

HAINES LAW GROUP, APC

Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
Fletcher W. Schmidt (SBN 286462)
fschmidt@haineslawgroup.com
Andrew J. Rowbotham (SBN 301367)
arowbotham@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355

Asaf Agazanof, SBN: 285043
Asaf Law, APC
2330 Westwood Blvd., Second Floor
Los Angeles, California 90064
Tel: 424.254.8870
Fax: 888.254.0651
E-mail: asaf@lawasaf.com
Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA BARBARA

OLIVIA ROSE RAMIREZ and KRYSTAL
PECORARO, as individuals and on behalf of all
others similarly situated,

Plaintiffs,

v.

WYNDHAM VACATION OWNERSHIP, INC.,
a Delaware Corporation; and DOES 1-100,

Defendants.

Case No. 20CV01715

*[Assigned for all purposes to the Hon. James
F. Rigali, Dept. 2]*

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT, ATTORNEYS' FEES
AND COSTS, AND CLASS
REPRESENTATIVE ENHANCEMENT
PAYMENT**

Date: March 12, 2024
Time: 8:30 a.m.
Dept.: 2

Action Filed: April 17, 2020
Trial Date: None Set

PLEASE TAKE NOTICE that on March 12, 2024, at 8:30 a.m., or as soon thereafter as the matter may be heard in Department 2 of the Santa Barbara County Court, Cook Division, located at 312 East Cook Street Building E, Santa Maria, CA 93454, Plaintiff Olivia Rose Ramirez, as an individual and on behalf of a class of similarly situated individuals, will and hereby does move this Court for entry of an Order pursuant to California Code of Civil Procedure § 382 and Rule 3.769 of the California Rules of Court:

1. Confirming the certification of the Settlement Class for settlement purposes under California Code of Civil Procedure § 382;
2. Confirming the appointment of Plaintiff Olivia Rose Ramirez as the Class Representative for settlement purposes;
3. Confirming the appointment of Paul K. Haines, Fletcher W. Schmidt, and Andrew J. Rowbotham of Haines Law Group, APC as Class Counsel for settlement purposes;
4. Granting final approval of the Stipulation of Settlement (“Settlement Agreement” or “Settlement”);
5. Approving an award of \$1,266,666.67 in attorneys’ fees to Class Counsel;
6. Approving an award of \$77,420.63 in actual litigation costs reimbursement to Class Counsel;
7. Approving an award of \$22,500.00 in costs to CPT Group, Inc. (“CPT”) for its settlement administration services;
8. Approving a Class Representative Enhancement Payment of \$5,000.00 to Plaintiff Olivia Rose Ramirez for her service as the Class Representative;
9. Approving an award of \$300,000.00 for civil penalties under the Private Attorneys General Act (“PAGA”), \$225,000.00 of which will be paid to the California Labor and Workforce Development Agency (“LWDA”); and
10. Entering final judgment in the form of the [Proposed] Judgment and Order Granting Plaintiff’s Motion for Final Approval of Class Action Settlement, Attorneys’ Fees and Costs, and Class Representative Enhancement Payment (the “[Proposed] Judgement and Order”) submitted herewith.

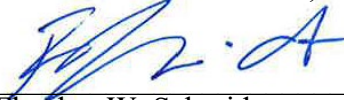
1 This Motion is made on the following grounds: (1) the Settlement Class continues to meet
2 the requirements for class certification for settlement purposes only under Code of Civil
3 Procedure § 382; (2) Plaintiff and Class Counsel continue to be adequate representatives of the
4 Settlement Class; (3) the Settlement is a fair, adequate, and reasonable compromise of disputed
5 wage and hour claims; (4) the requested awards of attorneys' fees and costs, Class Representative
6 Enhancement Payment, LWDA payment for its share of PAGA penalties, and settlement
7 administration costs are all fair, adequate, and reasonable; and (5) in light of the foregoing, the
8 [Proposed] Judgment and Order submitted concurrently herewith should be entered so as to give
9 finality to, and allow for disbursements from, the Settlement.

10 This Motion is based on this Notice of Motion; the attached Memorandum of Points and
11 Authorities; the supporting declarations of Paul K. Haines, Fletcher W. Schmidt, Andrew J.
12 Rowbotham, Olivia Rose Ramirez,¹ and William Argueta of CPT, and the exhibits attached
13 thereto; the Settlement Agreement; all other pleadings and papers on file in this action; and on
14 any further oral or documentary evidence or argument presented at the time of hearing.

15 Dated: February 16, 2024

Respectfully submitted,
HAINES LAW GROUP, APC

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17 By:



Fletcher W. Schmidt
Attorneys for Plaintiff

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28 ¹ Plaintiff Olivia Rose Ramirez previously submitted her declaration in support of preliminary settlement
approval on September 15, 2023. For the convenience of the Court, Plaintiff is re-submitting her
declaration with the current filing.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Olivia Rose Ramirez (“Plaintiff”) hereby submits this Memorandum of Points
4 and Authorities in support of her Motion for Final Approval of this Class Action Settlement (the
5 “Settlement”) on behalf of all current and former non-exempt housekeeping and guest services
6 employees of Defendant Wyndham Vacation Ownership, Inc. (“Defendant”) in California who
7 worked at any time between February 5, 2016, and February 4, 2023 (the “Class Period”).²
8 Plaintiff and Defendant are referred to collectively as “the Parties.”

9 This is a \$3,800,000.00 non-reversionary Settlement, in which all participating Settlement
10 Class Members will automatically receive payments without the need to submit a claim form.
11 This results in average Individual Settlement Payments of approximately \$654.90 to each of the
12 3,250 participating Settlement Class Members, with the highest Individual Settlement Payment
13 expected to be approximately \$3,535.15. Further, this Settlement provides additional
14 consideration to the State of California and other aggrieved employees for settlement of Plaintiff’s
15 claim for civil penalties under the Private Attorneys General Act. This is a fair and reasonable
16 resolution of the disputed wage and hour claims at issue in this case considering the significant
17 litigation risks that Plaintiff faced. After receiving notice of the proposed Settlement and the
18 estimated Individual Settlement Payments, no Settlement Class Members have objected to the
19 Settlement and only one individual elected to opt out, resulting in a 99.97% participation rate.³

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21

² On December 1, 2023, the Settlement Administrator notified the Parties that the number of workweeks
22 worked by Settlement Class Members exceeded the 220,000 workweek threshold found in the escalator
23 clause of the Settlement Agreement. *See* Declaration of Fletcher Schmidt, (“Schmidt Decl.”), ¶ 14. Per the
24 Settlement Agreement, Defendant could either: “(1) pay an additional sum necessary to increase the
25 Maximum Settlement Amount on a proportional basis over 10% (i.e., if there was a 15% increase in
26 workweeks, Defendant would increase the Maximum Settlement Amount by 5%); or (2) elect to shorten
the Class Period and PAGA Period (along with their associated releases) to a date that the total number of
workweeks worked is at or under the 220,000 workweek threshold.” *See* Settlement, § 5.E. Defendant
elected the latter and the Class Period was shortened to February 4, 2023. *See* Schmidt Decl., ¶ 14.

27 ³ Due to the delay associated with the escalator clause being triggered, Notice Packets were not mailed
28 until December 29, 2023. As such, the opt-out deadline falls on February 27, 2024, which is after the
deadline for Plaintiff to file this Motion. Prior to the hearing on this Motion (and after the opt-out deadline),

As explained below, the Court should grant Plaintiff's Motion in its entirety because: (1) the Settlement Class continues to meet the requirements for class certification for settlement purposes under Code of Civil Procedure § 382; (2) the Settlement is a fair, adequate, and reasonable compromise of the disputed claims in this case; and (3) the amounts requested for Class Counsel's attorneys' fees and costs, Plaintiff's Class Representative Enhancement Payment, payment to the California Labor and Workforce Development Agency ("LWDA"), and settlement administration costs are all fair, adequate, and reasonable. In light of the foregoing, this Court should enter the [Proposed] Judgment and Order Granting Plaintiff's Motion for Final Approval of Class Action Settlement, Attorneys' Fees and Costs, and Class Representative Enhancement Payment (the "[Proposed] Judgement and Order"), submitted concurrently herewith.

II. FACTUAL AND PROCEDURAL BACKGROUND

Defendant operates a chain of vacation ownership resorts and employed Plaintiff as a non-exempt employee from approximately May 2016 to February 2019. Schmidt Decl., ¶ 9; Declaration of Olivia Rose Ramirez ("Ramirez Decl."), ¶ 2. Plaintiff worked in the position of "Housekeeper" and "Guest Services Agent," primarily answering phones and checking-in guests. *Id.* Like all Settlement Class Members, Plaintiff was subject to Defendant's wage and hour policies and practices. *See* Schmidt Decl., ¶ 9.

On February 5, 2020, Plaintiff filed a class action complaint in Santa Barbara Superior Court, Case No. 20CV00759, alleging Defendant failed to: (i) pay all overtime wages owed; (ii) pay all minimum wages; (iii) provide all lawful meal periods; (iv) authorize and permit all lawful rest periods; (v) issue accurate and itemized wage statements; (vi) timely pay all final wages upon separation; and (vii) comply with California's Unfair Competition laws ("Class Action"). *See* Schmidt Decl., ¶ 10. On February 11, 2020, Plaintiff submitted a letter to the LWDA and Defendant to advise of her intent to pursue civil penalties under the Private Attorneys General Act ("PAGA") based on the Labor Code violations pled in the Class Action. *Id.* On April

Plaintiff will submit an amended declaration from the Settlement Administrator, updating the Court on whether any additional opt-outs or objections were received from the Settlement Class Members.

1 16, 2020, Defendant removed the action to the United States District Court, Central District, Case
2 No. 2:20-cv-03528. *Id.* On April 17, 2020, Plaintiff filed a separate representative action
3 complaint against Defendant alleging a single cause of action for civil penalties under PAGA
4 (“PAGA Action”). *Id.* The Court granted the Parties’ stipulation to stay the PAGA Action on
5 October 23, 2020. *Id.* The Parties then engaged in significant formal class certification related
6 discovery in the Class Action, including formal written discovery, mailing a *Belaire-West* notice
7 to the Settlement Class Members, and taking the depositions of Defendant’s five FRCP
8 30(b)(6) witnesses. *Id.*

9 In anticipation of private mediation, Defendant provided Plaintiff with electronic
10 timekeeping records and corresponding payroll records for all Settlement Class Members.⁴ *See*
11 Schmidt Decl., ¶ 11. Through formal discovery, Defendant also produced thousands of pages of
12 policies, handbooks, bonus plans, and other relevant documents in effect during the relevant time
13 period. *Id.* Plaintiff retained an expert with a Ph.D. in economics to analyze the data and create a
14 class-wide exposure model for the claims at issue. *Id.* On February 2, 2023, the Parties
15 participated in a full-day mediation with Jeffrey Krivis, Esq., a well-respected wage and hour
16 class action mediator. *Id.* Although the matter did not settle on that day, the Parties continued
17 settlement negotiations through Mr. Krivis and were eventually able to agree on terms to a global
18 resolution of all claims in the Class Action and PAGA Action. *Id.* As a material term of the
19 Settlement Agreement, the Parties stipulated to consolidating the claims in the Class Action into
20 the PAGA Action, dismissing the Class Action without prejudice, and moving forward with
21 settlement approval of all claims in this Court.⁵ *Id.* Over the following months, the Parties
22 negotiated and executed the long-form Settlement Agreement this Court preliminarily approved
23

24 ⁴ Mediation was originally scheduled to take place with Francis “Tripper” Ortman on May 16, 2022.
25 However, shortly before mediation Defendant hired new counsel, necessitating mediation to be
rescheduled. A new mediation date was booked with Jeffrey Krivis on February 2, 2023.

26 ⁵ As part of this consolidation process, Krystal Pecoraro was removed as a named plaintiff and will not
27 take part in this Settlement. Ms. Pecoraro resolved all of her claims as part of a previous class action
28 settlement on behalf of Defendant’s piece-rate employees, titled *Socorro Chavez de Barrios v. Wyndham*
Vacation Ownership, Inc., Monterey County Superior Court Case No. 15CV000228, final approval
granted on January 29, 2018.

on October 11, 2023. *Id.*, at Exhibit 1 (Preliminary Approval Order). On September 15, 2023 and February 16, 2024, Plaintiff submitted the Parties’ Settlement Agreement to the LWDA along with her Motions for Preliminary Approval and Final Approval. *See* Schmidt Decl., Exhibit 2.

On December 29, 2023, the Court-approved Class Notice and Notice of Settlement Payment (collectively, the “Notice Packet”) was mailed in English and Spanish via U.S. first-class mail to all 3,251 potential Settlement Class Members. *See* Declaration of William Argueta (“Argueta Decl.”) ¶ 7; Exhibit A. Settlement Class Members will have until February 27 2024, to submit disputes, objections, and/or requests for exclusion (the “Response Deadline”). *Id.* As of the date of this filing, no Settlement Class Members have objected to the Settlement and only one individual opted out, resulting in a 99.97% participation rate. *Id.*, ¶¶ 11-12. Plaintiff now respectfully submits the Settlement for this Court’s final approval.

III. SUMMARY OF THE SETTLEMENT AND NOTICE PROCESS

A. Settlement Class Definition

“All current and former non-exempt housekeeping and guest services employees of Defendant Wyndham Vacation Ownership, Inc. in California who worked at any time between February 5, 2016, and February 4, 2023.” *See* Schmidt Decl., Exhibit 1.

B. Monetary Terms

Defendants will pay a non-reversionary Maximum Settlement Amount (“MSA”) of \$3,800,000.00. *See* Settlement, § 5. The Net Settlement Amount (“NSA”) is the amount remaining from the MSA after deducting Court-approved amounts for attorneys’ fees (\$1,266,666.67) and verified costs reimbursement (\$77,420.63), the Class Representative Enhancement Payment (\$5,000.00), settlement administration costs (\$22,500.00), and payment to the LWDA for its share of PAGA penalties (\$225,000.00). *See* Schmidt Decl., ¶ 15; Exhibit 3 (Cost Records). Based on these requested amounts, CPT calculates the NSA to be approximately \$2,203,412.70. *See* Argueta Decl., ¶ 15.

CPT will calculate and apportion Individual Settlement Payments from the NSA using the following formula: (1) the \$75,000.00 payable to the PAGA Aggrieved Employees as PAGA civil penalties shall be designated as the “PAGA Amount” and will be distributed to each Settlement

1 Class Member who was employed by Defendant at any time between February 5, 2019 to
2 February 4, 2023, proportionate to the number of pay periods that he or she worked during the
3 aforementioned time period compared to the total pay periods worked by all PAGA Aggrieved
4 Employees during the aforementioned time period; and (2) the remainder of the NSA will be
5 distributed to each participating Settlement Class Member based on his or her proportionate
6 number of workweeks worked during the Class Period, by multiplying the remaining NSA by a
7 fraction, the numerator of which is the Settlement Class Member's total workweeks worked
8 during the Class Period, and the denominator of which is the total number of workweeks worked
9 by all participating Settlement Class Members during the Class Period. *See* Settlement, §§ 6.B.i-
10 ii.

11 Individual Settlement Payments will be classified as 20% wages to be reported on an IRS
12 Form W-2 and 80% penalties and interest to be reported on an IRS Form 1099.⁶ *See* Settlement,
13 § 6.B.ii. In addition, PAGA Aggrieved Employees will receive their share of the PAGA Amount
14 to be reported on an IRS Form 1099 as 100% penalties and interest. *Id.* at, § 6.B.i.

15 **C. Summary of Notice Process**

16 On November 20, 2023, Defendant provided CPT, the Court-approved Settlement
17 Administrator, with a mailing list containing the names, last known addresses, Social Security
18 numbers, employment dates, and relevant workweek information for each Settlement Class
19 Member during the Class Period. *See* Argueta Decl., ¶ 5. After performing address updates and
20 verifications, CPT mailed the Notice Packets to all 3,251 potential Settlement Class Members on
21 December 29, 2023. *Id.*, ¶¶ 5-7. As a result of CPT's use of a skip trace and/or the Post Office
22 providing an updated address, a total of 83 Notice Packets were re-mailed. *Id.*, ¶ 9. In total, 23
23 Notice Packets are deemed undeliverable. *Id.* Settlement Class Members have until February 27,
24 2024, to submit objections, disputes, and/or requests for exclusion. *Id.*, ¶ 7. As of the date of this
25 filing, not a single Settlement Class Member objected to the Settlement and only individual opted
26

27 ⁶ Defendant's share of employer-side payroll taxes for payments made to Settlement Class Members
28 allocated as wages will be paid separately and apart from, and in addition to, the MSA. *See* Settlement,
§ 5.F.

1 out, resulting in a 99.97% participation rate. *Id.*, ¶¶ 11-12. On February 9, 2024, CPT received a
2 response from an individual requesting to be added to the Settlement Class. *Id.*, ¶ 10. After
3 reviewing the information provided by the individual and comparing it to Defendant's
4 employment records, it was determined that this individual's employment ended prior to the
5 beginning of the Class Period. *Id.* CPT reports no additional responses or disputes regarding the
6 information included in the Notice Packet. *Id.*, ¶ 13.

7 **D. Timing of Payments**

8 Defendants will deposit the MSA (\$3,800,000.00) with the Settlement Administrator
9 within thirty (30) calendar days after the Settlement becomes final. *See* Settlement, §§ 5.B., 4.D.
10 Within ten (10) business days of the full funding of the MSA, the Settlement Administrator will
11 calculate each Individual Settlement Payment and mail the Individual Settlement Payments to the
12 participating Settlement Class Members and the PAGA Amount to the PAGA Aggrieved
13 Employees. *Id.*, § 6.C. Settlement Class Members will have 180 calendar days from the date CPT
14 mails the Individual Settlement Payments to cash their checks. *Id.*, § 6.E. In the event there are
15 any uncashed checks remaining after 180 days, CPT will transfer any remaining funds to the
16 California State Controller's Office to be held pursuant to the Unclaimed Property Law,
17 California Civil Code § 1500 *et seq.*, in the name of the Class Member to whom the check was
18 issued, until such time that they claim their property. *Id.*

19 **IV. ARGUMENT**

20 **A. This Court Should Confirm its Conditional Certification of the Settlement**
21 **Class for Settlement 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 and absent
25 class members share a community of interest, and questions of law and fact common to the class
26 predominate over questions unique to individual class members; (3) the representative's claims
27 are typical of the class' claims; and (4) the representative will fairly and adequately represent the
28 class' interests. *See Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470. Here, the Court
found that the Settlement Class meets all the requirements for class certification for settlement

1 purposes when it granted preliminary approval of the Settlement on October 11, 2023. *See*
2 Schmidt Decl., Exhibit 1. Since then, no events have cast doubt on the propriety of this
3 determination, and in fact, the reaction of the Settlement Class Members has been
4 overwhelmingly supportive of the Settlement, with not a single Class Member objecting to or the
5 Settlement and only one individual opting out from participation, resulting in a 99.97%
6 participation rate. Argueta Decl., ¶¶ 11-12. The Court should therefore confirm its conditional
7 certification of the Settlement Class.

8 **B. This Court Should Finally Approve the Settlement Because it is a Fair,**
9 **Adequate, and Reasonable Compromise of Disputed Wage and Hour and**
10 **PAGA Claims**

11 California courts have a strong policy in favor of settlement. *See Stambaugh v. Superior*
12 *Court* (1976) 62 Cal.App.3d 231, 236. Unlike individual settlements, class action settlements
13 involve a court approval process that exists to prevent fraud, collusion, and unfairness to
14 Settlement Class Members. *See Malibu Outrigger Bd. of Governors v. Superior Court* (1980) 103
15 Cal.App.3d 573, 578-79. This approval process consists of preliminary settlement approval,
16 notice being given to Settlement Class Members, and a final fairness and approval hearing being
17 held, at which Settlement Class Members can be heard with respect to the settlement. *Id.* Further,
18 trial courts should evaluate a PAGA settlement to similarly determine “whether it is fair,
19 reasonable, and adequate in view of PAGA's purposes to remediate present labor law violations,
20 deter future ones, and to maximize enforcement of state labor laws.” *Moniz v. Adecco USA, Inc.*
21 (2021) 72 Cal.App.5th 56, 77. Because many of the factors used to evaluate class action
22 settlements bear on a settlement's fairness—including the strength of the plaintiff's case, the risk,
23 the stage of the proceeding, the complexity and likely duration of further litigation, and the
24 settlement amount—these factors can be useful in evaluating the fairness of a PAGA settlement.
25 *Id.* Now that the settlement administrator has provided notice to the Settlement Class Members,
26 Plaintiff respectfully requests that the Court finally approve the Settlement as fair, adequate, and
27 reasonable.
28

1 ***1. The Settlement was Reached at Arms' Length, Through Experienced***
2 ***Counsel and an Experienced Mediator, and Was Based on Sufficient***
3 ***Information to Intelligently Negotiate a Fair Settlement Considering the***
4 ***Claims Asserted and Risks of Continued Litigation***

5 A settlement is presumptively fair where it is reached through arms'-length bargaining,
6 based on sufficient discovery and investigation to allow counsel and the court to act intelligently,
7 counsel is experienced in similar litigation, and the percentage of objectors to the settlement is
8 small. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802. In deciding whether to approve
9 a proposed settlement, a trial court has broad powers to determine if the proposed settlement is
10 fair under the circumstances of the case. *Mallick v. Superior Court* (1979) 89 Cal.App.3d 434,
11 438. In exercising these powers, the overriding concern is to ensure that a proposed settlement is
12 "fair, adequate, and reasonable." *Dunk, supra*, 48 Cal.App.4th at 1801 (internal quotations
13 omitted). Relevant factors for the Court to consider include, but are not limited to:

14 [T]he strength of plaintiffs' case, the risk, expense, complexity and likely
15 duration of further litigation, the risk of maintaining class action status
16 through trial, the amount offered in settlement, the extent of discovery
17 completed and the stage of the proceedings, the experience and views of
18 counsel, the presence of a governmental participant, and the reaction of the
19 class members to the proposed settlement.

20 *Id.* These factors require balancing, are non-exhaustive and, as such, trial courts should tailor the
21 factors to each case and give due regard to "what is otherwise a private consensual agreement
22 between the parties." *Id.*

23 "In the context of a settlement agreement, the test is not the maximum amount plaintiffs
24 might have obtained at trial on the complaint, but rather whether the settlement is reasonable
25 under all of the circumstances." *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224,
26 250. Because settlements inherently involve compromise, even settlements providing for
27 substantially narrower relief than what may be obtained if the suit were successfully litigated can
28 be reasonable because, "the public interest may indeed be served by a voluntary settlement in
 which each side gives ground in the interest of avoiding litigation." *Id.* (quoting *Air Lines*
 Stewards, etc., Local 550 v. American Airlines, Inc., 455 F.2d 101, 109 (7th Cir. 1972)).

1 Here, the Settlement resulted from extensive arms'-length settlement negotiations
2 between qualified and experienced counsel with the aid of a neutral third-party mediator. The
3 Settlement is fair, adequate, and reasonable for all Settlement Class Members. While Plaintiff
4 steadfastly maintains that her claims are meritorious, Defendant vigorously contests liability and
5 the appropriateness of class treatment and, correspondingly, Plaintiff acknowledges the
6 substantial risks and uncertainty in proceeding with class certification and eventually trial, which
7 justify a downward departure from the maximum exposure that Plaintiff calculated each claim
8 carried.

9 As detailed in Plaintiff's Motion for Preliminary Approval, Defendant argues it maintains
10 a legally-compliant meal period policy, that it has always provided meal periods consistent with
11 that policy, and that it is only required to "provide" the opportunity to take meal periods, not
12 "ensure" meal periods are taken. *See* Schmidt Decl., ¶ 17; *see Brinker v. Superior Court* (2012) 53
13 Cal.4th 1004, 1038 (rejecting "ensure" standard and holding employers only have to "provide"
14 employees the opportunity to take meal periods). Defendant further maintains that any meal
15 period violations reflected in timekeeping records were the result of employee choice, not
16 Defendant's policies, thereby precluding liability. *See* Schmidt Decl., ¶ 17. Defendant further
17 contends that putative class members signed valid meal period waivers for shifts between 10 and
18 12 hours. *Id.* Defendant also argues that, even though Defendant always provided compliant
19 meals, Defendant paid meal period premium payments in instances that a meal period was not
20 taken. *Id.* Defendant also argues individualized inquiries into why meal periods are late, short, or
21 missed for the "Guest Services Agent" and "Housekeeper" positions, whether there was a valid
22 waiver, and whether a premium was paid, thereby precluding class certification of this claim. *Id.*

23 As to Plaintiff's rest period allegations, Defendant asserts it has always authorized and
24 permitted all required rest periods for their non-exempt employees. *See* Schmidt Decl., ¶ 18.
25 Defendant argues it maintained lawful rest period policies throughout the Class Period, and that
26 company policy did not prohibit employees from taking their rest periods. *Id.* Further, Defendant
27 asserts that this claim is unmanageable, as it requires individualized inquiries into why rest
28 periods were missed for "Guest Services Agent" and "Housekeeper" positions, whether specific

1 employees were prevented from taking their authorized rest periods, and on which days, all of
2 which, Defendant argues, Plaintiff will be unable to substantiate with any common, documentary
3 evidence, as rest periods are not required to be recorded. *Id.*

4 As to Plaintiff's allegation that Defendant maintained an unlawful rounding practice for a
5 portion of the Class Period (from February 5, 2016, through January 5, 2018), Defendant contends
6 that its timekeeping and rounding practice were neutral and operated in an even-handed way,
7 which Defendant asserts is lawful under the ruling in *See's Candy Shops, Inc. v. Superior Court*
8 (2012) 210 Cal.App.4th 889. *See* Schmidt Decl., ¶ 19; *see also AHMC Healthcare, Inc. v.*
9 *Superior Ct.* (2018) 24 Cal.App.5th 1014, 1027-29 (finding employer's time-rounding policy
10 lawful where it was neutral "on its face" and "in practice"). Further, Defendant argues it has
11 previously compensated employees for any potential underpayment due to the rounding practice,
12 thereby drastically minimizing any alleged exposure. *See* Schmidt Decl., ¶ 19. As a result,
13 Defendant contends that Plaintiff will have difficulty certifying this claim as there is no substantial
14 benefit to maintaining a class when employees have been paid back the allegedly unpaid wages
15 already. *Id.*

16 As to Plaintiff's claim that Defendant failed to correctly include the value of the incentive
17 pay when calculating the employees' respective regular rates of pay for overtime purposes,
18 Defendant asserts that the incentive pay payments were implemented on a location-by-location
19 basis, were based on various and changing criteria, and were ultimately discretionary. *See*
20 Schmidt Decl., ¶ 20. As a result, Defendant asserts that this claim is unmanageable, as it requires
21 individualized inquiries into each payment to determine the terms by which each bonus could be
22 earned, whether each employee met those terms, whether the communication of the bonus to
23 employees meets the criteria necessary for a non-discretionary payment, and whether there was
24 actually any underpayment of overtime on any given week due to the bonus. Each of these steps
25 would result in an unmanageable series of mini-trials. *Id.*

26 As to Plaintiff's derivative penalty claims, Defendant argues that Plaintiff's underlying
27 claims will fail and, as a result, the derivative wage statement, waiting time, and PAGA claims
28 will also fail. *See* Schmidt Decl., ¶ 21; *see Price v. Starbucks Corp.* (2011) 192 Cal.App.4th 1136,

1 1147 (“Because the underlying causes of action fail, the derivative UCL and PAGA claims also
2 fail.”). Defendant also maintains that Plaintiff cannot show that the wage statement violations
3 were “knowing and intentional,” or that the putative Settlement Class Members “suffer[ed]
4 injury” as a result of the alleged violations, as required by Labor Code § 226(e) for the imposition
5 of wage statement penalties. *See* Schmidt Decl., ¶ 21; *see* Labor Code § 226(e)(1). Moreover,
6 Defendant maintains that its good faith defenses to Plaintiff’s underlying claims and its voluntary
7 repayment of disputed wages would preclude the recovery of waiting time penalties, which are
8 only available for the “willful” failure to pay wages, and that this Court would exercise its
9 discretion to substantially reduce any PAGA penalties awarded. *See* Schmidt Decl., ¶ 21; *see also*
10 8 Cal. Code Regs. § 13520 (“[A] good faith dispute that any wages are due will preclude
11 imposition of waiting time penalties under Section 203.”); Labor Code § 2699(e)(2); *Thurman v.*
12 *Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112, 1135; *Carrington v. Starbucks*
13 *Corporation* (2018) 30 Cal.App.5th 504 (affirming reduction of PAGA penalties to 10% of
14 exposure).

15 These considerations not only bore heavily on the negotiations leading to the Settlement,
16 but also confirm that the Settlement is a fair, adequate, and reasonable compromise considering
17 the risks of further litigation. As detailed in Plaintiff’s Motion for Preliminary Approval, Plaintiff
18 and Class Counsel carefully vetted the claims at issue and conducted a detailed analysis of
19 Defendant’s data to arrive at the calculated damages figures. It was only after this comprehensive
20 analysis that the Parties participated in a mediation session and ultimately reached the Settlement
21 now before the Court. Plaintiff contends the \$300,000.00 amount set aside for PAGA is
22 significant and will ensure Defendant’s future labor law compliance. Additionally, many of the
23 alleged unlawful policies have been voluntarily ended by Defendant (ie: the rounding practice).
24 While the risks are far from exhaustive, they show that the Settlement is fair, adequate, and
25 reasonable.

26 **2. *The Settlement Fairly, Reasonably, and Adequately Compensates***
27 ***Settlement Class Members Because Each Class Member Will Be Paid***
28 ***Based on the Extent of His or Her Injury***

CPT will calculate Individual Settlement Payments based on the proportionate number of

workweeks worked by each participating Settlement Class Member during the Class Period divided by the total number of workweeks worked by all participating Settlement Class Members. *See* Settlement, § 6.B.ii. Further, a portion of the NSA will also be distributed to Settlement Class Members who have standing to pursue a claim for PAGA penalties. *Id.*, § 6.B.i. CPT will calculate each PAGA Aggrieved Employees’ portion of the PAGA Amount by calculating each PAGA Aggrieved Employees’ pay periods worked during the PAGA Period, proportionate to the number of pay periods worked by all PAGA Aggrieved Employees. *Id.*; *see also Moniz, supra*, 72 Cal.App.5th at 87-88 (holding PAGA settlement payments should be calculated for aggrieved employees on a “per-pay period basis.”). This method of distribution compensates Settlement Class Members based on the estimated extent of their injuries, as Settlement Class Members who worked more workweeks during the relevant time periods were subjected to more of the alleged wage and hour violations than those who worked fewer workweeks and pay periods, and only Settlement Class Members with standing to pursue derivative and/or PAGA penalties would have been eligible to recover those penalties. Thus, the formula is tethered to the damages and penalties that Settlement Class Members could recover and is therefore, fair, adequate, and reasonable.

3. The 99.97% Participation Rate and Absence of Any Objections Further Confirm That the Settlement is Fair, Adequate, and Reasonable

The Settlement Class Members’ response to the Settlement is relevant in evaluating whether it merits final approval. *Dunk, supra*, 48 Cal.App.4th at 1801. Further, the absence of objections and requests for exclusion support a fairness presumption. *See 7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1152-53 (finding 9 objections and 80 opt-outs from a class of 5,454 showed a “particularly impressive” favorable response from Settlement Class Members). Here not a single Settlement Class Member objected to the Settlement and only one individual opted out from participation, resulting in a 99.97% participation rate. *See Argueta Decl.*, ¶¶ 11-12. This extremely positive reaction from the Settlement Class Members further confirms that the Settlement is fair, adequate, and reasonable.

1 **C. The Requested Award of Attorneys’ Fees is Reasonable as a Percentage of the**
2 **Maximum Settlement Amount Confirmed by a Lodestar Cross-Check**

3 Plaintiff and the Settlement Class Members are entitled to recover their attorneys’ fees
4 and costs for their wage claims. *See* Labor Code §§ 226(e), 1194, and 2699(g). A fee award is
5 justified where the legal action has produced its benefits by way of a voluntary settlement. *See,*
6 *e.g., Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1290-91; *Westside Community for Independent*
7 *Living, Inc. v. Obledo* (1983) 33 Cal.3d 348, 352-53; *Serrano v. Priest* (1977) 20 Cal.3d 25, 34
8 (finding that “when a number of persons are entitled in common to a specific fund, and an action
9 brought by a plaintiff or plaintiffs for the benefit of all results in the creation or preservation of
10 that fund, such plaintiff or plaintiffs may be awarded attorney’s fees out of the fund.”).

11 California state and federal courts routinely award fee awards of one-third of the
12 settlement fund in class actions. *Chavez v. Netflix, Inc.* (2008) 162 Cal. App. 4th 43, 66, fn. 11;
13 *see also Wershba, supra*, 91 Cal. App. 4th at 254 (recognizing the “percentage of recovery”
14 method); *In re Pacific Enterprises Securities Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (affirming
15 33% fee award). Indeed, the California Supreme Court approved the use of the “percentage of
16 fund” method in California. *See Laffitte v. Robert Half Int’l, Inc.* (2016) 1 Cal.5th 480, 506 (“the
17 percentage of fund method survives in California class action cases...”); *see also Rawlings v.*
18 *Prudential-Bache Properties, Inc.*, 9 F.3d 513, 516 (6th Cir. 1993) (holding that the percentage
19 of the fund method more accurately reflects the results achieved than the lodestar method and
20 “establishes reasonable expectations on the part of plaintiffs’ attorneys as to their expected
21 recovery; and it encourages early settlement, which avoids protracted litigation.”); *In re Rite Aid*
22 *Corp. Securities Litigation*, 396 F.3d 294, 300 (3d Cir. 2005) (“The percentage-of-recovery
23 method is generally favored in common fund cases because it allows courts to award fees from
24 the fund ‘in a manner that rewards counsel for success and penalizes it for failure.’”). This is
25 consistent with Class Counsel’s experience in similar wage-and-hour class action matters. *See*
26 Schmidt Decl., ¶ 22. Here, Class Counsel’s fee request of \$1,266,666.67, representing one-third
27 of the MSA, is the same percentage sought in *Laffitte*, and is fair and reasonable based on the
28 percentage of the recovery method. *Id.*

1 In *Laffitte*, the California Supreme Court held that trial courts have discretion to assess the
2 reasonableness of fee awards with tools such as the “lodestar cross-check,” whereby the trial court
3 calculates counsel’s lodestar and determines whether the “lodestar multiplier” needed to bring the
4 lodestar on par with the percentage of recovery is reasonable. *Laffitte*, 1 Cal.5th at 503-06. Under
5 the lodestar method, the court multiplies the number of hours reasonably expended by each
6 attorney or legal staff member by their reasonable hourly rates, then enhances this lodestar figure
7 by a “multiplier” to account for a range of factors, such as the contingent nature of the case and
8 the degree of success achieved. *See Serrano v. Priest*, (1977) 20 Cal.3d 25, 48-49; *Ketchum v.*
9 *Moses*, (2001) 24 Cal.4th 1122, 1132-36; *Thayer v. Wells Fargo Bank*, (2001) 92 Cal.App.4th
10 819, 834 (“There is no hard-and-fast rule limiting the factors that may justify an exercise of
11 judicial discretion to increase or decrease a lodestar calculation”).

12 Under California law, lodestar multipliers can range from 2 to 4 or even higher. *See, e.g.,*
13 *Chavez*, 162 Cal.App.4th at 49-50 (approving multiplier of approximately 2.5); *Coalition for L.*
14 *County Planning etc. Interest v. Bd. of Supervisors*, (1977) 76 Cal.App.3d 241, 251 (approving
15 multiplier of approximately 12.8). In class and representative actions, where the value of the
16 benefit conferred “can be monetized with a reasonable degree of certainty,” a court may “adjust
17 the lodestar in comparison to a percentage of the common fund to ensure that the fee awarded is
18 reasonable and within the range of fees freely negotiated in the legal marketplace in comparable
19 litigation.” *Consumer Privacy Cases*, (2009) 175 Cal.App.4th 545, 557.

20 In this case, Plaintiff’s counsel has a lodestar of approximately \$500,335.00, which results
21 in a multiplier of 2.53 compared to the \$1,266,666.67 fee request. *See Schmidt Decl.*, ¶ 22. A
22 summary showing the number of hours of work performed by each attorney and paralegal is set
23 forth on the following page. *Id.* A more detailed summary broken down by attorney and task is
24 attached to the Schmidt Decl. as Exhibit 4. The billing rates used are reasonable in view of the
25 evidence submitted herewith, and have all been previously approved by various courts throughout
26
27
28

California.⁷ See Schmidt Decl., ¶¶ 4, 22; Exhibit 5 (2024 Laffey Matrix); see also generally Declaration of Paul K. Haines; and Declaration of Andrew J. Rowbotham.

Name	Rate	Hours	Pre-Multiplier Lodestar
Paul K. Haines (18th Year Attorney)	\$850	96.6	\$82,110.00
Fletcher W. Schmidt (12th Year Attorney)	\$750	193.9	\$145,425.00
Andrew J. Rowbotham (10th Year Attorney)	\$650	378.3	\$245,895.00
Susan J. Perez (5th Year Attorney)	\$475	41.5	\$19,712.50
Firm Paralegals	\$175	41.1	\$7,192.50
Total Lodestar			\$500,335.00

As discussed above, this case presented significant risks to both class certification and merits considerations. Accordingly, it is fair and reasonable to account for these risks in compensating Class Counsel. Since undertaking representation of Plaintiff, Class Counsel has devoted substantial time to this litigation without receiving any compensation to date. See Schmidt Decl., ¶ 25. Class Counsel has incurred substantial attorneys’ fees conducting pre-filing investigation, analyzing Plaintiff’s claims, conducting legal research and analysis, engaged in formal class certification related discovery, including drafting multiple sets of formal discovery, meeting and conferring with Defendant’s counsel on responses, mailing out the *Belaire-West* notice to the Settlement Class Members, ***taking five separate depositions*** of Defendant’s FRCP 30(b)(6) witnesses, preparing for a class certification motion, reviewing thousands of pages of policies, handbooks, bonus plans, and other relevant documents produced by Defendant, extensively reviewing and evaluating the produced timekeeping and payroll records with the assistance of a retained expert to build a comprehensive damages model, preparing for and

⁷ When setting rates, courts should utilize attorneys’ “current” rates, i.e., their rates at the time of the fee application. This accounts for the delay in receiving payment, as well as lost interest and inflation. See *Pennsylvania v. Delaware Valley Citizens’ Council for Clean Air* (1987) 483 U.S. 711, 716 (“In setting fees for prevailing counsel, the courts have regularly recognized the delay factor...by basing the award on current rates.”); *Bouman v. Block*, 940 F.2d 1211, 1235 (9th Cir.1991) (affirming district court’s use of current hourly rates); *In re HPL Techs., Inc. Sec. Litig.*, 366 F.Supp.2d 912, 919–20 (N.D. Cal. 2005) (explaining that the use of current rates “simplifies the calculation and accounts for the time value of money in that lead counsel ha[ve] not been paid contemporaneously”).

1 attending mediation, negotiating and drafting the Memorandum of Understanding, long-form
2 Settlement Agreement, and Notice Packet documents, preparing the Motions for Preliminary and
3 Final Approval, overseeing the notice process, meeting and conferring with the Settlement
4 Administrator and Defendant's counsel regarding the calculation of workweeks worked during
5 the Class Period to discuss the triggered "escalator clause," fielding questions from Settlement
6 Class Members, and otherwise litigating the case. *Id.*; *see also* Exhibit 4. Given the considerable
7 potential for adverse outcomes in this case, including, but not limited to, failing to certify any or
8 all of the classes, the contingent risk borne by Class Counsel was great. The quality of Class
9 Counsel's work, and the efficacy and dedication with which it was performed, should be
10 equivalently compensated.

11 As discussed above, this case presented significant risks to both class certification and
12 merits considerations. Accordingly, it is fair and reasonable to account for these risks in
13 compensating Class Counsel. Class Counsel should also be compensated for the risks involved in
14 undertaking this litigation and for expending considerable effort, all while working on a pure
15 contingency basis. Since undertaking representation of Plaintiff, Class Counsel has expended
16 \$77,420.63 in litigation costs and devoted substantial time to this litigation without receiving any
17 compensation to date. *See* Schmidt Decl., ¶¶ 25-26, Exhibit 3.

18 Class Counsel's previous experience in litigating wage and hour class actions also
19 supports the reasonableness of the fee request. Class Counsel are well-versed in plaintiff and
20 defense-side wage and hour class action litigation and collectively bring decades of wage-and-
21 hour class and representative action litigation experience. *See* Schmidt Decl., ¶¶ 2-6; *see also*
22 *generally* Declaration of Paul K. Haines; Declaration of Andrew J. Rowbotham. Class Counsel
23 have also been certified as class counsel in numerous other cases in both state and federal court.
24 *Id.* Class Counsel's experience in similar matters was integral in evaluating the strengths and
25 weaknesses of this case and the reasonableness of the Settlement. Practice in the narrow field of
26 wage and hour litigation requires skill and knowledge concerning the rapidly evolving substantive
27 state and federal law, as well as the procedural law of class action litigation. Because it is
28 reasonable to compensate Class Counsel equal with their skill, reputation, and experience, the

requested fee award of one-third of the MSA is fair and reasonable and should therefore be approved.

D. The Requested Cost Reimbursement Warrants Final Approval as Fair, Adequate, and Reasonable

Class Counsel incurred and respectfully requests reimbursement of \$77,420.63 in actual litigation costs, which is significantly less than the \$100,000.00 amount preliminarily approved by the Court as set out in the Settlement Agreement. *See* Schmidt Decl., ¶ 26, Exhibits 1 and 3; *see also* Settlement, §§ 5.C.4, 7. The unclaimed amount of litigation costs will be paid to the Settlement Class Members as part of the NSA. *Id.*, § 5.D. Class Counsel’s request is fair, adequate, and reasonable, as all these costs are documented and reasonably incurred. *See* Schmidt Decl., Exhibit 3. Moreover, the costs Plaintiff seeks to reimburse are the types of costs routinely approved by courts. *See, e.g., Harris v. Marhoefer* 24 F.3d 16, 19 (9th Cir. 1994) (counsel should recover “those out-of-pocket expenses that would normally be charged to a fee paying client”); *Ashker v. Sayre*, No. 05-03759 CW, 2011 WL 825713, at * 3 (N.D. Cal. 2011) (“costs of reproducing pleadings, motions and exhibits are typically billed by attorneys to their fee-paying clients” and are reimbursable); *Trustees of Const. Industry & Laborers Health and Welfare Trust v. Redland Ins. Co.*, 460 F.3d 1253, 1258-59 (9th Cir. 2006) (legal research costs are reimbursable); *In re Immune Response Securities Litigation* 497 F.Supp.2d 1166, 1177-78 (S.D. Cal. 2007) (mediation expenses, legal research, copies, postage, filing fees, messenger and overnight delivery costs are reimbursable). Further, not a single Settlement Class Member objected to the Settlement, including Class Counsel’s request for up to \$100,000.00 in reimbursement of verified costs. *See* Argueta Decl., ¶ 12. Because the expense reimbursements requested by Class Counsel were reasonably incurred, and no Class Member has objected to them, the Court should grant Class Counsel’s request for \$77,420.63 in actual litigation costs reimbursement.

1 **E. The Court Should Finally Approve the Requested Settlement Administration**
2 **Costs**

3 Plaintiff also requests that the Court approve \$22,500.00 in administration costs to CPT
4 as the Settlement Administrator. *See* Schmidt Decl., ¶ 27; Argueta Decl., ¶ 18, Exhibit B. As
5 detailed in the declaration of William Argueta, submitted concurrently with this Motion, CPT
6 performed duties in connection with this Settlement that were integral in effectuating the
7 Settlement and the Notice process. Among other things, CPT calculated each Settlement Class
8 Member’s Individual Settlement Payment, updated addresses contained in the class data supplied
9 by Defendants, calculated Settlement Class Member workweeks and notified the Parties that the
10 “escalator clause” was triggered, formatted and translated the Notice Packets for mailing, mailed
11 Notice Packets to all 3,251 individuals who were eligible to take part in the Settlement, kept the
12 Parties informed of the status of the Notice mailing through weekly reports, informed the Parties
13 of potential Settlement Class Members who reached out to the administrator, and otherwise
14 administered the Settlement. *See generally*, Argueta Decl. For these reasons, CPT’s requested
15 costs are fair, reasonable, and adequate, and should be finally approved.

16 **F. The Court Should Finally Approve Plaintiff’s Requested Class**
17 **Representative Enhancement Payment Because the Requested Amount is**
18 **Fair, Adequate, and Reasonable Considering Plaintiff’s Efforts and the Risks**
19 **Assumed on Behalf of the Class**

20 Courts routinely approve service awards to compensate named plaintiffs for the services
21 they provide and the risks they incur during class action litigation. *See, e.g., Bell v. Farmers Ins.*
22 *Exchange* (2004) 115 Cal.App.4th 715, 726 (upholding “service payments” to named plaintiffs
23 for their efforts in bringing the case); *Van Vranken v. Atlantic Richfield Co.* 901 F.Supp. 294
24 (N.D. Cal. 1995) (approving \$50,000.00 service payment); *Clark v. American Residential*
25 *Services LLC* (2009) 175 Cal.App.4th 785, 804 (“[s]ince without a named plaintiff there can be
26 no class action, such compensation as may be necessary to induce him to participate in the suit
27 could be thought the equivalent of the lawyers’ nonlegal but essential case-specific expenses,
28 such as long-distance phone calls, which are reimbursable.”) (citations omitted).

1 Here, Plaintiff seeks a Class Representative Enhancement Payment of \$5,000.00 and
2 believes that this request is reasonable given Plaintiff's considerable efforts in this case, the risks
3 Plaintiff undertook on behalf of the Settlement Class Members, and Plaintiff's general release of
4 all claims against Defendants subject to a waiver of California Civil Code § 1542. *See* Schmidt
5 Decl., ¶ 28; Settlement, §§ 4.C., 8. Further, the amount Plaintiff is requesting as an enhancement
6 payment is warranted and within the range of service award amounts regularly approved by courts
7 throughout California, amounting to *less than 1%* of the settlement amount. *See, e.g., Anthony*
8 *Controulis v. Anheuser-Busch, LLC*, Case No. BC518518, Los Angeles County Superior Court
9 (awarding \$10,000 service awards to each named plaintiff); *Torres Dawson, et al. v. Wonderful*
10 *Pistachios and Almonds, LLC*, Kern County Superior Court, Case No. BCV-17-100848 (same);
11 *Koreisz v. On Q Financial Inc.*, Ventura County Superior Court, Case No. 56-2018-00517126-
12 CU-OE-VTA (same); *Grace v. Flowmaster, Inc.*, Sacramento County Superior Court, Case No.
13 34-2017-00220347-CU-OE-GDS (same); *Enombang et al v. Target Corp.*, Alameda County
14 Superior Court, Case No. RG17853948 (awarding enhancement payments of \$20,000 each to four
15 named plaintiffs in a PAGA-only action).

16 Plaintiff has invested considerable time and effort into seeing this litigation through
17 resolution, and the Settlement Class, who would not be receiving anything if it were not for
18 Plaintiff's decision to pursue these claims, will benefit from her participation. *See* Schmidt Decl.,
19 ¶ 28. Plaintiff attached her name to this lawsuit for the benefit of the Settlement Class Members
20 and to the risk of herself, and has agreed to a broader, general release of claims beyond what other
21 Settlement Class Members are releasing through this action, including a waiver of Civil Code
22 § 1542. *Id.* Plaintiff deserves to be compensated for these unique risks and her broad release of
23 claims, which other Settlement Class Members are not subject to. Plaintiff's efforts include
24 gathering relevant documents for use in the lawsuit and providing factual information to her
25 attorneys, holding various phone calls with her attorneys to discuss the claims in the lawsuit and
26 Defendant's practices, helping identify other Settlement Class Members who experienced the
27 same violations as Plaintiff, assisting her attorneys in preparing for mediation, making herself
28 available the entire day of mediation, providing insight into supervisors and location specific

1 questions in advance of the depositions of Defendant's five FRCP 30(b)(6) witnesses, and
2 otherwise assisting her attorneys in moving the case towards resolution, the significant risks
3 Plaintiff undertook by serving as the named plaintiff, and the fact that she agreed to a general
4 release of all claims subject to a waiver of Civil Code § 1542. *See* Schmidt Decl., ¶ 28; Ramirez
5 Decl., ¶ 4; Settlement, §§ 4.C., 8.

6 Further, Plaintiff's requested Enhancement Payment is fair and reasonable when
7 compared to the anticipated recoveries for the participating Settlement Class Members. Notably,
8 the average Individual Settlement Payment is approximately \$654.90, with the highest individual
9 payment of approximately \$3,535.15. *See* Argueta Decl., ¶ 16. This Settlement provides monetary
10 recovery to Settlement Class Members that greatly exceed the average payments achieved in other
11 wage and hour class action settlements.⁸ Moreover, after receiving notice of the proposed
12 \$5,000.00 enhancement payment, not a single Settlement Class Member objected to the proposed
13 award. *See* Argueta Decl., ¶ 12. Thus, Plaintiff's request for an enhancement payment is proper
14 and justified as part of the Settlement and should be finally approved.

15 **V. CONCLUSION**

16 For the reasons stated herein, Plaintiff respectfully submits that this Court should grant
17 Plaintiff's Motion in its entirety and adopt the [Proposed] Judgment and Order Granting
18 Plaintiff's Motion for Final Approval of Class Action Settlement, Attorneys' Fees and Costs, and
19 Class Representative Enhancement Payment, submitted herewith.

20 Dated: February 16, 2024

Respectfully submitted,
HAINES LAW GROUP, APC

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22 By:


Fletcher W. Schmidt
Attorneys for Plaintiff

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25 ⁸ *See e.g., Bercea v. AE Retail West*, Case No. 34-2012-00123947 (Sacramento County Super. Ct. May 9,
26 2012) (average net recovery of approximately \$105); *Ressler v. Federated Department Stores, Inc.*, Case
27 No. BC335018 (L.A. County Super. Ct. Jan. 2, 2009) (average net recovery of approximately \$90); and
28 *Schiller v. David's Bridal, Inc.*, Case No. 1:10-cv-00616-AWI-SKO, 2012 WL 2117001, at *17 (E.D. Cal.
June 11, 2012) ("Class Members will receive an average of approximately 198.70 . . . [T]his is a substantial
recovery where Defendants asserted compelling defenses to liability; Plaintiff also notes several similar
actions where the gross recoveries per class member were less than \$90 . . . [T]he Court finds that the
results achieved are good").