an attorney fee is awarded out of a common fund
16 preserved or recovered by means of litigation (internal citation omitted), the award is not per
17 se unreasonable merely because it is calculated as a percentage of the common fund." *Laffitte*
18 *v. Robert Half Int'l. Inc.* (2016) 1 Cal. 5th 480, 486. Also "[t]hat the recognized advantages
19 of the percentage method...convince us that the percentage method is a valuable tool that
20 should not be denied in our trial courts." *Id.* at 503.

21 The Common Fund Doctrine is predicated on the principle of preventing unjust
22 enrichment. When a litigant's efforts create or preserves, or generates a fund from which
23 others derive benefits, he may require the passive beneficiaries to compensate those who
24 created the fund. Both California State and Federal Courts have embraced this Doctrine.
25 *Serrano III, supra*, at 35; *Vincent, supra*, at 769.

26 Since *Serrano III, supra*, there has been a ground swell of support for mandating the
27 percentage of the fund approach in common fund cases. Both State and Federal Court have
28 found the percentage approach preferable to the Lodestar because; (1) it aligns the interest of

1 class counsel and absent class members; (2) it encourages efficient resolution of the litigation
2 by providing an incentive for early, yet reasonable, settlement; and (3) it reduces the demand
3 on judicial resources. *In re Activision Sec. Litig.* (N.D. Cal. 1989) 723 F Supp. at 1378-79.
4 The Ninth Circuit now routinely uses the percentage of the common fund approach to
5 determine the award of attorney fees. *Lealao v. Beneficial Calif., Inc.* (2000) 82 Cal.App.4th
6 19, 30-31.

7 Collectively, Plaintiff's counsel seeks \$131,666.66 which is one-third (33 1/3%) of the
8 \$395,000 Settlement Amount. Class Counsel's request for one-third of the monetary fund
9 recovered is well within the range customarily approved by California courts in comparable
10 class actions and other class actions as well as with contingency contracts negotiated by
11 plaintiffs and their counsel. "Empirical studies show that regardless of whether or not the
12 percentage method or Lodestar method is used, fee awards in class actions average around
13 one-third of the recovery." See e.g., *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 66, fn. 11;
14 *In re California Indirect Purchases* (October 22, 1998) WL1031494 at *9 (citing *In re Milk*
15 *Antitrust Litigation* (L.A. Sup. Ct. 1998) Civ. Case No. BC070061 (33 1/3% award); *In re*
16 *Facsimile Paper Antitrust Litigation* (San Francisco Sup. Ct. 1997) Civ. Case No. BC
17 0070061 (33 1/3% award); *In re Liquid Carbon Dioxide Cases* (San Diego Sup. Ct. 1996)
18 J.C.C.P. 3012 (33 1/3% award); *Romero v. Producers Dairy Foods, Inc.* (E.D. Cal. November
19 14, 2007) WL 3492841 at *4 ("fee awards in class actions average around one-third of the
20 recovery." (Quoting Newberg on Class Actions § 14.6 (4th ed. 2007).

21 In *Lealao, supra*, at 46-47, the Court indicated that in defining a "reasonable" fee in
22 representative actions, the law should "mimic the market." The Court went on to state:

23 "Given the unique reliance of our legal system on private litigants to enforce
24 substantive provisions of law through class and derivative actions, attorneys
25 providing the essential enforcement services must be provided incentives roughly
26 comparable to those negotiated in the private bargaining that takes place in the
27 legal marketplace as it will otherwise be economic for Defendant's to increase
28 injurious behavior. *Lealao, supra*, 82 Cal.App.4th at 46-47, and *Graciano v.*
Robinson Ford Sales, Inc. (2006) 144 Cal. App.4th 140, 163.

For the following reasons, awarding one-third of the gross settlement for attorney fees
is fair, reasonable and appropriate.

1 **B. Factors Supporting the Fee Award**

2 1. The Amount of the Settlement

3 In Class Counsel's experience, a gross non-reversionary settlement of \$395,000 in a
4 wage and hour case for a class size of 102 is a fair, reasonable, and adequate settlement in
5 light of the asserted claims, Defendant's defenses, and the strong possibility that the class
6 would not recover anything without this settlement. Declaration of Zorik Mooradian
7 (hereinafter "ZM Decl."), ¶7, HH Decl. ¶6.

8 The fact that there presently are no objections, no exclusion requests, and Participating
9 Class Members are expected to be paid 100% of the value of their individual claims shows
10 that the settlement has been well received by the Class Members. Romero Decl. ¶9. The
11 average amount expected to be paid amongst the 102 Participating Settlement Class Members
12 is \$2,037.58 and the highest estimated settlement payment is \$3,325.37. *Id.* at ¶12.

13 2. The Named Plaintiff Signed a Retainer Agreement

14 Plaintiff Ramos signed a single retainer with Mooradian Law, APC. The Retainer
15 Agreement had language providing a maximum of forty percent (40%) in attorneys' fees, of
16 course, subject to a court approval of class wide issues. The Retainer Agreement also had a
17 provision for recovery of costs in relation to the representation. ZM Decl. ¶8.

18 In *Lealao, supra*, 82 Cal.App.4th at 46-47, the court indicated that in defining a
19 "reasonable" fee in representative actions, the law should "mimic the market." Here, as for
20 the representation of the individual rights of Mr. Ramos, a proposed retainer agreement for
21 recovery of fees could be one-third of the gross recovery. That would be consistent with the
22 market rate, and there is no reason to believe that, if any of the other 102 class members had
23 signed an individual retainer, it would be any different. ZM Decl. ¶9.

24 In, *In re Cont'l Ill. Secs. Litig.*, Judge Posner endorsed a market-based approach to
25 evaluating fee requests, stating that the function of judges in fee litigation "is to determine
26 what the lawyer would receive if he were selling his services in the market rather than being
27 paid by court order." (7th Cir. 1992) 962 F.2d 566, 568. In a law review article (Silver) entitled
28 "A Restitutionary Theory of Attorneys' Fees in Class Actions (1991) 76 Cornell L.Rev. 656,

702-703 (it stated that the goal “is to pay attorneys on terms they would probably accept in an ex ante bargain, before the outcome of litigation is known”).

3. The Defendant and the Class Do Not Object to the Attorney Fee Agreement

In almost all the mediations that Mr. Mooradian has attended, a one-third attorney fee percentage is generally agreed upon by the Defendant and the Plaintiff subject to court approval. In this matter, the Parties agreed that Class Counsel may request up to \$131,666.66 in attorney fees and Defendant would not oppose the same. ZM Decl. ¶10.

Of most importance, notice was provided to each of the Settlement Class Members that the attorneys would be seeking attorney fees in the amount of \$131,666.66 or one-third of the settlement. The fact that no Settlement Class Members had any objection to the settlement or any of its terms to date, speaks pretty strongly to the notion that class members are extremely happy with the settlement. ZM Decl. ¶21.

Here, it is beyond any reasonable dispute that, if class counsel had been able to negotiate directly with the class members, the class would have found that a one-third fee arrangement was eminently reasonable. ZM Decl. ¶11.

4. The Contingent Risk Factor

For Class Counsel, the fees in this case are entirely contingent in nature. As the 9th Circuit noted, class counsel who take a case on a contingency basis bears a “double contingency: first they must prevail on the class claims, and then they must find some way to collect what they win.” *Torrise v. Tucson Elec. Power Co.* (9th Cir. 1993) 8 F.3d 1370, 1377. The fees received from one case, are often used to finance and move forward other cases that have failed and bring in revenue for counsel. ZM Decl. ¶23.

C. **The Lodestar/Multiplier Cross-Check**

Even though class counsel is requesting fees with the percentage of the benefit approach, some courts nevertheless use a Lodestar/Multiplier cross check to confirm the fees’ reasonableness. *Lealao v. Beneficial California, Inc.*, *supra*, 82 Cal.App.4th 19-45; *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051. The Lodestar Analysis (Lodestar-Multiplied Method) begins with a calculation of time spent in reasonable hourly compensation

of each attorney and paralegal who worked on the case and then to compensation counsel for risk, quality and result, courts commonly apply a “multiplier” to the Lodestar in awarding attorney fees.

The first step is to determine the Lodestar individually for each attorney and/or paralegal that has worked on the case and is claiming fees. The Lodestar analysis for each attorney appears in their own Declaration(s) and fee and cost ledger attachments, which is summarized below:

Attorney(s)	Billable Rate(s)	Hours	Lodestar
Zorik Mooradian ZM Decl., ¶14, Exh. 1	\$650.00	61.6	\$40,040
ZM anticipated – <i>Id.</i>	\$650.00	5	\$3,250
Haik Hacopian HH Decl., ¶18, Exh. 2	\$415.00	70.5	\$29,257.50
HH anticipated – <i>Id.</i>	\$415.00	5	\$2,075
Jean-Claude Lapuyade JCL Decl., ¶4, Exh. B	\$150-\$550	114.6	\$32,893.33
Shani O. Zakay SOZ Decl., ¶4, Exh. #2	\$350-\$550	56.9	\$28,962.50
Total Present and Anticipated Lodestar		313.6	\$136,478.33

In this matter, the total present and anticipated lodestar tallies to \$136,478.33, which exceeds the requested \$131,666.66 fee award. As such, the application of a multiplier is not necessary.

D. Attorneys Fees v. Class Benefit

While it’s generally true that the greater the attorney fees, the less funds there will be for distribution to class members as damages, nevertheless, a balance must be achieved. In the instant matter, the class got a very balanced and fair settlement. Given the strengths and

1 weaknesses of the case, they will be receiving a fair sum of money. The results and the case
2 law support that the settlement was fair, reasonable and adequate. The class had an affirmative
3 response to the settlement, where there was not a single objection or exclusion request. In light
4 of the favorable settlement, giving more money to the class after an excellent settlement had
5 been achieved punishes the attorneys without whom such a settlement would not have been
6 attained but for the efforts of good lawyering. Punishing lawyers when they do well is
7 potentially sending the wrong message and serves as a disincentive and unjustly enriches the
8 class that has already received a fair and adequate amount of benefits. ZM Decl. ¶26.

9
10 **VI. PAYMENT OF COSTS TO CLASS COUNSEL SHOULD BE APPROVED**

11 Class Counsel has incurred \$16,632.07 in total costs which is less than the \$20,000
12 maximum contemplated per the Settlement Agreement and is the amount that Plaintiff is
13 requesting the Court approve. S.A. ¶3.6. All costs are necessary and reasonable, as reflected
14 by the itemized cost ledgers. ZM Decl., ¶15, Exh. 1 (\$12,434.98); HH Decl., ¶18, Exh. 2
15 (\$404.78); Declaration of Jean-Claude Lapuyade, ¶3, Exh. A (\$906.68); Declaration of Shani
16 O. Zakay, ¶7 (\$2,885.63).

17
18 **VII. THIS COURT SHOULD FINALLY APPROVE PLAINTIFFS' REQUESTED**
19 **ENHANCEMENT AWARDS BECAUSE THEY ARE FAIR, ADEQUATE, AND**
20 **REASONABLE IN VIEW OF PLAINTIFFS' EFFORTS AND THE RISKS THAT**
21 **THEY ASSUMED IN THIS LITIGATION ON BEHALF OF THE CLASS**

22 Courts routinely approve enhancement awards to compensate named Plaintiff(s) for
23 the services they provide and the risks they incur during class action litigation. See, e.g., *Bell*
24 *v. Farmers Ins. Exchange* (2004) 115 Cal.App.4th 715, 726 (upholding "service payments"
25 to named Plaintiff for their efforts in bringing the case); see also *Van Vranken v. Atlantic*
26 *Richfield Co.* (N.D. Cal. 1995) 901 F. Supp. 294 (approving a \$50,000 incentive payment).

27 Here, pursuant to the Settlement, Plaintiffs seek Enhancement Awards totaling
28 \$20,000, or \$10,000 to each Plaintiff. S.A. ¶3.8. This request is a reasonable portion of the
Settlement Amount given Plaintiffs' efforts in litigating this case and the risks they undertook

1 on behalf of the class members. See, e.g., *Staton v. Boeing Co.* (9th Cir.2003) 327 F.3d 938,
2 977 (affirming that courts should consider “the actions the plaintiff has taken to protect the
3 interests of the class, the degree to which the class has benefitted from those actions, the
4 amount of time and effort the plaintiff expended in pursuing the litigation and reasonable
5 fear[s of] workplace retaliation”).

6 Plaintiff’s proposed Enhancement Award in proportion to the Settlement Amount and
7 standing alone is well within the range of reasonable. Each requested Enhancement Award
8 represents only 2.5% of the Settlement Amount, or 5% jointly. See, e.g., *Bond v. Ferguson*
9 *Enters., Inc.* (E.D.Cal. June 30, 2011) Civ. No. 1:09–1662 OWW MJS, 2011 WL 2648879, at
10 *2, 15 (approving an \$11,250 incentive award to each of the two named Plaintiffs); *Ross v.*
11 *U.S. Bank Nat’l Ass’n* (N.D. Cal. Sept. 29, 2010) Civ. No. 3:07–2951 SI, 2010 WL 3833922,
12 at *3 (approving an award of \$20,000 to each of four named Plaintiffs based on their
13 contributions to litigation and the risk that being a class representative would harm their
14 reputation); *Glass v. UBS Fin. Servs.* (N.D. Cal. Jan. 26, 2017) No. C-06-4068 MMC, 2007
15 WL 221862, at *17 (finding “requested payment of \$25,000 to each of the named plaintiffs is
16 appropriate” in wage and hour settlement); *Garner v. State Farm Mut. Auto. Ins. Co.* (N.D.
17 Cal. Apr. 22, 2010) No. CV 08 1365 CW (EMC), 2010 WL 1687832, at *17 n.8 (“Numerous
18 Court in the Ninth Circuit and elsewhere have approved Enhancement Awards of \$20,000 or
19 more where, as here, the class representative has demonstrated a strong commitment to the
20 class”).

21
22 Plaintiff Alberto Ramos and Roger Rodriguez have also spent a great deal of time
23 assisting in the prosecution of this action, which deserves compensation. See e.g., *In re Cont’l*
24 *Ill. Sec. Litig.* (7th Cir.1992) 962 F.2d 566, 571 (“Since without a named plaintiff there can
25 be no class action, such compensation as may be necessary to induce him to participate in the
26 suit...”). It is important that Mr. Ramos and Mr. Rodriguez are paid a fair amount for their
27 services to the class and out of 102 employees they are the only one that stepped forward. If
28

1 it was not for them, the \$395,000 settlement would not have been obtained for the class. ZM
2 Decl. ¶17.

3 Plaintiff Ramos has put a significant amount of time into this case spanning a period
4 of over three years. Mr. Ramos has participated in numerous telephonic conferences speaking
5 to his attorneys and their staff. Mr. Ramos has also traveled to his attorneys' office in
6 Calabasas for a meeting, has spent time looking for documents and spent time reviewing the
7 settlement agreement as well as his declaration. Declaration of Alberto Ramos, ¶6. In total,
8 Mr. Ramos estimates that he has spent approximately 12-13 hours participating in this case.
9 *Id.* at ¶7. Plaintiff Ramos has been involved with this matter since May of 2022 and has also
10 participated in a similar manner. Declaration of Roger Rodriquez, ¶6.

11 Moreover, by the filing of this lawsuit, Plaintiffs subjected themselves to the risk of
12 retaliation both by current and potential future employers who may learn of the lawsuit. See,
13 e.g., *Marlo v. United Parcel Service, Inc.* (9th Cir. 2015) 600 Fed.Appx. 551 (awarding
14 significant verdict to a former UPS employee who terminated in retaliation for filing a class
15 action lawsuit against his employer, UPS).

16 Significantly, after receiving Class Notice, including notice of the proposed
17 Enhancement Award to Plaintiff, not a single Class Member objected to these proposed
18 awards. Romero Decl. ¶9. Also, Plaintiffs are agreeing to a general release of all claims which
19 must be assigned additional value. Accordingly, the \$10,000 Enhancement Award to each
20 Plaintiff is appropriate and justified as part of the Settlement.
21

22

23 **VIII. THE PAGA ALLOCATION AND PAYMENTS SHOULD BE APPROVED**

24 Pursuant to the terms of the Settlement Agreement, \$10,000.00 of the Settlement
25 Amount, is to be allocated for the PAGA claim with \$7,500.00 (75%) payable to the LWDA
26 and \$2,500.00 (25%) payable to the Settlement Class. S.A. ¶3.9. This is a fair amount given
27 the nature of the claims and the strengths and weaknesses advanced by the parties regarding
28 this claim, as elaborated upon in the Preliminary Approval Motion. Plaintiff has also provided
notice of the proposed PAGA settlement to the LWDA. HH Decl. ¶12.

1 **IX. THE ADMINISTRATION FEE SHOULD BE APPROVED**

2 The administration fee is fair. CPT's charge for services rendered to perform its duties
3 and responsibilities pursuant to the terms of the settlement is \$8,000.00 which is to be paid
4 from the Settlement Amount. This includes all costs incurred to date, as well as estimated
5 costs for completing the administration and disbursement of the settlement. Romero Decl.,
6 ¶15.

7
8 **X. CONCLUSION**

9 For the reasons stated herein, this Court should grant Plaintiffs' Motion in its entirety
10 and adopt the [Proposed] Order Granting Final Approval of Class Action Settlement submitted
11 concurrently herewith.

12
13 Dated: September 14, 2022

MOORADIAN LAW, APC

14
15 By: /s/Haik Hacopian

16 Zorik Mooradian, Esq.,
17 Haik Hacopian, Esq.,
18 Attorneys for Plaintiff Alberto Ramos,
19 individually and on behalf of all those
20 similarly situated and other aggrieved
21 employees
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