

1 Justin F. Marquez, Esq. (SBN 262417)

2 justin@wilshirelawfirm.com

3 Nicol E. Hajjar, Esq. (SBN 303102)

4 nicol@wilshirelawfirm.com

5 Rachel J. Vinson, Esq. (SBN 331434)

6 rvinson@wilshirelawfirm.com

7 **WILSHIRE LAW FIRM**

8 3055 Wilshire Blvd., 12th Floor

9 Los Angeles, California 90010

10 Telephone (213) 381-9988

11 Facsimile: (213) 381-9989

12 *Attorneys for Plaintiff*

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

VICTOR PEREZ, individually, and on behalf of
all others similarly situated,

Plaintiff,

v.

THE BIG COMPANY, INC. DBA CAPO
FIRESIDE, a California corporation; and DOES
1 through 10, inclusive,

Defendants.

Case No. CIVDS 2009691

CLASS ACTION

*[Assigned for all purposes to Hon. David
Cohn, Dept. S26]*

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR FINAL APPROVAL
OF CLASS ACTION SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES**

*[Filed with Memorandum of Points and
Authorities the Declaration of Justin F.
Marquez, and Proposed Order]*

FINAL APPROVAL HEARING

Date: February 15, 2022

Time: 10:00 a.m.

Dept: S-26

Complaint filed: May 29, 2019

Trial date: Not set

1 **TO THE COURT AND TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 PLEASE TAKE NOTICE that on February 15, 2022 at 10:00 a.m., in Department S-26 of
3 the San Bernardino Justin Center located at 247 West Third Street, San Bernardino, CA 92415-
4 0210, pursuant to Code of Civil Procedure § 382 and California Rules of Court 3.769 *et seq.*,
5 Plaintiff Victor Perez will move the Court for an Order granting final approval of the proposed
6 class action settlement between Plaintiff and Defendant The BIG Company, Inc. dba CAPO
7 Fireside. Plaintiff further moves the Court for an Order:

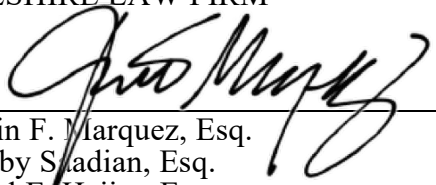
- 8 1. Certifying a Class for settlement purposes;
- 9 2. Approving the settlement as fair and reasonable and finding that class members were
10 given notice of the settlement, and advised of their right to participate in the
11 settlement, object to the settlement, or exclude themselves from the settlement, in a
12 reasonable manner;
- 13 3. Appointing Plaintiff Victor Perez as Class Representative for settlement purposes;
- 14 4. Appointing Plaintiff's Counsel, Wilshire Law Firm, PLC, as Class Counsel for
15 settlement purposes;
- 16 5. Approving payment of administrative expenses to Phoenix Class Action
17 Administration Solutions as the Settlement Administrator; and
- 18 6. Approving payment of \$191,666.66 in attorney's fees, which is 33 1/3% of the
19 Maximum Settlement Amount, and costs of approximately \$20,513.81 for litigating
20 this action to Class Counsel;
- 21 7. Approving the payment to the California Labor Workforce Development Agency in
22 the amount of \$22,500.00;
- 23 8. Directing that the clerk of the Court enter the Court's order as a final judgment; and,
- 24 9. Without affecting the finality of the final judgment, reserving continuing jurisdiction
25 over the parties for the purposes of implementing, enforcing and/or administering the
26 Settlement or enforcing the terms of the judgment.

27 The motion will be based upon this notice, the attached memorandum of points and
28 authorities, the Declaration of Justin F. Marquez and the Declaration of Taylor Mitzner filed

1 concurrently herewith, the records and files in this action, and any other further evidence or
2 argument that the Court may properly receive at or before the hearing.

3
4 Dated: January 21, 2022

WILSHIRE LAW FIRM

5
6 By: 

Justin F. Marquez, Esq.
Bobby Skadian, Esq.
Nicol E. Hajjar, Esq.
Rachel J. Vinson, Esq.

8
9 *Attorneys for Plaintiff*

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	SUMMARY OF THE LITIGATION AND SETTLEMENT.....	2
A.	Plaintiff’s Claims	2
B.	Discovery and Investigation.....	3
C.	Settlement Negotiations	3
D.	Key Terms of the Proposed Settlement.....	4
E.	Preliminary Settlement Approval, Class Notice, and Settlement Administration.	6
III.	THE SETTLEMENT MERITS FINAL APPROVAL	7
A.	The Settlement Reflects a Reasonable Compromise.	7
B.	The Settlement was Reached After Arms-Length Negotiations Following Informal Discovery.	9
C.	Plaintiff’s Counsel Has Substantial Class Action Experience.	9
D.	There Are No Objections to the Settlement.	10
IV.	THE COURT SHOULD AWARD PLAINTIFFS THE REQUESTED AMOUNTS OF FEES, COSTS AND AN ENHANCEMENT PAYMENT.	11
A.	Counsel Requests an Award of Fees Based on the “Common Fund” Method.	11
1.	The Standard Fee Award in Class Actions Has Resolved Itself As One-Third Of The Recovery In Common Fund Cases.	13
2.	This Matter Involves A “Fee-Shifting” Provision of the Labor Code.	13
3.	The Experience, Reputation and Ability of Class Counsel Support the Fee Award.....	15
B.	While the Lodestar Method is Not Necessary in Common Fund Cases, Courts May Perform a Cross-Check to Award Fees.....	15
1.	Class Counsel’s Rates Have Been Approved by Several Courts.....	16
2.	The Lawsuit Provided a Public Benefit.	16
3.	Applying a Positive Multiplier Is Appropriate.....	17

1	C. Costs Are Reasonable.	18
2	D. The Enhancement Payment to the Plaintiff Is Reasonable.	19
3	E. Administration Expenses Should be Approved.	20
4	V. CONCLUSION	20

TABLE OF AUTHORITIES

CASES

<i>Been v. O.K. Industries Inc.</i> (E.D. Okla. 2011) 2011 WL 4478766	17
<i>Chavez v. Netflix, Inc.</i> (2008) 162 Cal.App.4th 43.....	13
<i>City and County of San Francisco v. Sweet</i> (1995) 12 Cal.4th 105.....	12
<i>D’Amico v. Board of Medical Examiners</i> (1974) 11 Cal.3d 1	11
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794	7
<i>Frank v. Eastman Kodak Co.</i> (W.D.N.Y. 2005) 228 F.R.D. 174	19
<i>Gentry v. Super. Ct.</i> (2007) 42 Cal.4th 443.....	19
<i>Graham v. DaimlerChrysler Corp.</i> (2004) 34 Cal.4th 553.....	14
<i>Hughes v. Microsoft Corp.</i> (W.D.Wash. 2001) 2001 U.S. Dist. LEXIS 5976, 2001 WL 34089697	10
<i>In re Activision Securities Litigation</i> (N.D. Cal 1989) 723 F. Supp. 1373	12
<i>In re Consumer Privacy Cases</i> (2009) 175 Cal.App.4th 545	15
<i>In re Lifelock, Inc. Marketing and Sales Practices Litigation</i> (D. Ariz. 2010) 2010 WL 3715138	10
<i>In re Pacific Enterprises Securities City and County of San Francisco Litigation</i> (9th Cir. 1994) 47 F.3d 373	12
<i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122.....	17
<i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal.App.4th 116.....	7
<i>Laffitte v. Robert Half Int’l Inc.</i> (2016) 1 Cal.5th 480.....	12
<i>Lealao v. Beneficial California, Inc.</i> (2000) 82 Cal.App.4th 19.....	16
<i>Murphy v. Kenneth Cole Productions, Inc.</i> (2007) 40 Cal.4th 1094.....	14
<i>Neary v. Regents of Univ. of California</i> (1992) 3 Cal.4th 272	7
<i>Officers for Justice v. Civil Service Commission of City and County of San Francisco</i> (9th Cir. 1982) 688 F.2d 615	8
<i>Press v. Lucky Stores</i> (1983) 34 Cal.3d 311	14
<i>Quinn v. State of California</i> (1995) 15 Cal. 3d 162.....	11

1	<i>Rodriguez v. W. Publ'g Corp.</i> (9th Cir. 2009) 563 F.3d 948	19
2	<i>Ryan v. California Interscholastic Federation</i> (2001) 94 Cal.App.4th 1033.....	14
3	<i>Sav-on Drug Stores, Inc. v. Super. Ct.</i> (2004) 34 Cal.4th 319.....	17
4	<i>Serrano v. Priest</i> (1977) 20 Cal.3d 25.....	11
5	<i>United Steelworkers of America v. Phelps Dodge Corp.</i> (1990) 896 F.2d 403.....	16
6	<i>Van Vranken v. Atlantic Richfield Company</i> (N.D. Cal. 1995) 901 F. Supp. 294.....	13
7	<i>Vincent v. Hughes Air West, Inc.</i> (9th Cir. 1977) 557 F.2d 759	11
8	<i>Vizcaino v. Microsoft Corp.</i> (9th Cir. 2002) 290 F.3d 1043	17
9	<i>Wershba v. Apple Computers, Inc.</i> (2001) 91 Cal.App.4th 224.....	7
10	STATUTES	
11	Cal. Code of Civ. Proc. § 1021.5	14
12	Cal. Code of Civ. Proc. § 384(a).....	4
13	Cal. Lab. Code § 1194	13
14	OTHER AUTHORITIES	
15	Theodore Eisenberg & Jeffrey P. Miller, “Incentive Awards to Class Action Plaintiffs: An	
16	Empirical Study”, 53 UCLA L. Rev. 1303 (2006)	20
17	TREATISES	
18	Conte & Newberg, <i>Newberg on Class Actions</i> (3rd Ed.) § 14.03	13

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

I. INTRODUCTION

Plaintiff Victor Perez (“Plaintiff”) seeks final approval of a proposed \$575,000.00 non-reversionary, wage and hour class action settlement with Defendant The BIG Company, Inc. dba CAPO Fireside (“Defendant”).

The proposed settlement satisfies all the criteria for settlement approval under California law. A presumption of fairness exists as the Settlement was reached through extensive, mediated arm's-length negotiations, sufficient investigation and discovery allowed Class Counsel to act intelligently, and Class Counsel is experienced in similar wage-and-hour litigation. The settlement will provide substantial monetary payments to approximately 232 participating class members. Upon the Court's approval of the settlement, participating class members will receive an estimated average gross payment of \$1,371.08, with the estimated highest gross payment being approximately \$4,075.35. (Declaration of Taylor Mitzner Regarding Notice Administration ["Mitzner Decl."], ¶ 11.) ***The deadline to opt-out or object to the settlement was December 27, 2021; as of December 28, 2021, there were 2 requests for exclusion and no objections to the settlement.*** (*Id.* at ¶¶ 8-9.) Thus, the proposed Settlement is fair, reasonable, and adequate and is in the best interests of the Settlement Class Members.

Plaintiff's request for attorneys' fees in the amount of \$191,666.66, reimbursement of attorney costs and expenses in the amount of \$20,513.81, an incentive award in the amount of \$7,500.00, Settlement Administration Costs in the amount of \$7,500.00, and a payment to the California Labor Workforce Development Agency "LWDA") in the amount of \$22,500.00 are also reasonable and thus should be approved by the Court.

Accordingly, Plaintiff respectfully requests that the Court grant final approval of the Settlement.

///

///

///

II. SUMMARY OF THE LITIGATION AND SETTLEMENT

A. Plaintiff's Claims

This is a wage and hour class action and PAGA representative action. Plaintiff and putative class members worked in California as hourly-paid, non-exempt employees for Defendant during the class period. Defendant provides modern fireplace installation and serves customers in Van Nuys, San Diego, Palm Desert, Concord, San Juan Capistrano, Santa Cruz, and Sacramento. (Declaration of Justin F. Marquez in Support of Plaintiff's Motion for Final Approval of Class Action Settlement ["Marquez Decl."], ¶ 2.)

Plaintiff alleges that Defendant's payroll, timekeeping, and wage and hour practices resulted in Labor Code violations. Plaintiff alleges that Defendant failed to pay for all hours worked by not recording the actual start and end times of shifts and only paying for 8 hours of work for each workday, regardless of whether an employee worked overtime. Plaintiff further alleges that Defendant failed to provide employees with legally compliant meal and rest periods. Based on these allegations, Plaintiff asserts claims against Defendant for failure to pay overtime wages, failure to pay minimum and straight time wages, failure to provide meal periods, failure to authorize and permit rest periods, inaccurate wage statements, failure to pay all final wages at termination, unfair business practices, and civil penalties under PAGA. (*Id.* at ¶ 3.)

May 29, 2020, Plaintiff filed a putative wage-and-hour class action complaint against Defendant The BIG Company, Inc. dba CAPO Fireside for: (1) failure to pay minimum and straight time wages (Labor Code §§ 204, 1194, 1194.2, and 1197); (2) failure to pay overtime wages (Labor Code §§ 1194, and 1198); (3) failure to provide meal periods (Labor Code §§ 226.7 and 512); (4) failure to authorize and permit rest periods (Labor Code §§ 226.7); (5) failure to timely pay final wages at termination (Labor Code §§ 201-203); (6) failure to provide accurate itemized wage statements (Labor Code § 226); and (7) unfair business practices (Business and Professions Code 17200 et seq.). On June 29, 2020, Plaintiff filed a First Amended Complaint adding a claim for civil penalties under Private Attorneys General Act "PAGA" (Labor Code § 2698 et seq.). (Marquez Decl., ¶ 4.)

1 **B. Discovery and Investigation**

2 Following the filing of the Complaint, the parties exchanged documents and
3 information before mediating this action. Defendant produced a sample of time and pay
4 records for class members. Defendant also provided documents of its wage and hour policies
5 and practices during the class period, and information regarding the total number of current
6 and former employees in its informal discovery responses. (*Id.* at ¶ 5.)

7 After reviewing documents regarding Defendant’s wage and hour policies and
8 practices, analyzing Defendant’s timekeeping and payroll records, and interviewing Class
9 Members, Class Counsel was able to evaluate the probability of class certification, success on
10 the merits, and Defendant’s maximum monetary exposure for all claims. (*Id.* at ¶ 6.) Class
11 Counsel also investigated the applicable law regarding the claims and defenses asserted in the
12 litigation. (*Id.*) Class Counsel reviewed these records and prepared a damage analysis prior
13 to mediation. (*Id.*)

14 **C. Settlement Negotiations**

15 On May 20, 2021, the parties participated in private mediation with experienced class
16 action mediator Steven J. Serratore. (*Id.* at ¶ 7.) The mediation was conducted via Zoom.
17 After extensive negotiations and discussions regarding the strengths and weaknesses of
18 Plaintiff’s claims and Defendant’s defenses, Mr. Serratore issued a mediator’s proposal that
19 was accepted by all parties, the material terms of which are encompassed within the
20 Settlement. (*Id.* at ¶ 8, Ex. 1 [Joint Stipulation for Class Action Settlement].)

21 Class Counsel has conducted a thorough investigation into the facts of this case. Based
22 on the foregoing discovery and their own independent investigation and evaluation, Class
23 Counsel is of the opinion that the Settlement is fair, reasonable, and adequate and is in the best
24 interests of the Settlement Class Members in light of all known facts and circumstances, the
25 risk of significant delay, the defenses that could be asserted by Defendant both to certification
26 and on the merits, trial risk, and appellate risk. (*Id.* at ¶ 14.)

27 Indeed, the \$575,000.00 Settlement represents **49.5% of the realistic maximum**
28 **recovery of \$1,162,393.** (*Id.* at ¶ 22.) Although Class Counsel estimated that Defendant’s

1 maximum potential liability for all claims was approximately \$5.4 million, when the risk of
2 prevailing at certification and trial are factored into the equation, Class Counsel believes that
3 Defendant’s realistic exposure was \$1,162,393, meaning the Settlement achieves a significant
4 recovery. (*Id.* at ¶¶ 17-22.) Considering the risk and uncertainty of prevailing at class
5 certification and at trial, particularly in light of many class members being subject to arbitration
6 agreements and class action waivers, this is an excellent result for the Class. (*Id.* at ¶ 22.)
7 Indeed, because of the proposed Settlement, class members will receive timely, guaranteed relief
8 and will avoid the risk of an unfavorable judgment.

9 **D. Key Terms of the Proposed Settlement**

10 Under the Settlement, Defendants will pay \$575,000.00 to resolve this litigation. This
11 amount is all-inclusive. The Settlement’s key terms include:

12 1. Class or Class Members: For settlement purposes only, the Parties agree to the
13 certification of a class pursuant to California Code of Civil Procedure § 382 defined as: “All
14 current and former employees who worked in a non-exempt or hourly-paid position for The BIG
15 Company, Inc. dba CAPO Fireside within the state of California during the Class Period
16 (together, collectively referred to as the “Class Members”). (Settlement, ¶ 6.)

17 2. Class Period: The Settlement Period means the period from May 29, 2016 to July
18 19, 2021. (Settlement, ¶ 8.)

19 3. Total Settlement Amount: This amount is \$575,000.00, which shall be paid by
20 Defendant and from which all Net Settlement Payments, Court-approved attorneys’ fees and
21 Litigation costs pursuant to ¶43(a), Administrative Costs pursuant to ¶ 28, enhancement to
22 Named Plaintiff pursuant to ¶ 12, statutory penalties, interest, and PAGA Settlement pursuant to
23 ¶ 21 shall be paid, except as provided herein. (Settlement, ¶¶ 15, 41.)

24 4. No Reversion: This is a non-reversionary settlement. Settlement checks will be
25 valid for 180 days. Pursuant to Code of Civil Procedure § 384(a), any unpaid cash residue or
26 unclaimed or abandoned class member funds, plus any accrued interest thereon will be sent to the
27 State of California’s Unclaimed Property Fund in the name of the Participating Class
28

1 Member/Aggrieved Employee pursuant to Code of Civil Procedure Section 384(a). (Settlement, ¶
2 50 (e).)

3 5. Release: The class release is limited to “all Settled Claims, whether known or
4 unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or
5 hidden, which now exist, or have existed upon any theory of law or equity now existing or coming
6 into existence in the future.” (Settlement, ¶ 37.)

7 6. PAGA Amount: The settlement \$30,000 allocated to Plaintiff’s claims under
8 PAGA, with 75% of which (\$22,500) will be paid to the LWDA and 25% (\$7,500) will be paid
9 to eligible members of the PAGA Class. (Settlement, ¶ 21.) Class Counsel submitted the
10 proposed settlement to the LWDA before filing this Motion for Final Approval. (Marquez Decl.,
11 ¶ 11.)

12 7. Net Class Settlement Amount: The Net Settlement Fund is the settlement amount
13 to be distributed to Participating Class Members, which is the Gross Settlement Amount less
14 Attorneys’ Fees and Costs, the Enhancement Award, the PAGA Amount, and Settlement
15 Administration Costs. (Settlement, ¶ 19.)

16 8. Distribution Formula: Individual Settlement Payments shall be distributed only to
17 Participating Class Members, with the exception that PAGA Payments will be distributed to all
18 Aggrieved Employees. The portion of the Net Class Settlement Amount allocated to Class
19 Members who opt out of the Settlement will be distributed to Participating Class Members on a
20 *pro rata* basis based on the formula set forth in ¶ 43.e . (Settlement, ¶ 43 (g).) This formula is
21 explained in the proposed Notice of Settlement. (Settlement, Ex. A, p. 3.)

22 9. Taxation of Settlement Proceeds: Any settlement money paid to Settlement Class
23 Members will be allocated as 10% as wages, 45% as interest on unpaid wages, and 45% as
24 penalties. (Settlement, ¶ 45 (a).)

25 10. Enhancement Award: Subject to Court approval, Plaintiff shall be paid an
26 enhancement award not to exceed \$7,500. (Settlement, ¶¶ 12, 43 (c).) This amount is for
27 Plaintiff’s time and effort in bringing and presenting the action, and in exchange for a general
28 release of all claims, known or unknown, pursuant to Civil Code Section 1542. (Settlement, ¶

12, 43 (c).) If the Court awards less than the amount requested, any amount not awarded will be part of the distribution to the Participating Class Members as set forth in this Agreement and shall not be a reason to invalidate/terminate this Agreement. (Settlement, ¶ 43 (c).)

11. Attorneys' Fees and Costs: The Settlement provides that Defendant will not oppose a fee application of up to 33 1/3% (\$191,666.66) of the Settlement Amount, plus out-of-pocket costs not to exceed \$25,000.00 (Settlement, ¶ 4.) (Marquez Decl., ¶ 11.) At this time, Class Counsel's costs are approximately \$20,013.81. (Marquez Decl., ¶ 43.)

12. Notice of Proposed Settlement: The Notice sets forth in plain terms, a statement of the case, the terms of the Settlement Agreement, the approximate amount of attorneys' fees, costs, and service awards being sought, and an explanation of how the settlement allocations are calculated. (Settlement, Ex. A.) The Notice also sets forth each class member's total workweeks, as well as the approximate amount of money they would receive in the event all class members participate in the settlement. The Notice also includes an opt-out form. (*Id.*) Class Members will be notified by first class mail of the settlement. (Settlement, ¶ 46 (a).) Phoenix Class Action Administration Solutions, the proposed Settlement Administrator, will undertake its best efforts to ensure that the notice is provided to the current addresses of class members, including conducting a national change of address search and re-mailing the notice to updated addresses. (Settlement, ¶ 46 (a)-(c).) Notice was provided in English and Spanish.

13. Dispute Procedure: Class Notice included a procedure by which a Class Member may dispute the number of workweeks or opt-out of the settlement. (Settlement, Ex. A.)

E. Preliminary Settlement Approval, Class Notice, and Settlement Administration.

This Court granted preliminary approval on September 22, 2021. (Marquez Decl., ¶ 9.) Notices explaining class member rights were mailed out to all 234 class members. (Mitzner Decl., ¶ 5.) To date, 6 notice packets remain undeliverable. (*Id.* at ¶ 7.) ***There were 2 requests for exclusion and no objections to the settlement.*** (*Id.* at ¶¶ 8, 9.)

///

///

1 **III. THE SETTLEMENT MERITS FINAL APPROVAL**

2 The law favors the settlement of lawsuits, particularly in class actions and other complex
3 cases. (*See e.g., Neary v. Regents of Univ. of California* (1992) 3 Cal.4th 272, 277-81.) Factors
4 to be considered in evaluating a class action settlement include “the strength of plaintiffs’ case,
5 the risk, expense, complexity and likely duration of further litigation, the risk of maintaining
6 class action status through proceedings, the experience and views of counsel, the presence of a
7 government participant, and the reaction of the class members to the proposed settlement.”
8 (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128.) A presumption that a
9 settlement is fair and reasonable exists where, as here, the following four factors are present: “(1)
10 the settlement is reached through arm’s length bargaining; (2) investigation and discovery are
11 sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
12 litigation; and (4) the percentage of objectors is small.” (*Wershba v. Apple Computers, Inc.*
13 (2001) 91 Cal.App.4th 224, 245.)

14 Whether a class action settlement should be approved is a question committed to the trial
15 court’s broad discretion. (*Id.* at pp. 234-35.) In exercising its discretion, the Court should give
16 “[d]ue regard ...to what is otherwise a private consensual agreement between the parties.” (*Dunk*
17 *v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) “The inquiry ‘must be limited to the
18 extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or
19 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a
20 whole, is fair, reasonable and adequate to all concerned.” (*Id.* [internal citations omitted].)

21 **A. The Settlement Reflects a Reasonable Compromise.**

22 A settlement is not judged against what the plaintiff might recover had she prevailed at
23 trial, nor does the settlement have to provide 100% of the damages sought to be fair and
24 reasonable. (*Wershba, supra*, 91 Cal.App.4th at pp. 246, 250 [“Compromise is inherent and
25 necessary in the settlement process...even if the relief afforded by the proposed settlement is
26 substantially narrower than it would be if the suits were to be successfully litigated, this is no bar
27 to a class settlement because the public interest may indeed be served by a voluntary settlement
28 in which each side gives ground in the interest of avoiding litigation.”].)

1 The settlement obviates the significant risk that this Court may deny certification of all or
2 some of Plaintiff’s claims. (Marquez Decl., ¶ 25.) While Plaintiff is confident in the merits of
3 their claims, a legitimate controversy exists as to each cause of action. (*Id.* at ¶ 23.) Plaintiff
4 also recognizes that proving the amount of wages due to each class member would be an
5 expensive, time-consuming, and uncertain proposition. (*Id.*) Furthermore, even if Plaintiff
6 obtained certification of all or some of the claims, continued litigation would be expensive,
7 involving a trial and possible appeals, and would substantially delay and reduce any recovery by
8 the class. (*Id.* at ¶ 25.)

9 The proposed settlement of \$575,000.00 therefore represents a substantial recovery when
10 compared to Plaintiff’s reasonably forecasted recovery. (*Id.* at ¶ 28.) Because of the proposed
11 Settlement, class members will receive timely, guaranteed relief and will avoid the risk of an
12 unfavorable judgment. When considering the risks of litigation, the uncertainties involved in
13 achieving class certification, the burdens of proof necessary to establish liability, the probability
14 of appeal of a favorable judgment, it is clear that the settlement amount of \$575,000.00 is within
15 the “ballpark” of reasonableness, and preliminary settlement approval is appropriate. (*Id.*) To be
16 sure, Defendant ultimately has to pay less under the settlement than it would have had to pay if
17 Plaintiff had achieved a judgment after trial. But an ideal settlement requiring a defendant to pay
18 the full amount of its potential damages is rarely achieved. As the Ninth Circuit has observed,
19 “the very essence of a settlement is compromise, ‘a yielding of absolutes and an abandoning of
20 highest hopes.’” (*Officers for Justice v. Civil Service Commission of City and County of San*
21 *Francisco* (9th Cir. 1982) 688 F.2d 615, 624.) Thus, a proposed settlement “is not to be judged
22 against a hypothetical or speculative measure of what might have been achieved by the
23 negotiators.” (*Id.* at p. 625.) A court’s “intrusion upon what is otherwise a private consensual
24 agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to
25 reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or
26 collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair,
27 reasonable and adequate to all concerned.” (*Id.*)

28 ///

1 **B. The Settlement was Reached After Arms-Length Negotiations Following**
2 **Informal Discovery.**

3 The Settlement was reached following a full day of mediation with experienced
4 employment mediator Steven J. Serratore. (Marquez Decl. ¶¶ 7-8.) The settlement negotiations
5 were at arm's length and, although conducted in a professional manner, were adversarial. (*Id.*)
6 The parties went into the mediation willing to explore the potential for a settlement of the
7 dispute, but each side was also prepared to litigate their or its position through trial and appeal if
8 a settlement had not been reached. (*Id.*)

9 Prior to reaching this settlement, Class Counsel conducted informal discovery concerning
10 the claims set forth in the Litigation, such as a sample of class member timekeeping and payroll
11 records, Defendants' policies and procedures concerning the payment of wages, the provision of
12 meal and rest breaks, issuance of wage statements, and providing all wages at separation, as well
13 as information regarding the number of putative class members and the mix of current versus
14 former employees, the wage rates in effect, and the amount of meal and rest period premium
15 wages paid to class members. (*Id.* at ¶¶ 5-6.) In conjunction with their extensive factual
16 investigation, Class Counsel investigated the applicable law regarding the claims and defenses
17 asserted in the litigation. (*Id.*) Thus, Plaintiff and his counsel were able to act intelligently and
18 effectively in negotiating the proposed Settlement. (*Id.*) There is no evidence to suggest that the
19 Parties did not have sufficient information to make informed decisions about the value of this
20 case or that the Settlement is a product of fraud, overreaching or collusion.

21 **C. Plaintiff's Counsel Has Substantial Class Action Experience.**

22 Class Counsel also has considerable experience and has demonstrated competence with
23 litigating wage and hour class actions. (*Id.* at ¶¶ 45-57.) Class Counsel has substantial
24 experience in all facets of litigation in state and federal court, including discovery, law and
25 motion, trial, appeals, arbitration and mediation. Class Counsel has litigated numerous class
26 actions on behalf of plaintiffs and have been lead counsel or otherwise exercised significant case
27 handling responsibilities in numerous cases resulting in millions of dollars in class action
28 settlements. (*Id.*)

1 Based on Class Counsel’s experience as employment and class action attorneys, Class
2 Counsel is eminently qualified to evaluate the strength of Plaintiff’s claims, the strength of
3 Defendant’s defenses against certification, the strength of Defendant’s defenses on the merits,
4 and the fairness of the Settlement. Their opinion that final approval of the Settlement would be
5 in the best interests of class members in light of the significant risks of litigation is entitled to
6 great weight. (*See Kullar, supra*, 168 Cal.App.4th at 129 [“The court undoubtedly should give
7 considerable weight to the competency and integrity of counsel and the involvement of a neutral
8 mediator in assuring itself that a settlement agreement represents an arms’ length transaction
9 entered without self-dealing or other potential misconduct”].)

10 **D. There Are No Objections to the Settlement.**

11 No class member has objected to the Settlement, and 2 class members have requested
12 exclusion from the Settlement. (Mitzner Decl., ¶¶ 8, 9.) The overwhelmingly positive response
13 of the class strongly supports final approval of the Settlement. (*See, e.g., In re Lifelock, Inc.*
14 *Marketing and Sales Practices Litigation* (D. Ariz. 2010) 2010 WL 3715138, *6 [relatively few
15 objections and requests for exclusion support approval].)

16 Factors to be considered in evaluating a class action settlement include “the reaction of
17 the class members to the proposed settlement.” (*Kullar, supra*, 168 Cal.App.4th at p. 128.) The
18 reaction here has been overwhelmingly positive. Courts have approved class action settlements
19 in lesser circumstances. (*See, e.g., Hughes v. Microsoft Corp.* (W.D.Wash. 2001) 2001 U.S.
20 Dist. LEXIS 5976, 2001 WL 34089697, *8 [court found that the “class members
21 overwhelmingly support[ed] the settlement” where there were over 37,000 notices sent out, 2,745
22 class members participated in the settlement, “only nine objections were submitted”, and there
23 were 86 timely opt-outs and over 20 additional defective or untimely opt-outs, “these indicia of
24 the approval of the class of the terms of the settlement support a finding of fairness under Rule
25 23”], *citing Hanlon v. Chrysler Corp.* (9th Cir.1998) 150 F.3d 1011, 1027 [despite vigorous
26 objections and appeal by objectors, “fact that the overwhelming majority of the class willingly
27 approved the offer and stayed in the class presents at least some objective positive commentary
28 as to its fairness”, court did not abuse its discretion in approving settlement].)

1 **IV. THE COURT SHOULD AWARD PLAINTIFFS THE REQUESTED AMOUNTS**
2 **OF FEES, COSTS AND AN ENHANCEMENT PAYMENT.**

3 Under the Settlement, subject to the Court's approval, Defendant has agreed to pay Class
4 Counsel reasonable attorneys' fees in the amount of \$191,666.66, which is 33 1/3% of the
5 Maximum Settlement Amount, and costs of \$20,513.81 for litigating this Action. In addition,
6 Defendant will not oppose an application for the payment of Settlement Administration Costs
7 and a Class Representative Enhancement Award. Settlement Administration Costs are estimated
8 at \$7,500.00, and Plaintiff will apply for an Enhancement Award in the amount of \$7,500.00.
9 The proposed attorneys' fees and expenses were disclosed to the Class Members in the proposed
10 Notice of Proposed Class Action Settlement.

11 "In general, questions whether a settlement was fair and reasonable, whether certification
12 of the class was proper, and whether the attorney fee award was proper are matters addressed to
13 the trial court's broad discretion." (*Wershba, supra*, 91 Cal.App.4th at pp. 234-235.) "Courts
14 recognize two methods for calculating attorney fees in civil class actions: the lodestar/multiplier
15 method and the percentage of recovery method." (*Id.* at p. 254; *Vincent v. Hughes Air West, Inc.*
16 (9th Cir. 1977) 557 F.2d 759, 769.)

17 **A. Counsel Requests an Award of Fees Based on the "Common Fund" Method.**

18 California courts have long awarded attorneys' fees as a percentage of the benefit created
19 by counsel in pursuing claims on behalf of a class. The California Supreme Court held that
20 "when a number of persons is entitled in common to a specific fund, and an action brought by a
21 plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund, such
22 plaintiff or plaintiffs may be awarded attorneys' fees out of the fund." (*Serrano v. Priest* (1977)
23 20 Cal.3d 25, 34 [quoting *D'Amico v. Board of Medical Examiners* (1974) 11 Cal. 3d 1.]

24 Class Counsel intends to seek an award of attorneys' fees on the "percentage of recovery/
25 common fund" theory. The purpose of the common fund/percentage approach is to "spread
26 litigation costs proportionally among all the beneficiaries so that the active beneficiary does not
27 bear the entire burden alone." (*Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759,
28 769.) In *Quinn v. State of California* (1995) 15 Cal. 3d 162, 167, the California Supreme Court

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

7 The California Supreme Court affirmed in *Laffitte v. Robert Half Int’l Inc.* (2016) 1
8 Cal.5th 480 that, “when class action litigation establishes a monetary fund for the benefit of the
9 class members, and the trial court in its equitable powers awards class counsel a fee out of that
10 fund, the court may determine the amount of a reasonable fee by choosing an appropriate
11 percentage of the fund created.” (*Id.* at p. 503.) The court explained: “The recognized
12 advantages of the percentage method—including relative ease of calculation, alignment of
13 incentives between counsel and the class, a better approximation of market conditions in a
14 contingency case, and the encouragement it provides counsel to seek an early settlement and
15 avoid unnecessarily prolonging the litigation—convince us the percentage method is a valuable
16 tool that should not be denied our trial courts.” (*Id.* [internal citations omitted].)

17 Several courts have expressed frustration with the alternative “lodestar” approach for
18 deciding fee awards, which usually involves wading through voluminous and often
19 indecipherable time records. Commenting on the lodestar approach, Chief Judge Marilyn Hall
20 Patel wrote: “This court is compelled to ask, ‘Is this process necessary?’ Under a cost-benefit
21 analysis, the answer would be a resounding, ‘No!’” (*In re Activision Securities Litigation* (N.D.
22 Cal 1989) 723 F. Supp. 1373, 1375.) The percentage approach is preferable to the lodestar
23 because: (1) it aligns the interests of class counsel and absent class members; (2) it encourages
24 efficient resolution of the litigation by providing an incentive for early, yet reasonable,
25 settlement; and (3) it reduces the demands on judicial resources. (*Id.* at pp. 1378-79.) The Ninth
26 Circuit now routinely uses the percentage of the common fund approach to determine the award
27 of attorney’s fees. (*See, e.g. In re Pacific Enterprises Securities City and County of San*
28 *Francisco Litigation* (9th Cir. 1994) 47 F.3d 373, 378-79 [approving attorney’s fee of 33 1/3%.])

1 **1. The Standard Fee Award in Class Actions Has Resolved Itself As One-**
2 **Third Of The Recovery In Common Fund Cases.**

3 According to a leading treatise on class actions, “No general rule can be articulated on
4 what is a reasonable percentage of a common fund. Usually 50% of the fund is the upper limit
5 on a reasonable fee award from a common fund in order to assure that the fees do not consume a
6 disproportionate part of the recovery obtained for the class, although somewhat larger
7 percentages are not unprecedented.” (*See Conte & Newberg, Newberg on Class Actions* (3rd
8 Ed.) § 14.03.) Attorneys’ fees that are fifty percent of the fund are typically considered the upper
9 limit, with *thirty to forty percent commonly awarded in cases where the settlement is relatively*
10 *small.* (*See Id.*; *see also, Van Vranken v. Atlantic Richfield Company* (N.D. Cal. 1995) 901 F.
11 Supp. 294 [stating that most cases where 30-50 percent was awarded involved “smaller”
12 settlement funds of under \$10 million].)

13 The settled-for 33 1/3% fee award is consistent with the average fee award in class
14 actions. Indeed, the custom and practice in class actions is to award approximately one-third of a
15 fund as a fee award. (*See Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, n.11
16 [“Empirical studies show that, regardless whether the percentage method or the lodestar method
17 is used, fee awards in class actions average around one-third of the recovery.”].) Thus,
18 Plaintiff’s fee request is in line with the prevailing guidelines established in California case law
19 and academic literature, and is consistent with awards in California. Accordingly, Plaintiff
20 requests that the Court approve the attorneys’ fees requested herein.

21 **2. This Matter Involves A “Fee-Shifting” Provision of the Labor Code.**

22 Class Counsel is entitled to recover fees under Labor Code § 1194, which provides, in
23 part:

24 [A]ny employee receiving less than the legal minimum wage or the legal overtime
25 compensation applicable to the employee is entitled to recover in a civil action the
26 unpaid balance of the full amount of this minimum wage or overtime compensation,
27 including interest thereon, reasonable attorney’s fees, and costs of suit.

28 (Cal. Lab. Code § 1194.)

///

///

1 As this litigation culminated in a settlement that provided for a recovery of unpaid wages,
2 including unpaid minimum wages and overtime compensation, Plaintiff is entitled to recover
3 reasonable attorneys' fees and costs under the California Labor Code.

4 Class Counsel is also entitled to a fee award under California's private attorney general
5 statute, Code of Civil Procedure § 1021.5. "The award of attorneys' fees is proper under Section
6 1021.5 if '(1) plaintiffs' action 'has resulted in the enforcement of an important right affecting
7 the public interest,' (2) 'a significant benefit, whether pecuniary or nonpecuniary, has been
8 conferred on the general public or a large class of persons' and (3) 'the necessity and financial
9 burden of private enforcement are such as to make the award appropriate.'" (*Press v. Lucky*
10 *Stores* (1983) 34 Cal.3d 311, 317-318.) The fundamental objective of the statute is "to
11 encourage suits enforcing public policies by providing substantial attorneys' fees to successful
12 litigants in such cases." (*Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 565.)

13 This action resulted in the enforcement of an important right affecting the public interest,
14 as Plaintiff sought to enforce Settlement Class Members' rights to recover statutory wages
15 arising from Defendants' failure to pay all wages and failure to provide meal and rest breaks.
16 (*See Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1113 [noting that "health
17 and safety concerns" are what motivated the Industrial Wage Commission to adopt mandatory
18 meal and rest periods].)

19 This action also conferred a significant benefit on a large class of persons. Notice was
20 sent to 234 Settlement Class Members, and only 2 Settlement Class Members requested
21 exclusion. The Settlement provides a significant monetary benefit, in that it permits all persons
22 who worked for Defendant during the applicable class period to obtain compensation for unpaid
23 wages and missed meal and rest periods.

24 Finally, the necessity and financial burden of private enforcement render an award
25 appropriate. Without the incentive of an attorneys' fee award, Plaintiff could not have afforded
26 to hire counsel to pursue this case, as the cost of litigating this matter far outweighed Plaintiff's
27 potential recovery. (*See Ryan v. California Interscholastic Federation* (2001) 94 Cal.App.4th
28 1033, 1044 ["As to the necessity and financial burden of private enforcement, an award is

1 appropriate where the cost of the legal victory transcends the claimants' personal interest; in
2 other words, where the burden of pursuing the litigation is out of proportion to the plaintiff's
3 individual stake in the matter."].)

4 **3. The Experience, Reputation and Ability of Class Counsel Support the**
5 **Fee Award.**

6 As demonstrated by their past experience in pursuing class actions on behalf of
7 consumers and employees, Class Counsel possesses considerable expertise in litigating class
8 action matters. Class Counsel has been involved as lead counsel or co-counsel in dozens of class
9 actions resulting in a multitude of beneficial results to class members in California. Because it is
10 reasonable to compensate class counsel commensurate with their skill, reputation and experience,
11 a fee award of 33 1/3% of the Maximum Settlement Amount, a percentage considered within the
12 norm in class action practice, is certainly justified here.

13 Class Counsel's experience in wage and hour class actions was integral in evaluating the
14 strengths and weaknesses of the case against Defendant and the reasonableness of the settlement.
15 Practice in the narrow field of wage and hour litigation requires skill and knowledge concerning
16 the rapidly evolving substantive law (state and federal), as well as the procedural law of class
17 action litigation. Based on these and other factors, Class Counsel has frequently received fee
18 awards amounting to 33 1/3% of the recovery for the class. Therefore, the requested fee award
19 is reasonable and fair.

20 **B. While the Lodestar Method is Not Necessary in Common Fund Cases, Courts**
21 **May Perform a Cross-Check to Award Fees.**

22 Although California supports the common fund doctrine, the lodestar method can be used
23 to cross-check fee awards. "It may be appropriate in some cases, assuming the class benefit can
24 be monetized with a reasonable degree of certainty, to "cross-check" or adjust the lodestar in
25 comparison to a percentage of the common fund to ensure that the fee awarded is reasonable and
26 within the range of fees freely negotiated in the legal marketplace in comparable litigation." (*In*
27 *re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557.)
28

1 Applying the lodestar method requires a two-step process. The first step is to multiply the
2 number of hours reasonably expended by a reasonable hourly rate. The second step is to apply a
3 multiplier to the lodestar to take into account various factors. “The purpose of such adjustment is
4 to fix a fee at the fair market value for the particular action. In effect, the court determines,
5 retrospectively, whether the litigation involved a contingent risk or required extraordinary legal
6 skill justifying augmentation of the unadorned lodestar in order to approximate the fair market
7 rate for such services.” (*Id.* at pp. 556-57.) “Under certain circumstances, a lodestar calculation
8 may be enhanced on the basis of a percentage-of-the-benefit analysis.” (*Id.* at p. 557.)

9 Wilshire Law Firm’s current lodestar is \$98,700 based on approximately 184.8 hours of
10 work performed by Class Counsel. (Marquez Decl., ¶ 35.) Accordingly, the requested fee of
11 \$191,666.66 is reasonable and fair as it is based on a multiplier of 1.94. To be sure, trial courts
12 have substantial discretion in adjusting the lodestar to account for various factors. (*See Lealao v.*
13 *Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 26, 39-45; *see also Serrano, supra*, 20
14 Cal.3d at p. 49.) In addition, it has been held that “[m]ultipliers can range from 2 to 4 or even
15 higher.” (*See Wershba*, 91 Cal.App.4th at p. 255; *see also Van Vranken, supra*, 901 F. Supp. At
16 p. 298 “[m]ultipliers in the 3-4 range are common in lodestar awards for lengthy and complex
17 class action litigation”].)

18 **1. Class Counsel’s Rates Have Been Approved by Several Courts.**

19 Class Counsel provides declarations to support their lodestar hourly rates. “Affidavits of
20 the plaintiffs’ attorney and other attorneys regarding prevailing fees in the community, and rate
21 determinations in other cases, particularly those setting a rate for the plaintiffs’ attorney, are
22 satisfactory evidence of the prevailing market rate.” (*United Steelworkers of America v. Phelps*
23 *Dodge Corp.* (9th Cir. 1990) 896 F.2d 403, 407.) Class Counsel has received final approval of
24 their hourly rates in other wage and hour class action settlements. These rates are not opposed or
25 challenged.

26 **2. The Lawsuit Provided a Public Benefit.**

27 Class Counsel’s choice to litigate this matter provided a public benefit to 232 California
28 employees. Moreover, the California Supreme Court stated that “Labor Code section 1194

1 confirms “a clear public policy ... that is specifically directed at the enforcement of California's
2 minimum wage and overtime laws for the benefit of workers.” [citation omitted].” (*Sav-on Drug*
3 *Stores, Inc. v. Super. Ct.* (2004) 34 Cal.4th 319, 340.) Given the financial risks and numerous
4 attorney hours attendant to the litigation of Plaintiff’s claims, this factor supports Class
5 Counsel’s fee request and encourages the private enforcement of legal rights for the general good

6 **3. Applying a Positive Multiplier Is Appropriate.**

7 Once this lodestar figure has been determined, the Court may take into account other
8 “enhancement” factors to adjust the lodestar award. While Plaintiff seeks only a modest
9 multiplier of 1.94 here, the overall reasonableness of Plaintiff’s request is underscored by the
10 fact that a significantly higher multiplier would be justified under applicable law.

11 Contingency fees should be higher than fees for the same legal services paid
12 concurrently with the provision of the services. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122,
13 1132-33.) “A lawyer who both bears the risk of not being paid and provides legal services is
14 not receiving the fair market value of his work if he is paid only for the second of these
15 functions. If he is paid no more, competent counsel will be reluctant to accept fee award
16 cases.” (*Id.* at p. 1133.) Application of that rule is particularly appropriate where the case is
17 brought to redress important rights of vulnerable persons. (*Id.*) A risk enhancement is
18 “earned compensation; unlike a windfall, it is neither unexpected nor fortuitous. Rather it is
19 intended to approximate market-level compensation for such services which typically pay a
20 premium for the risk of nonpayment or delay in payment of attorney’s fees.” (*Id.* at p. 1138.)

21 Multipliers normally range from two to four or higher. (*Wershba, supra*, 91
22 Cal.App.4th at p. 255; *see also Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043,
23 1051 n.6 [“most” common fund cases apply a multiplier of 1.0-4.0]; *Been v. O.K. Industries*
24 *Inc.* (E.D. Okla. 2011) 2011 WL 4478766, *11 [citing a study “reporting [an] average
25 multiplier of 3.89 in survey of 1,120 class action cases” and finding that a multiplier of 2.43
26 would be “per se reasonable”].)

27 Factors considered in determining whether a lodestar multiplier is appropriate
28 generally include: (1) the risks presented by the contingent nature of the case; (2) the novelty

1 and difficulty of the questions involved and the skill requisite to perform the legal service
2 properly; (3) the nature of the opposition; (4) the preclusion of other employment by the
3 attorney due to acceptance of the case; and (5) the result obtained and the importance of the
4 lawsuit to the public. (*Serrano, supra*, 20 Cal. 3d at pp. 48-49.) All of these factors favor
5 approval of a multiplier along the lines of those approved in the cases above.

6 The major consideration in determining the necessity of a multiplier is the contingent
7 nature of the award. (*Ketchum, supra*, 24 Cal.4th at pp. 1132-33.) Further, the possibility of no
8 recovery is only one of the uncertainties involved in taking on such a case. Other uncertainties
9 are the amount that will be recovered, uncertainty as to the cost, both in effort and expenses, and
10 uncertainty about how much time will pass before the recovery is obtained. (*Id.* at pp. 1132-
11 1133, 1138.) Here, Class Counsel have been the only counsel to represent Class Members in this
12 matter and have borne the entire risk and costs of litigation purely on a contingency basis. Class
13 Counsel's outlay of time and money in this case has been significant.

14 The other factors are also present here. Class Counsel are skilled attorneys who have had
15 success in wage-and-hour class actions. This case required experienced and competent lawyers
16 and expertise in the issues presented herein. Defendants' contentions underscore the risk of
17 prevailing at class certification and trial, and any of these obstacles could have prevented recovery
18 completely. Further, proceeding to trial would have added years to the resolution of this case
19 because of the difficult legal and factual issues raised and the likelihood of appeals. Despite these
20 risks, Class Counsel took this case on a contingency basis. Yet, there are only so many cases that
21 Class Counsel can take at any one time. Consequently, there were other meritorious cases
22 presented to Class Counsel that would have generated substantial fees, but were declined, during
23 the pendency of this action in order to devote the attention necessary to achieve favorable results.
24 (Marquez Decl., ¶ 41.) Considered against the risks of continued litigation, and the importance of
25 the employment rights and a speedy recovery, the relief provided under the Settlement represents a
26 very strong result for the Class.

27 ///

28 ///

1 **C. Costs Are Reasonable.**

2 Class Counsel requests reimbursement of \$20,513.81 in expenses. (Marquez Decl., ¶ 43.)
3 As of the date of filing this Motion, Class Counsel has incurred around \$20,013.81 in costs, and
4 they anticipate incurring at least \$500.00 in additional costs up to the time the Court enters a
5 judgment in this action and schedules a hearing on distribution. (*Id.*) Accordingly, Class
6 Counsel respectfully requests reimbursement of \$20,513.81 in costs. (*Id.*) Notably, Defendant
7 has agreed that it will not oppose any cost award request up to \$25,000.00. The categories of
8 costs are set forth in the accompanying Declaration of Justin Marquez, and these costs are easily
9 seen to be both reasonable and necessary.

10 **D. The Enhancement Payment to the Plaintiff Is Reasonable.**

11 Named plaintiffs in class action lawsuits “are eligible for reasonable incentive payments to
12 compensate them for the expense or risk they have incurred in conferring a benefit on other
13 members of the class.” (*Munoz, supra*, 86 Cal.App.4th at p. 412.) Courts routinely grant approval
14 of class action settlement agreements containing enhancements for the class representatives, which
15 are necessary to provide incentive to represent the class, and are appropriate given the benefit the
16 class representatives help to bring about for the class. (*See Rodriguez v. W. Publ'g Corp.* (9th Cir.
17 2009) 563 F.3d 948, 958-59.) The California Supreme Court has also noted that “retaliation against
18 employees for asserting statutory rights under the Labor Code is widespread,” despite anti-
19 retaliation statutes designed to protect employees. (*Gentry v. Super. Ct.* (2007) 42 Cal.4th 443,
20 460-61.) Plaintiffs should therefore be rewarded for assuming the risk of retaliation for the sake
21 of class members. (*See Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 F.R.D. 174, 187.)

22 Under the settlement agreement, subject to the Court’s approval, Defendant agreed to pay
23 a Service Award in the amount of \$7,500.00 to Plaintiff. (Settlement, ¶ 21.) This amount is also
24 in exchange for Plaintiff’s general release of all claims against Defendant. Plaintiff has
25 submitted a declaration demonstrating that he devoted approximately 27 hours of time and work
26 assisting counsel in the case, communicated with counsel very frequently for litigation and to
27 prepare for mediation. (*See Declaration of Plaintiff Victor Perez*, ¶¶ 6-13.)

28 ///

1 When compared with the amounts awarded in typical class action cases, the amount
2 requested here is particularly reasonable. Indeed, a **2006** study examining the average incentive
3 award given to class action plaintiffs from **1993 to 2002** found that the “average award per class
4 representative was \$15,992 and the median award per class representative was \$4,357.” (Theodore
5 Eisenberg & Jeffrey P. Miller, “Incentive Awards to Class Action Plaintiffs: An Empirical Study”,
6 53 UCLA L. Rev. 1303, 1308 (2006).)

7 **E. Administration Expenses Should be Approved.**

8 Phoenix Class Action Administration Solutions, the Settlement Administrator, estimates
9 that it will incur a total of \$7,500.00 in costs associated with the administration of this
10 Settlement. (Mitzner Decl., ¶ 13.) These expenses are reasonable, based upon the size of the
11 class, claim and exclusion tracking, and Class Member payment processing.

12 **V. CONCLUSION**

13 For the foregoing reasons, Plaintiff respectfully requests that the Court grant final
14 approval of the proposed settlement.

15
16 Dated: January 21, 2022

Respectfully submitted,

17 **WILSHIRE LAW FIRM, PLC**

18 By: _____

19 Justin F. Marquez, Esq.
20 Bobby Saadian, Esq.
21 Nicol E. Hajjar, Esq.
22 Rachel J. Vinson, Esq.

23
24 Attorneys for Plaintiff and the Class
25
26
27
28

Victor Perez v. The Big Company, Inc. dba Capo Fireside
CIVDS 2009691

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to this action. My business address is 3055 Wilshire Blvd., 12th Fl., Los Angeles, California 90010. My electronic service address is minjee@wilshirelawfirm.com. On **January 21, 2022**, I served the foregoing document described as:

[✓] **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known email address or e-mail of record in this action.

[✓] **BY UPLOAD:** I hereby certify that the documents were uploaded by my office to the State of California Labor and Workforce Development Agency Online Filing Site.

*Attorneys for Defendant The Big Company, Inc.
dba Capo Fireside*

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this **January 21, 2022**, at Los Angeles, California.

Min Jee Kim
Type or Print Name

Signature