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individually, and on behalf of all others  
similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**FOR THE COUNTY OF LOS ANGELES**

NANCY GARCIA, individually, and on  
behalf of all others similarly situated,

Plaintiff,

vs.

COMMON AREA MAINTENANCE  
SERVICES, INC. a California dba CAM  
SERVICES, INC.; CAM PROPERTY  
SERVICES INC.; DAVID HERRERA, an  
Individual, DOES 1 through 20, inclusive,

Defendants.

CASE NO. 20STCV19361

**PLAINTIFF'S NOTICE OF MOTION  
AND MOTION FOR FINAL  
APPROVAL OF CLASS ACTION  
SETTLEMENT**

*[Filed concurrently with supporting  
declarations and [Proposed] Order and  
Judgment]*

Date: March 22, 2024

Time: 9:00 a.m.

Department: 6

Complaint Filed: May 14, 2020

1 PLEASE TAKE NOTICE that on March 22, 2024 at 9:00 a.m., or as soon thereafter as the  
2 matter may be heard in Department 6 of the above-entitled court. Plaintiff Nancy Garcia  
3 (“Plaintiff”) will and hereby does move this Court for: (1) an order determining the good faith of  
4 and granting final approval of the proposed class action and PAGA settlement; (2) entry of the  
5 proposed Order of Final Approval and Judgment; (3) an order awarding costs to the claims  
6 administrator; and (4) an order awarding attorneys’ fees and costs and a class representative  
7 enhancement award to Class Counsel and the Plaintiff, respectively.

8 This Motion is brought pursuant to California *Rules of Court*, Rule 3.769, on the grounds  
9 that the Class Action Settlement Agreement (“Agreement”) between Plaintiff, Nancy Garcia  
10 (“Plaintiff”) and Defendants Common Area Maintenance Services dba CAM Services, Inc., and  
11 David Herrera (collectively “Defendants”), (Defendants and Plaintiff collectively “Parties”) is fair,  
12 reasonable, and adequate, achieved as the result of informed, arms-length negotiations, and  
13 deserving of approval for the benefit of the Settlement Class members to whom it pertains.

14 This Motion is based on this Notice and Motion, the declarations of Daniel J. Bass, Nancy  
15 Garcia and Irvin Garcia on behalf of CPT Group, Inc., the other papers on file in this action, and  
16 such other and further oral and documentary evidence as may be submitted at or before the hearing  
17 on the Motion.

18 Dated: February 27, 2024

**MAKAREM & ASSOCIATES, APLC**

19  
20 By: Daniel Bass  
21 Daniel J. Bass  
22 Attorney for Nancy Garcia  
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## **TABLE OF CONTENTS**

|      |                                                                                |    |
|------|--------------------------------------------------------------------------------|----|
| I.   | INTRODUCTION .....                                                             | 7  |
| II.  | STATUS OF THE LITIGATION .....                                                 | 8  |
| A.   | Defendants and Plaintiff.....                                                  | 8  |
| B.   | Commencement of the Action and Pleadings .....                                 | 8  |
| C.   | Investigation.....                                                             | 9  |
| D.   | Mediation and Settlement .....                                                 | 10 |
| III. | SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS .....                          | 10 |
| A.   | Settlement Class.....                                                          | 10 |
| B.   | Settlement Consideration .....                                                 | 11 |
| C.   | Claims and Settlement Fund Distribution Procedure.....                         | 11 |
| IV.  | FAIRNESS ANALYSIS .....                                                        | 12 |
| A.   | Standard for Final Approval.....                                               | 12 |
| B.   | The Strength of Plaintiff’s Case and Complexities of Further Litigation.....   | 13 |
| C.   | The Experience and Views of Counsel .....                                      | 20 |
| D.   | No Class Members Have Opted Out of or Objected to the Settlement.....          | 21 |
| V.   | CLASS COUNSELS’ FEES AND COSTS.....                                            | 21 |
| A.   | Attorneys’ Fees and Costs Provided in the Settlement are Fair and Reasonable . | 21 |
| B.   | The Trial Court has Wide Discretion Over the Amount of the Fee Award .....     | 22 |
| 1.   | The “Common Fund” Doctrine.....                                                | 23 |
| 2.   | The Lodestar Approach Demonstrates the Fee Request is Justified .....          | 24 |
| 3.   | Application of a Positive Multiplier is Appropriate, but Unnecessary.....      | 25 |
| C.   | Class Counsel’s Costs Are Reasonable and Were Incurred for the Class .....     | 27 |
| D.   | The Proposed Service Award to the Plaintiff is Reasonable.....                 | 27 |
| E.   | Submission to the LWDA and Review by Defendants.....                           | 29 |
| VI.  | CONCLUSION .....                                                               | 29 |

## **TABLE OF AUTHORITIES**

### **Cases**

|                                                                                                                                                                   |        |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|
| <i>7-Eleven Owners for Fair Franchising v. The Southland Corp.</i> (2000) 85 Cal.App.4th 1135, 1145-46, 1151 .....                                                | 13, 15 |
| <i>Abzug v. Kerkorian</i> (CA000981, Los Angeles County Super. Ct., November 1990) .....                                                                          | 24     |
| <i>Air Line Stewards, Loc. 550 v. American Airlines, Inc.</i> , (7th Cir.1972) 455 F.2d 101, 109.....                                                             | 19     |
| <i>Anderson v. Nextel Retail Stores, LLC</i> , 2010 U.S. Dist. LEXIS 43377 at *49 (C.D. Cal. 2010)....                                                            | 7      |
| <i>Balderas v. Massage Envy Franchising, LLC</i> , (N.D. Cal. July 21, 2014, No. 12-CV-06327 NC) 2014 WL 3610945, at *5.....                                      | 16     |
| <i>Barile v. Boston Market Corporation</i> (C.D. Cal. Case No.: 05 CV 1360 BTM (JMA)).....                                                                        | 24     |
| <i>Beasley v. Wells Fargo Bank</i> (1991) 235 Cal.App.3d 1407 .....                                                                                               | 25     |
| <i>Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.</i> (S.D.N.Y. 1979) 480 F. Supp. 1195, 1197-1199 .....                                                  | 23     |
| <i>Behrens v. Wometco Enters., Inc.</i> (S.D. Fla. 1988) 118 F.R.D. 534, 542, <i>aff'd</i> , (11th Cir. 1990) 899 F.2d 21 .....                                   | 16     |
| <i>Blum v. Stenson</i> , 465 U.S. 886, 900 fn. 16 (1984).....                                                                                                     | 23     |
| <i>Boeing Co. v. Van Gemert</i> (1980) 444 U.S. 472, 478.....                                                                                                     | 23     |
| <i>Bushnell v. Cremar, Inc.</i> (Orange County Super. Ct., Case No. 657778) .....                                                                                 | 24     |
| <i>Cellphone Fee Termination Cases</i> (2009) 180 Cal.App.4th 1110, 1117-18 .....                                                                                 | 15     |
| <i>Chavez v. Netflix, Inc.</i> (2008) 162 Cal.App.4th 43, 66 .....                                                                                                | 25     |
| <i>City of Detroit v. Grinnell Corp.</i> (S.D.N.Y. 1972) 356 F.Supp. 1380, 1386.....                                                                              | 16     |
| <i>Class Plaintiffs v. City of Seattle</i> , 955 F.2d 1268 (9th Cir. 1992).....                                                                                   | 13     |
| <i>Craft v. County of San Bernardino</i> (C.D. Cal. 2008) 624 F.Supp.2d 1113, 1125 .....                                                                          | 25     |
| <i>Crandall v. U-Haul</i> (Los Angeles County Super. Ct., Case No. BC178775).....                                                                                 | 24     |
| <i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794, 1801-02 .....                                                                                           | 12, 13 |
| <i>Elliott v. Clothestime</i> (Orange County Super. Ct., Case No. 01-CC00333) .....                                                                               | 24     |
| <i>Enterprise Energy Corp. v. Columbia Gas Transmission Corp.</i> , 137 F.R.D. 240, 250-251 (S.D. Ohio 1991) .....                                                | 28     |
| <i>Glass v. UBS Fin. Servs., Inc.</i> (N.D. Cal. Jan. 26, 2007, No. C-06-4068 MMC) 2007 WL 221862, at *9, <i>aff'd</i> , 331 Fed. Appx. 452 (9th Cir. 2009) ..... | 16     |
| <i>Glendora Community Redev. Agency v. Demeter</i> (1984) 155 Cal.App.3d 465, 474.....                                                                            | 22, 25 |
| <i>Greene v. Dillingham Construction N.A., Inc.</i> (2002) 101 Cal.App.4th 418, 426.....                                                                          | 26     |

|    |                                                                                                                                           |             |
|----|-------------------------------------------------------------------------------------------------------------------------------------------|-------------|
| 1  | <i>Haitz v. Meyer, et al.</i> (Alameda County Super. Court, 8-20-1990 No. 572968-3).....                                                  | 24          |
| 2  | <i>Hanlon v. Chrysler Corp.</i> (9th Cir. 1998) 150 F.3d 1011,1026-27 .....                                                               | 13, 15      |
| 3  | <i>Hernandez v. Chipotle Mexican Grill, Inc.</i> (2012) 146 Cal.Rptr.3d 424.....                                                          | 18          |
| 4  | <i>In re Activision Sec. Litig.</i> (N.D. Cal. 1989) 723 F. Supp. 1373, 1375.....                                                         | 23          |
| 5  | <i>In re Ampicillin Antitrust Litig.</i> (D.D.C. 1981) 526 F. Supp. 494, 500-503.....                                                     | 23          |
| 6  | <i>In re Dunn &amp; Bradstreet Credit Services Consumer Litigation</i> , 130 F.R.D. 366, 373-374 (S.D.<br>Ohio 1990) .....                | 28          |
| 7  | <i>In re Excess Value Ins. Coverage Litig.</i> , No. M-21-84 (RMB) 2004 WL 1724980, at *10<br>(S.D.N.Y. July 30, 2004) .....              | 20          |
| 9  | <i>In re GNC Shareholder Litig.</i> , 668 F.Supp. 450, 452 (W.D. Pa. 1987).....                                                           | 27          |
| 10 | <i>In re Inter-Op Hip Prosthesis Liab. Litig.</i> , 204 F.R.D. 330, 351 (N.D. Ohio 2001) .....                                            | 20          |
| 11 | <i>In re Lamps Plus Overtime Cases</i> (2012) 209 Cal.App.4th 35.....                                                                     | 18          |
| 12 | <i>In re Pacific Enterprises Security Litigation</i> , 47 F.3d 373, 378-9 (9th Cir. 1995).....                                            | 20          |
| 13 | <i>In re Southern Ohio Correctional Facility</i> , 175 F.R.D. 270, 272 (S.D. Ohio 1997) .....                                             | 27, 28      |
| 14 | <i>In re Toys R US FACTA Litig.</i> (C.D. Cal. 2014) 295 F.R.D. 438, 453.....                                                             | 16          |
| 15 | <i>In re United Energy Corp. Sec. Litig.</i> , 1989 U.S.Dist. LEXIS 19146 at *16 (C.D. Cal. 1989) ....                                    | 27          |
| 16 | <i>Ingram v. The Coca-Cola Co.</i> , 200 F.R.D. 685, 694 (N.D. Ga. 2001) .....                                                            | 28          |
| 17 | <i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122, 1132-1133.....                                                                            | 25, 26      |
| 18 | <i>Kullar v. Footlocker Retail, Inc.</i> (2008) 168 Cal.App.4th 116, 120 .....                                                            | 12, 15      |
| 19 | <i>Lealao v. Beneficial California, Inc.</i> (2000) 82 Cal.App.4th 19, 28-36, 49, 50-51, 53 ....                                          | 22, 23, 24, |
| 20 | 25                                                                                                                                        |             |
| 21 | <i>Lo Re v. Chase Manhattan Corp.</i> , 1979 U.S. Dist. LEXIS 12210, *16-17 (S.D.N.Y. 1979).....                                          | 29          |
| 22 | <i>Ma v. Covidien Holding, Inc.</i> , (C.D. Cal. Jan. 31, 2014, No. SACV 12-02161-DOC) 2014 WL<br>360196, at *5.....                      | 16          |
| 23 | <i>Martel v. Valderamma</i> (C.D. Cal. 2015) 2015 U.S. Dist. LEXIS 49830 * 17 .....                                                       | 16          |
| 24 | <i>Munoz v. BCI Coca Cola Bottling Co. of Los Angeles</i> (2010) 186 Cal.App.4th 399, 409 .....                                           | 13          |
| 25 | <i>Officers for Justice v. Civil Service Comm. of the City and County of San Francisco</i> , 688 F.2d<br>615, 624-5 (9th Cir. 1982) ..... | 13, 19      |
| 26 | <i>Parker v. City of Los Angeles</i> (1974) 44 Cal.App.3d 556, 557-68 .....                                                               | 24          |
| 27 | <i>Petrovic v. Amoco Oil Co.</i> , 200 F.3d 1140 (8th Cir. 1999) .....                                                                    | 27          |
| 28 | <i>Rebney v. Wells Fargo Bank</i> (1990) 220 Cal.App.3d 1117, 1138 .....                                                                  | 12          |
|    | <i>Rippee v. Boston Market Corporation</i> (C.D. Cal. Case No.: 05 CV 1359 BTM (JMA)).....                                                | 24          |

|    |                                                                                                       |        |
|----|-------------------------------------------------------------------------------------------------------|--------|
| 1  | <i>Salton Bay Marina, Inc. v. Imperial Irrigation Dist.</i> (1985) 172 Cal.App.3d 914, 954 .....      | 24     |
| 2  | <i>San Bernardino Valley Audubon Soc. v. County of San Bernardino</i> (1985) 155 Cal.App.3d 738,      |        |
| 3  | 755.....                                                                                              | 25     |
| 4  | <i>Sheppard v. Consolidated Edison Co. of New York, Inc.</i> , 2002 WL 2003206, * 5 (E.D.N.Y. 2002)   |        |
| 5  | .....                                                                                                 | 27     |
| 6  | <i>Sofia Lopez v. Citris Valley Health Partners, Inc.</i> , Los Angeles Superior Court case number    |        |
| 7  | BC544139 .....                                                                                        | 26     |
| 8  | <i>Tech-Bilt, Inc. v. Woodward-Clyde &amp; Assoc.</i> (1985) 38 Cal.3d 488, 499-500.....              | 15     |
| 9  | <i>Van Gemert v. Boeing Co.</i> (S.D.N.Y. 1981) 516 F. Supp. 412, 420 .....                           | 24     |
| 10 | <i>Van Vranken v. Atlantic Richfield Co.</i> (N.D. Cal. 1995) 901 F.Supp. 294, 298-300 .....          | 25, 28 |
| 11 | <i>Vincent v. Hughes Air West, Inc.</i> , 557 F.2d 759, 769 (9th Cir.1977) .....                      | 23     |
| 12 | <i>Vizcaino v. Microsoft Corp.</i> (9th Cir. 2002) 290 F.3d 1043, 1051 .....                          | 25     |
| 13 | <i>Washington v. Joe's Crab Shack</i> (N.D. Cal. 2010) 271 F.R.D. 629 .....                           | 18     |
| 14 | <i>Wershba v. Apple Computer, Inc.</i> (2001) 91 Cal.App.4th 224, 244-245, 254.....                   | 13, 25 |
| 15 | <i>Williams v. Costco Wholesale Corp.</i> , 2010 U.S. Dist. LEXIS 67731 at *13 (S.D. Cal. 2010) ..... | 7      |
| 16 | <i>Williams v. Vukovich</i> , 720 F.2d 909, 922-923 (6th Cir, 1983) .....                             | 20     |
| 17 | <b>Statutes</b>                                                                                       |        |
| 18 | 2 Hebert Newberg & Alba Conte, <i>Newberg on Class Actions</i> , §11.41 at 90 (4th Ed. 2001).....     | 20     |
| 19 | 4 William B. Rubenstein et al., <i>Newberg on Class Actions</i> (5th ed. 2016) § 13:15 .....          | 16     |
| 20 | Cal. Lab. Code § 203 .....                                                                            | 17     |
| 21 | Cal. Lab. Code § 226 .....                                                                            | 18     |
| 22 | Conte, <i>Attorney Fee Awards</i> , § 2:08 at 50-51 (2d ed. 1977).....                                | 27     |
| 23 | Newberg, <i>Attorney Fee Awards</i> § 2:19 (1987).....                                                | 27     |
| 24 | <b>Rules</b>                                                                                          |        |
| 25 | Cal. Rules of Court, Rules 3.769 and 3.770.....                                                       | 7, 13  |
| 26 |                                                                                                       |        |
| 27 |                                                                                                       |        |
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1     **I. INTRODUCTION**

2           Pursuant to California Rules of Court, Rule 3.769(g), Plaintiff, Nancy Garcia (“Class  
3     Representative” or “Plaintiff”), as Class Representative—of the “Class” or “Settlement Class” of  
4     all current and former non-exempt field or administrative employees employed by Defendants CAM  
5     Services, Inc., et al. in California at any time from May 14, 2016, through the earlier of either the  
6     Court has given (1) preliminary approval of the Class Settlement or (2) whenever the workweeks for  
7     the Settlement Class exceed 12,597. (see Declaration of Daniel J. Bass [“Bass Decl.”], ¶ 12).

8           The Settlement will resolve all of Plaintiff’s class claims against Defendants. As set forth  
9     in Plaintiff’s Motion for Preliminary Approval, which was granted by this Court on August 25,  
10    2023, (Bass Decl., Exh. B) this Court should approve as fair and reasonable the class-wide, non-  
11    reversionary Joint Stipulation of Settlement and Release of Class Action (“Settlement  
12    Agreement”). (Bass Decl., Exh. A). Three Hundred and Seventy-Five Thousand Dollars  
13    (\$375,000), inclusive of all fees and costs shall be paid for settlement of the claims of the Settlement  
14    Class. (Bass Decl., ¶ 13).

15          As of the filing of this motion no Settlement Class members have opted out and it is  
16    anticipated that all 186 Settlement Class Members will part of this Settlement. (Declaration of  
17    Irvin Garcia on Behalf of CPT Group, Inc. [“CPT Decl.”], ¶¶ 10-14). Moreover, as no one has  
18    objected to the Settlement, this reflects that the Settlement was well-received by all class  
19    members. See CPT Decl., ¶ 11; see also, *Anderson v. Nextel Retail Stores, LLC*, 2010 U.S. Dist.  
20    LEXIS 43377 at \*49 (C.D. Cal. 2010) (holding that a relatively high participation rate and  
21    extremely low objection rate weighed in favor of approving the settlement). Nor are there any  
22    workweek disputes or requests for exclusion from the Settlement. (CPT Decl., ¶ 11-12).  
23    Therefore, it is anticipated that all 186 Settlement Class Members will be issued settlement  
24    payment. (*Id.* ¶ 14). A unanimous participation rate “supports the fairness, reasonableness, and  
25    adequacy of the settlement.” *Williams v. Costco Wholesale Corp.*, 2010 U.S. Dist. LEXIS 67731  
26    at \*13 (S.D. Cal. 2010).

27          Moreover, the Court should grant Plaintiff’s request for a Class Representative’s Service  
28    Award of \$10,000 (Bass Decl., ¶ 15), Plaintiff’s request for attorneys’ fees of \$125,000 (Bass

Decl., ¶ 14), Class Counsel’s costs of \$20,284.44 (*Id.*), and settlement administration costs of \$9,750 (CPT Decl., ¶ 15), because each payment is reasonable and based on diligent work performed or costs incurred for the benefit of all Class Members.

Accordingly, the Settlement, and all of its terms, satisfies California Rules of Court, Rule 3.769, and other applicable laws, such that this Court should grant final approval.

## **II. STATUS OF THE LITIGATION**

### **A. Defendants and Plaintiff**

This case is a putative class action/PAGA alleging violations of California state law. Defendants Common Area Maintenance Services, Inc., dba CAM Services, Inc., and David Herrera (“Defendants”) provide facility and property services to commercial clientele throughout Southern and Northern California including janitorial, day porter, landscaping, storm water management, construction services, etc. cleaning and property management business in Culver City, California. They are headquartered in Torrance, California. Defendants’ work force includes non-exempt administrative office employees and field employees who perform work in the field. (Bass Decl., ¶ 2).

Plaintiff Nancy Garcia (“Plaintiff”) was employed by Defendants as a non-exempt hourly administrative employee during the class period. She worked for Defendants from approximately October 10, 2018 up to May 2020. The class Plaintiff seeks to represent includes all non-exempt hourly employees that worked for Defendants during the class period. During the time that Plaintiff was employed she was subject to the same policies and procedures as all other non-exempt hourly paid employees including but not limited to Defendants’ meal and rest period policies, which among other things, Plaintiff contends caused class members to not receive compliant meal and/or rest periods. (*Id.* at ¶ 3).

### **B. Commencement of the Action and Pleadings**

Plaintiff filed her Complaint on May 14, 2020, which includes claims for: (1) failure to pay overtime, (2) failure to provide meal periods, (3) failure to provide rest breaks, (4) failure to furnish accurate wage statements, (5) failure to pay all wages earned, (6) failure to maintain required records, (7) failure to pay all wages earned upon termination and, (8) unfair business

1 practices, and (9) penalties pursuant to Labor Code 2699, et seq. Plaintiff filed a First Amended  
2 Complaint on August 12, 2020. Defendants filed an answer on December 10, 2020 denying all  
3 allegations. Plaintiff filed a second lawsuit against Defendants on July 15, 2020, in Los Angeles  
4 Superior Court, Case No. 20STCV27465 (“PAGA” Action). In the PAGA action, Plaintiff asserts  
5 a single cause of action under the Labor Code’s Private Attorneys General Act, Labor Code  
6 sections 2698, et. seq. (*Id.* at ¶ 4). Plaintiff alleged that Defendants, throughout the class period,  
7 failed to provide compliant meal and rest breaks and failed to compensate employees for missed  
8 and/or non-compliant meal and/or rest breaks. Plaintiff further alleges that due to understaffing  
9 non-exempt employees were frequently unable to take timely meal and rest periods and/or  
10 uninterrupted meal and rest breaks. What’s more, Plaintiff alleges that Defendants failed to pay  
11 overtime at the regular rate of pay because non-exempt employees who worked more than eight  
12 hours in a day were not compensated for overtime or non-exempt employees who worked more  
13 than eight hours in a day, they were not compensated for overtime at the regular rate of pay. As a  
14 result of these violations, Plaintiff sought to recover meal and rest period premiums, unpaid  
15 overtime wages, penalties for unpaid wages upon termination, penalties for non-compliant wage  
16 statements, PAGA penalties, prejudgment interest, costs of suit, and attorneys’ fees. (*Id.* at ¶ 5).

17 Defendants contend that they at all times complied with California law. Defendants assert  
18 that it properly paid employees for all time worked. Defendants further contend that they provided  
19 Plaintiff and other putative class members with compliant meal and rest periods, and that to the  
20 extent any employee did not take a compliant meal or rest period, the reason for the non-compliant  
21 meal or rest period would be an individualized issue that would preclude class certification. (Bass  
22 Decl. at ¶ 6.)

### 23 C. Investigation

24 Before filing the lawsuit, Class Counsel investigated and researched the facts and  
25 circumstances underlying the pertinent issues and the laws applicable thereto. This required  
26 thorough discussions between Class Counsel and the Plaintiff, as well as preliminary research into  
27 the various legal issues and employment practices involved in the case. After conducting their initial  
28 investigation, Class Counsel determined that Plaintiff’s claims were well-suited for class action

1 adjudication owing to what appeared to be a common set of policies and procedures that impacted  
2 Plaintiff and other putative class members in a similar fashion. (*Id.* at ¶ 7).

3 After filing the lawsuit, Class Counsel conducted an extensive investigation of the facts and  
4 claims giving rise to the action, including:

- 5 (1) reviewing and analyzing time and payroll records and Defendant’s written policies  
and procedures;
- 6 (2) researching the applicable law and evaluating potential defenses;
- 7 (3) evaluating the damages based on countervailing interpretations of law;
- 8 (4) reviewing other documentation provided by Defendant. (*Id.* at ¶ 8).

9 Defendants, for their part, vigorously contested liability, the amount of claimed damages,  
10 and the propriety of class certification. After Class Counsel analyzed the relevant documentary and  
11 testamentary evidence, Class Counsel determined that this case was appropriate for resolution via  
settlement. (*Id.* at ¶ 9).

#### 12 **D. Mediation and Settlement**

13 On or about December 1, 2021, the Parties agreed to participate in a settlement conference  
14 with the well-respected mediator Michael Young. Although the case did not settle at mediation,  
15 with the assistance of Mr. Young, the parties were able to agree on the parameters for a settlement  
16 of the class action claims of a class of approximately 146 current and former hourly, non-exempt  
17 employees. Over the next months the parties negotiated the details of the long form settlement  
18 agreement which was granted preliminary approval on August 25, 2023 and pursuant to that order,  
19 finalized and fully executed on December 6, 2023. (*Id.* at ¶¶ 10-11, Exhs. A-B). After Preliminary  
20 Approval was granted, the Settlement Administrator confirmed for the Parties that the records  
21 provided by Defendants showed that there were 186 potential Class Members. (CPT Decl. ¶ 5).

### 22 **III. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS**

#### 23 **A. Settlement Class**

24 The “Class” or “Settlement Class” means all current and former non-exempt employees  
25 employed by Defendants in California at any time from May 14, 2016 through the earlier of either  
26 (1) preliminary approval or (2) whenever the workweeks for the Settlement Class exceed 12,597 (the  
27 “Class Period”). Defendants have represented that as of January 18, 2022 the Class consists of  
28 approximately 146 Class Members that worked a total of approximately 11,451 workweeks. (Bass

Decl., ¶ 12). As of the date of this filing, no Settlement Class members have opted out and it is anticipated that all 186 Settlement Class members will participate in the Settlement. (CPT Decl., ¶¶ 13-14).

#### **B. Settlement Consideration**

Under the terms of the proposed agreement, the parties have agreed that all claims brought on behalf of the Class shall be fully and finally resolved for a “Gross Settlement Amount” of \$375,000.00. (Bass Decl. ¶ 13). The Gross Settlement Amount is non-reversionary and no portion of the Settlement Amount will be returned to the Defendants. (*Id.*). The following amounts will be deducted from the Gross Settlement Amount, with the amount remaining after these deductions constituting the Net Settlement Amount (*Id.* at ¶¶ 13-18; CPT Decl. ¶ 15):

- **Attorneys’ Fees and Costs:** Up to 1/3 of the Gross Settlement Amount or \$125,000.00 plus up to \$30,000 in actual costs and expenses, though Plaintiff’s costs have been limited to \$20,284.44;
- **Incentive Award:** Up to \$10,000 to the named Plaintiff as a class representative;
- **Settlement Administration Costs:** Up to \$20,000 from the Gross Settlement Amount for the costs associated with administration of the Settlement, though CPT has limited its costs to \$9,750
- **PAGA Penalties:** Up to \$3,750 or \$2,812 (75% to the Labor Workforce Development Agency) and the remaining \$938 (25% allocated from the Gross Settlement Amount for PAGA penalties to Class Members who worked during the PAGA Period.

Thus, the net Settlement amount was estimated to be around \$ 187,188 (CPT Decl., ¶ 14), though this number will increase by at least \$9,715.56 in authorized but unspent litigation costs (Bass Decl., ¶¶ 14, 20, Exh D) and includes the \$10,250 in authorized but unspent administrator costs. (CPT Decl., ¶ 15) Each Class Participant shall be eligible to receive an Individual Settlement Amount, which is a share of the Net Settlement Amount based on the pro rata number of weeks worked by the Settlement Class Members during the Class Period as a proportion of all weeks worked by all Settlement Class Members. (Bass Decl., ¶ 19). Based on estimated settlement calculations, prior to increasing the Net Settlement Amount for any unused costs, the average gross payment to each Settlement Class Member is \$1,061.49, the highest is \$4,510.96, and the lowest is \$12.52. (CPT Decl., ¶ 13).

#### **C. Claims and Settlement Fund Distribution Procedure**

According to the Settlement Agreement “Final Effective Date” shall mean that the full payment of the Gross Settlement Amount is received and the later of: (i) if no time objections are

1 filed, or are withdrawn prior to Final Approval, then the date of Final Approval; or (ii) if a Class  
2 Member files an objection and/or intervenes in the Settlement the Effective Date shall be the  
3 sixty-fifth (65) calendar day after the date of Final Approval, provided no appeal is initiated by an  
4 objector and/or intervenor; or (iii) if a timely appeal is initiated by an objector and/or intervenor,  
5 then the Effective Date will be the date of final resolution of that appeal (including any requests  
6 for rehearing and/or petitions for certiorari), resulting in final judicial approval of the Settlement  
7 provided that the final resolution does not result in a material alteration of the terms of the  
8 Settlement Agreement. Bass Decl., Exh. A at 5(B). Within thirty (30) days after the Gross  
9 Settlement Amount has been fully funded with the Settlement Administrator by Defendant  
10 Common Area Maintenance Services, Inc., the Settlement Administrator will calculate Individual  
11 Settlement Share amounts and will prepare and mail settlement payments to Settlement Class  
12 Members. (*Id.*, Exh. A at 4(C))

13 Settlement payment checks issued to Settlement Class Members that remain uncashed one  
14 hundred eighty (180) calendar days after such checks are mailed by the Settlement Administrator  
15 (“Check Expiration Date”) shall become void, and the funds associated with such voided checks,  
16 plus any accrued interest that has not otherwise been distributed (together, “Unused Funds”), shall  
17 be distributed to Dress for Success Worldwide West, located at 1933 S. Broadway – 11th Floor,  
18 Los Angeles, CA 90007. (*Id.*, Exh. A at 4(E)).

#### 19 **IV. FAIRNESS ANALYSIS**

##### 20 **A. Standard for Final Approval**

21 The trial court has broad discretion to determine whether a proposed class action  
22 settlement is fair. See *Rebney v. Wells Fargo Bank* (1990) 220 Cal.App.3d 1117, 1138. There is a  
23 presumption of fairness of a class action settlement when: (1) the settlement is reached as the  
24 result of arm’s length negotiations; (2) there has been sufficient investigation and discovery; (3)  
25 counsel is experienced in similar litigation; and (4) the percentage of objections is low. See *Dunk*  
26 *v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802. Before approving a class action settlement,  
27 a trial court must have an understanding “of the amount that is in controversy and the realistic  
28 range of outcomes of the litigation.” *Kullar v. Footlocker Retail, Inc.* (2008) 168 Cal.App.4th

1 116, 120. However, the parties need not provide an explicit statement of the maximum amount  
2 plaintiffs could have potentially recovered. See *Munoz v. BCI Coca Cola Bottling Co. of Los*  
3 *Angeles* (2010) 186 Cal.App.4th 399, 409.

4 Further, “voluntary conciliation and settlement are the preferred means of dispute  
5 resolution. This is especially true in complex class action litigation...” *7-Eleven Owners for Fair*  
6 *Franchising v. The Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151 (quoting *Officers for*  
7 *Justice v. Civil Service Comm. of the City and County of San Francisco*, 688 F.2d 615, 625 (9th  
8 Cir. 1982)). A class action may not be dismissed, compromised, or settled without the approval of  
9 the Court. See Cal. Rules of Court, Rules 3.769 and 3.770. The decision to approve or reject a  
10 class action settlement may only be reversed upon a strong showing of “clear abuse of  
11 discretion.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998); *Class Plaintiffs v.*  
12 *City of Seattle*, 955 F.2d 1268 (9th Cir. 1992) (in the context of a class action settlement, an  
13 appellate court cannot “substitute [its] notion of fairness for those of the [trial] judge and the  
14 parties to the agreement,” and will reverse only upon a strong showing of abuse of discretion.)

15 To make this fairness determination, the court must consider several relevant factors,  
16 including “the strength of plaintiff’s case, the risk, expense, complexity and likely duration of  
17 further litigation, the risk of maintaining class action status throughout trial, the amount offered in  
18 settlement, the extent of discovery completed and the state of the proceedings, [and] the experience  
19 and views of counsel...” *Dunk v. Ford Motor Co.*, *supra*, 48 Cal.App.4th at 1801; *Wershba v. Apple*  
20 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 244-245; *7-Eleven Owners for Fair Franchising v. The*  
21 *Southland Corp.*, *supra*, 85 Cal.App.4th at 1146. “The list of factors is not exclusive and the court  
22 is free to engage in a balancing and weighing of factors depending on the circumstances of each  
23 case.” *Wershba*, 91 Cal.App.4th at 245. Furthermore, courts must give:

24 [p]roper deference to the private consensual decision of the parties, [since] the court’s  
25 intrusion upon what is otherwise a private consensual agreement negotiated between the  
26 parties ... must be limited to the extent necessary to reach a reasoned judgment that the  
27 agreement is not the product of fraud or overreaching by, or collusion between, the  
28 negotiating parties, and the settlement, taken as a whole, is fair, reasonable and adequate ...  
(*Hanlon*, 150 F.3d at 1027.)

## **B. The Strength of Plaintiff’s Case and Complexities of Further Litigation**

1 Plaintiff believes that the Settlement Class claims in this action are legally meritorious and  
2 present a reasonable probability of a favorable determination on behalf of the class. At the same  
3 time, there is undeniably significant litigation risk avoided by the proposed Settlement, both at class  
4 certification proceedings, at trial, and potentially in the appellate courts. (Bass Decl., ¶ 28).

5 Liability remains highly contested by Defendants who deny that they engaged in any  
6 violations of the law, and they further deny any liability or engagement in wrongdoing of any kind  
7 associated with the claims alleged in the Action by the Plaintiff or any Class Member. Defendants  
8 contend that at all times they complied with all wage-and-hour laws in connection with the  
9 employment and/or retention of services of Plaintiff and the Class Members. (*Id.*, ¶ 29)

10 Plaintiff's counsel understood and appreciated the defenses and position of Defendants but  
11 believed that Plaintiff would ultimately succeed in the action. In light of the strongly divergent  
12 views, the parties, were able to negotiate a fair settlement, considering the costs and risks of  
13 continued litigation. The negotiations were at all times conducted professionally and at arm's  
14 length and have produced a result that the Parties believe to be in their respective best interests.  
15 (*Id.*, ¶ 30)

16 The Parties have also considered the uncertainty and risk of the outcome of further  
17 litigation, and the difficulties and delays inherent in such litigation. Plaintiff is also aware of the  
18 burdens of proof necessary to establish liability for the claims asserted in the action, the defenses  
19 thereto, and the difficulties in establishing damages. (*Id.*, ¶ 31) In evaluating the settlement, the  
20 Court will seek a reasonable estimate of the nature and amount of recovery that each class member  
21 could have obtained if the Plaintiff had prevailed in the litigation. Numerous decisions summarize  
22 a trial court's task when considering whether to approve the settlement of a putative class action.  
23 (*Id.*) As Division Five of this Court stated:

24 The trial court has broad discretion to determine whether the settlement is fair. [Citation.]  
25 It should consider relevant factors, such as the strength of Plaintiff's case, the risk, expense,  
26 complexity and likely duration of further litigation, the risk of maintaining class action  
27 status through trial, the amount offered in settlement, the extent of discovery completed  
28 and the stage of the proceedings, the experience and views of counsel, the presence of a  
governmental participant, and the reaction of the class members to the proposed settlement.

1 *Cellphone Fee Termination Cases* (2009) 180 Cal.App.4th 1110, 1117-18 (citations omitted). The  
2 court's consideration of relevant factors, however, does not transform the settlement approval  
3 "into a trial or rehearsal for trial on the merits." *7-Eleven Owners for Fair Franchising*, 85  
4 Cal.App.4th at 1145 (internal citation omitted). The record need only provide the trial court with  
5 an understanding of the amount that is in controversy and the realistic range of outcomes of the  
6 litigation. Because settlements are inherently a compromise, once the parties have provided it  
7 with the requisite "basic information," the trial court must only "satisfy itself that the class  
8 settlement is within the 'ballpark' of reasonableness." *Tech-Bilt, Inc. v. Woodward-Clyde &*  
9 *Assoc.* (1985) 38 Cal.3d 488, 499-500.

10 Here, in preparation for mediation, Plaintiff calculated Defendants' liability to Class  
11 Members to be in excess of the settlement amount. Plaintiff's valuation assumed that Plaintiff: (1)  
12 prevailed in certifying the case; (2) prevailed in establishing liability on the merits; and (3) was  
13 awarded the full amount of all discretionary penalties (Bass Decl., ¶ 32). The realistic range of  
14 outcomes for this litigation took into account the present state of the law regarding meal and rest  
15 break claims and the other claims brought in the Action, Defendants' defenses for each claim, and  
16 the likelihood of prevailing on a class certification motion as well as trial and any appeals (*Id.*, ¶  
17 33). Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*  
18 *Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011,1026.

### 19 ***Kullar v. Footlocker Analysis***

20 To allow this Court to make an informed assessment pursuant to *Kullar v. Foot Locker*  
21 *Retail, Inc.* (2008) 18 Cal.App.4th 116, Plaintiff's Counsel provides the following assessment of  
22 the case and settlement. Plaintiff's Counsel believes that the settlement is a very good one for the  
23 class members. In this case, Plaintiff sought unpaid wages and statutory penalties as well as  
24 equitable remedies of declaratory relief, disgorgement, accounting, and restitution. (Bass Decl., ¶  
25 34). Plaintiff estimated Defendant's total non-penalty exposure at \$ 4,215,877. Of that exposure  
26 approximately \$1,672,770 is due to potential penalties that would be difficult to prove. As such,  
27 the settlement represents over approximately 14.7% of Defendants' non-penalty exposure based on  
28 Plaintiff's analysis. This in a reasonable recovery, particularly given that Defendants' seasonal

1 business. (Bass Decl., ¶ 35).

2 Courts have determined that settlements are, of course, reasonable even where Plaintiffs  
3 recover only a portion of their actual losses. *See Behrens v. Wometco Enters., Inc.* (S.D. Fla. 1988)  
4 118 F.R.D. 534, 542, *aff'd*, (11th Cir. 1990) 899 F.2d 21 (“[T]he fact that a proposed settlement  
5 amounts to only a fraction of the potential recovery does not mean the settlement is unfair or  
6 inadequate.”). Indeed, “[a] settlement can be satisfying even if it amounts to a hundredth or even -  
7 a thousandth of a single percent of the potential recovery.” *Id.*; *see also City of Detroit v. Grinnell*  
8 *Corp.* (S.D.N.Y. 1972) 356 F.Supp. 1380, 1386 [a recovery of 3.2% to 3.7% of the amount sought  
9 is “well within the ball park”], *aff'd in part, rev'd on other grounds*, (2d Cir. 1974) 495 F.2d 448;  
10 *Martel v. Valderamma* (C.D. Cal. 2015) 2015 U.S. Dist. LEXIS 49830 \* 17 (approving a settlement  
11 of \$75,000 when potential damages were \$1.2 million); *In re Toys R US FACTA Litig.* (C.D. Cal.  
12 2014) 295 F.R.D. 438, 453 (approving settlement with vouchers (not cash) potentially worth a  
13 maximum of three percent (3%) if all possible claims were actually made, or \$391.5 million  
14 aggregate voucher potential where the class could have recovered \$13.05 billion); 4 William B.  
15 Rubenstein et al., *Newberg on Class Actions* (5th ed. 2016) § 13:15 (the range of reasonableness  
16 percentage could be as low as 1/100th or 1/1000th of 1%); *Ma v. Covidien Holding, Inc.*, (C.D. Cal.  
17 Jan. 31, 2014, No. SACV 12-02161-DOC) 2014 WL 360196, at \*5 (finding a settlement worth  
18 9.1% of the total value of the action “within the range of reasonableness”); *Balderas v. Massage*  
19 *Envy Franchising, LLC*, (N.D. Cal. July 21, 2014, No. 12-CV-06327 NC) 2014 WL 3610945, at  
20 \*5 (granting preliminary approval of a net settlement amount representing 5% of the projected  
21 maximum recovery at trial); *Glass v. UBS Fin. Servs., Inc.* (N.D. Cal. Jan. 26, 2007, No. C-06-4068  
22 MMC) 2007 WL 221862, at \*9, *aff'd*, 331 Fed. Appx. 452 (9th Cir. 2009) (approving a settlement  
23 of an action claiming unpaid overtime wages where the settlement amount constituted  
24 approximately 25% to 35% of the estimated actual loss to the class).

25 Below, Plaintiff details the issues that necessitated deductions from the maximum potential  
26 value of this case to arrive at the reasonable Gross Settlement Amount in this action. Here the class  
27 was estimated at 146 persons working approximately 11,451 workweeks. (Bass Decl. ¶ 36).  
28 Plaintiff believes this is still a reasonable approximation, because despite the Class potentially

1 increasing to 186 employees their workweeks are capped at when they exceed 12,597, a maximum  
2 increase of 10% contemplated in the settlement. (*Id.*)

3 **Rest Periods:** Plaintiff calculated Defendants' maximum liability to be five violations per  
4 employee per week at \$23.05 per violation for \$115.25 per week. As such, with 11,451 work  
5 weeks, Plaintiff estimated that Defendants' exposure could be as high as \$984,399. Plaintiff did  
6 not discount this number or the calculations that follow in order to arrive at the settlement, rather  
7 Plaintiff discounted the number in order to reach a settlement that understood the risks of  
8 continued litigation. (Bass Decl. ¶ 37).

9 **Meal Periods:** Plaintiff, based on an analysis of a twenty-five percent (25%) sampling of  
10 Defendants' time keeping records, Plaintiff found 43.9% of the class member shifts had at least  
11 one unique meal period violation (at least one late, short, or missing meal break of 30 minutes) in  
12 the data reviewed. Extrapolating those violations to the class at the time, there were an estimated  
13 20,122 unique meal period violations making Defendants' potential exposure as  $\$23.05 \times 20,122$   
14  $= \$463,812$ . In regard to this number, Plaintiff recognized that Defendants would argue that late  
15 and shortened meal periods stemmed from the choices of class member, and that such claims  
16 were not amenable to class certification. (Bass Decl. ¶ 38).

17 **Unpaid Off-the-Clock:** Based on Plaintiff's analysis, Plaintiff estimated that there was  
18 off-the-clock overtime where employees were not compensated. Plaintiff's analysis estimates  
19 unpaid overtime was worked twenty minutes per month per class member resulting in  
20 approximately 765 hours of off-the-clock overtime resulting in approximately \$21,206 unpaid  
21 overtime and thus, calculated Defendants' potential exposure as  $\$23.05 \times 0.033 \times 146 = \$17,633$ .  
22 (Bass Decl. ¶ 39).

23 **Penalties:** Although the Class arguably could have seen a payout of approximately  
24 \$439,357 in waiting time penalties and wage statement penalties, and another \$2,103,750 for  
25 PAGA penalties, Plaintiff's Counsel had to weigh the likelihood of recovery against probable  
26 defenses and the wide discretion Courts have exercised in awarding Labor Code penalties. Along  
27 these lines, Plaintiff considered that Defendants would argue that Plaintiff could not prove the  
28 "willful" prong needed to obtain waiting time penalties under Cal. Lab. Code § 203 and would

1 further argue that Plaintiff could not show that Class Members suffered an “injury” as a result of  
2 wage statement violations, as required by Cal. Lab. Code § 226. Further, Plaintiff arguably could  
3 not recover any waiting time penalties for meal and rest claims and Plaintiff would not recover  
4 derivative penalties if she failed to prove underlying claims. (Bass Decl. ¶ 40).

5 Plaintiff, in agreeing to the settlement had to take into account the difficulties in certifying  
6 a class and maintaining any such certification. What’s more, Plaintiff had to take into account the  
7 Defendants’ position that its non-exempt field employees were governed by a different set of  
8 policies and procedures than its administrative employees. These concerns weighed into  
9 Plaintiff’s analysis to eventually agree to a settlement that is less than Defendants’ total projected  
10 liability even if Plaintiff eventually won every aspect of this case including an appeal. A  
11 settlement now guarantees that class members will 1) obtain a recovery and 2) that they will get  
12 the recovery in a time period that is shorter than one if the case went through a full trial and  
13 appeal process. (Bass Decl. ¶ 41).

14 **Certification in General:** The great discretion afforded trial courts in electing to grant or  
15 deny class certification, and the resultant possibility that this Court would deny certification of any  
16 of the claims, resulting in no recovery whatsoever for those unnamed class members further  
17 weighed in favor of settlement. Indeed, going into settlement discussions and during the course of  
18 constructing the settlement, Class Counsel bore in mind similar meal and rest break cases wherein  
19 class certification was denied. *See e.g. In re Lamps Plus Overtime Cases* (2012) 209 Cal.App.4th  
20 35; *Washington v. Joe's Crab Shack* (N.D. Cal. 2010) 271 F.R.D. 629 (“individualized inquiry will  
21 be required to determine whether any single employee failed to take a meal break because he/she  
22 was too busy, and also to determine whether a particular employee signed a waiver based on a  
23 decision not to take meal breaks”). *Hernandez v. Chipotle Mexican Grill, Inc.* (2012) 146  
24 Cal.Rptr.3d 424, 2012 WL 3579567, \*10.

25 **Trial and Manageability Issues:** While Plaintiff was confident in the strength of her  
26 claims, as is always the case with a trial, Plaintiff needed to accept that there was a possibility that  
27 he would not prevail at trial. Compromise is inherent and necessary in the settlement process. Thus,  
28 even if “the relief afforded by the proposed settlement is substantially narrower than it would be if

1 the suits were to be successfully litigated,” this is no bar to a class settlement because “the public  
2 interest may indeed be served by a voluntary settlement in which each side gives ground in the  
3 interest of avoiding litigation.” *Id.* at 250 (quoting *Air Line Stewards, Loc. 550 v. American*  
4 *Airlines, Inc.*, (7th Cir.1972) 455 F.2d 101, 109. The Ninth Circuit observed “the very essence of  
5 a settlement is compromise, ‘a yielding of absolutes and an abandoning of highest hopes.’” *Officers*  
6 *for Justice v. Civil Serv. Commission* (9th Cir.1982) 688 F.2d 615, 624 (citation omitted). Thus,  
7 when analyzing the amount offered in settlement, the Court should examine “the complete package  
8 taken as a whole,” and the amount is “not to be judged against a hypothetical or speculative measure  
9 of what might have been achieved by the negotiators.” *Id.* at pp. 625, 628.

10 Given the difficulties Plaintiff and the Settlement Class faced, both in terms of certification  
11 and in adjudicating their claims on the merits, the litigation discounts afforded by Plaintiff are  
12 appropriate and the settlement is fair, reasonable, and adequate. In the present case, it is clear that  
13 the settlement before this Court is the best course of action as it ensures a fair and adequate recovery  
14 for the members of the class. Thus, it was clearly reasonable for Plaintiff to negotiate a smaller  
15 certain award rather than seek the full recovery but risk recovering nothing.

16 Plaintiff, in agreeing to the settlement had to take into account the difficulties in certifying  
17 a class and maintaining any such certification. Moreover, Plaintiff had to take into account the  
18 uncertainties, including business uncertainties facing Defendants and similar employers during the  
19 ongoing COVID 19 pandemic. Each of these concerns weighed into Plaintiff’s analysis to  
20 eventually agree to a settlement that is less than Defendants’ total projected liability even if Plaintiff  
21 eventually won every aspect of this case including potential appeal. A settlement now guarantees  
22 that class members will 1) obtain a recovery and 2) that they will get the recovery in a time period  
23 that is shorter than one if the case went through a full trial and appeal process. (Bass Decl., ¶ 41).

24 The settlement amount was a negotiated compromise, factoring in the risks related to  
25 certification, liability, and damages. Taking into account all of the circumstances of the action and  
26 the significant factual and legal defenses raised by Defendants against certification, liability, and  
27 damages, Class Counsel believe that the settlement is fair and reasonable. Each Class Member’s  
28 individual share of the settlement amount is tailored to the number of weeks worked by each Class

1 Member during the class period so the distribution is weighted in favor of those Class Members  
2 who were potentially most affected by the alleged violations. Moreover, because the class consists  
3 of several employees, it was unlikely that the potential monetary claims of individual Class  
4 Members would have proved viable without the class-action mechanism. (Bass Decl. ¶ 42).

5 **C. The Experience and Views of Counsel**

6 This “Parties represented by competent counsel are better positioned than courts to  
7 produce a settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pacific*  
8 *Enterprises Security Litigation*, 47 F.3d 373, 378 (9th Cir. 1995). Here, Plaintiff is represented by  
9 competent and experienced counsel who possess extensive experience litigating wage and hour  
10 class actions and have been appointed as class counsel in numerous cases alleging similar claims.  
11 (Bass Decl., ¶¶ 43-51).

12 There is an initial presumption that a proposed settlement is fair and reasonable if it is the  
13 result of arms-length negotiations. See *Williams v. Vukovich*, 720 F.2d 909, 922-923 (6th Cir,  
14 1983) (“The court should defer to the judgment of experienced counsel who have competently  
15 evaluated the strengths of his proofs.”); *In re Excess Value Ins. Coverage Litig.*, No. M-21-84  
16 (RMB) 2004 WL 1724980, at \*10 (S.D.N.Y. July 30, 2004) (“Where ‘the court finds the  
17 settlement is the product of arm’s length negotiations conducted by experienced counsel  
18 knowledgeable in complex class litigation, the settlement will enjoy a presumption of fairness.’”);  
19 *In re Inter-Op Hip Prosthesis Liab. Litig.*, 204 F.R.D. 330, 351 (N.D. Ohio 2001) (granting  
20 preliminary approval of settlement “where the settlement is the result of extensive negotiations by  
21 experienced counsel...”); see also 2 Hebert Newberg & Alba Conte, *Newberg on Class Actions*,  
22 §11.41 at 90 (4th Ed. 2001).

23 Counsel for Plaintiff have extensive experience in employment law, particularly wage and  
24 hour class action litigation. (Bass Decl., ¶¶ 43-51). Counsel for Plaintiff and Defendants each  
25 zealously negotiated on behalf of their respective clients’ best interests, and the Settlement was  
26 reach after lengthy negotiations. As a result, the Settlement is presumed to be fair and reasonable,  
27 and was not the product of collusion.  
28

1           **D.      No Class Members Have Opted Out of or Objected to the Settlement**

2           As part of CPT’s preparation for mailing, all 186 names and addresses contained in the  
3           Class List were processed against the National Change of Address (“NCOA”) database,  
4           maintained by the United States Postal Service (“USPS”), for purposes of updating and  
5           confirming the mailing addresses of the Settlement Class Members before mailing of the Notice  
6           Packet. (See CPT Decl., ¶ 6). On January 16, 2024, the Notices were mailed by U.S. first class  
7           mail to the 186 Settlement Class Members. The deadline to submit requests for exclusion or  
8           objection is March 22, 2024. (*Id.*, ¶ 10). Fourteen (14) Notice Packets were returned as  
9           undeliverable, all of which were skipped traced and thirteen were mailed again to the newly  
10          discovered addresses. (*Id.*, ¶¶ 8-9). Ultimately, one (1) Notice Packet was undeliverable with no  
11          forwarding address, where no new address could be found through skip trace. (*Id.*, ¶ 9).

12          The Administrator has received no requests for exclusion from the Settlement, disputes or  
13          objections. (*Id.*, ¶ 10). As of the date of this filing, a 100% participation rate is anticipated. (*Id.*, ¶  
14          14). Accordingly, all factors typically used by California courts to determine the appropriateness  
15          of final approval of a class action settlement weigh in favor of finding that this Settlement is a fair  
16          and reasonable result after well-represented parties who engaged in arms-length negotiations over  
17          hotly-contested and unclear issues of California’s wage and hour laws, culminating in a  
18          settlement that provides a substantial benefit to all class members. In other words, the Settlement  
19          as proposed by the parties should be finally approved.

20          **V.      CLASS COUNSELS’ FEES AND COSTS**

21               **A. Attorneys’ Fees and Costs Provided in the Settlement are Fair and Reasonable**

22          In the Settlement, Defendants agreed, subject to Court approval, to pay Class Counsel an  
23          award of reasonable attorneys’ fees in the amount of \$125,000 and up to \$30,000 in costs (Bass  
24          Decl., Exh., A), for work performed for the benefit of the Class. To date, Class Counsel has  
25          incurred only \$20,284.44 in litigation costs. (Bass Decl., Exh. D). In terms of their actual time  
26          spent on the matter, Class Counsel will have collectively spent more than 373.3 hours. (Bass  
27          Decl., ¶ 55) Multiplying the hours by their hourly rates, Class Counsel’s incurred fees exceed  
28          \$282,386. (Bass Decl., ¶¶ 55-57). Class Counsel anticipate spending additional time attending the

1 final approval hearing and working with the Settlement Administrator through the disbursement  
2 and accounting process, that will likely exceed 20 hours. (*Id.*, ¶ 58).

3 Though there are two methods for determining the appropriateness of a fee award, the  
4 starting point for determining a fees' appropriateness is to assess the amount of time spent by the  
5 attorneys working for the class. In *Lealao v. Beneficial California*, the court held that:

6 The starting point of every fee award, once it is recognized that the court's role in equity is  
7 to provide just compensation for the attorney, must be a calculation of the attorney's  
8 services in terms of the time he has expended on the case. Anchoring the analysis to this  
concept is the only way of approaching the problem that can claim objectivity, a claim  
which is obviously vital to the prestige of the bar and the courts. [citation omitted]

9 *Lealao*, 82 Cal.App.4th 19, 26-27. As stated above, Class Counsel's actual fees incurred litigating  
10 this case already exceeds \$282,386. (Bass Decl., ¶¶ 55-57). Beyond a simple review of Class  
11 Counsel's hours worked, the fee award presently requested comports with attorneys' fee awards  
12 issued by other courts under both the "common fund" and "lodestar" methodologies.

13 Because the requested award is well within those typically provided a multiplier when  
14 approved by California courts, and because it is fully supported by the factors that California  
15 courts consider in determining the reasonableness of attorney fee awards in class action cases,  
16 Class Counsel respectfully submit that their request for \$125,000 in fees is appropriate.

17 **B. The Trial Court has Wide Discretion Over the Amount of the Fee Award**

18 California appellate courts have long recognized that trial courts are ideally situated to  
19 assess the quality and effectiveness of Class Counsel's efforts, and have, thus, conferred  
20 considerable equitable discretion upon trial courts to determine an appropriate fee award. *See*  
21 *Serrano*, 20 Cal.3d at 49; *accord, Glendora Community Redev. Agency v. Demeter* (1984) 155  
22 Cal.App.3d 465, 474 (holding that "[t]he rule with respect to attorney[s'] fees is that the amount  
23 to be awarded as attorney[s'] fees is left to the sound discretion of the trial court. The trial judge is  
24 in the best position to evaluate the services rendered by an attorney in his courtroom; his  
25 judgment will not be disturbed unless it is clearly wrong.").

26 California courts recognize two standard methods for calculating attorneys' fee awards in  
27 common fund class actions. The more prevalent "percentage of the fund" (also known as the  
28 "common fund" or "common benefit") method calculates attorneys' fees based on a percentage of

1 the common benefit bestowed upon the class. The “lodestar-plus-multiplier” method uses Class  
2 Counsel's “lodestar” as a basis - determined by multiplying the hours counsel expended by their  
3 hourly rates - which the Court may then enhance by a multiplier. The “lodestar-plus-multiplier”  
4 method is often a cross-check of the propriety of the “common fund” award.

### 5                   **1.       The “Common Fund” Doctrine**

6           The California Supreme Court has held it is advisable for trial courts to employ the  
7 “common fund” doctrine to award attorneys' fees and costs to Class Counsel in class actions,  
8 where litigants proceeding in a representative capacity have secured a monetary settlement or  
9 judgment on behalf of the class. *Serrano*, 20 Cal.3d at 35-40. The United States Supreme Court  
10 has specifically endorsed the use of the percentage of the fund method in paradigmatic common  
11 fund cases such as this one. *Blum v. Stenson*, 465 U.S. 886, 900 fn. 16 (1984) [“... under the  
12 ‘common fund doctrine,’ ... a reasonable fee is based on a percentage of the fund bestowed on the  
13 class...”]; see also, *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Vincent v. Hughes Air*  
14 *West, Inc.*, 557 F.2d 759, 769 (9th Cir.1977).

15           Class Counsel commenced this action with the goal of, inter alia, recovering unpaid  
16 wages, premium wages for meal and rest break violations, penalties for inaccurate wage  
17 statements, and waiting time penalties. This Settlement constitutes the achievement of that goal.  
18 As such, Class Counsel should be paid their attorneys' fees based on the common benefit they  
19 have achieved for the class. *Lealao*, 82 Cal.App.4th at 28-36, 50-51 (noting that percentage of the  
20 fund awards are appropriate in cases where the common benefit to the class can be quantified);  
21 *Serrano*, 20 Cal.3d at 35-40.

22           Various federal courts have made similar attorneys’ fee awards of a similar or greater  
23 percentage to that requested in this case. (See, e.g., *In re Pacific Enters. Sec. Litig.* (9th Cir. 1995)  
24 47 F.3d 373, 379 (affirming an award equal to 33% of the common fund); *In re Activision Sec.*  
25 *Litig.* (N.D. Cal. 1989) 723 F. Supp. 1373, 1375 (awarding plaintiffs’ counsel 32.8% of the  
26 common fund created to settle the litigation); *In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526  
27 F. Supp. 494, 500-503 (awarding 45% of \$7.3 million settlement fund); *Beech Cinema, Inc. v.*  
28 *Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F. Supp. 1195, 1197-1199

1 (approximately 53% of the settlement fund awarded); *Van Gemert v. Boeing Co.* (S.D.N.Y. 1981)  
2 516 F. Supp. 412, 420 (awarding 36% of settlement fund); *Parker v. City of Los Angeles* (1974)  
3 44 Cal.App.3d 556, 557-68 (affirming fee award to counsel of one-third of recovery achieved).)

4 In fact, fees amounting to 1/3 or more of the settlement fund are often awarded. In  
5 *Crandall v. U-Haul* (Los Angeles County Super. Ct., Case No. BC178775), the Honorable Steven  
6 Czuleger awarded a 40% attorney fee request in an overtime-exemption class action; in *Bushnell*  
7 *v. Cremar, Inc.* (Orange County Super. Ct., Case No. 657778), the Honorable Donald E.  
8 Smallwood awarded attorneys' fees in the amount of 38%; in *Abzug v. Kerkorian* (CA000981,  
9 Los Angeles County Super. Ct., November 1990), the Honorable R. William Schoettler awarded  
10 a 45% fee; in *Haitz v. Meyer, et al.* (Alameda County Super. Court, 8-20-1990 No. 572968-3), the  
11 court awarded a 40% fee; in *Elliott v. Clothestime* (Orange County Super. Ct., Case No. 01-  
12 CC00333), the Honorable Jonathan Cannon awarded a 40% fee in a wage-and-hour class action  
13 which had not yet proceeded to the class certification stage; and in both *Rippee v. Boston Market*  
14 *Corporation* (C.D. Cal. Case No.: 05 CV 1359 BTM (JMA)) and *Barile v. Boston Market*  
15 *Corporation* (C.D. Cal. Case No.: 05 CV 1360 BTM (JMA)), the Honorable Judge Barry T.  
16 Moskowitz awarded a 40% fee to plaintiffs' counsel in wage and-hour class actions that had not  
17 proceeded to the class-certification stage.

18 In this case, 1/3 of the Settlement in attorney's fees is fair and reasonable in light of the  
19 time spent by Class Counsel litigating this case and the substantial benefit received by class  
20 members. Moreover, the award is approved by the class representative and Defendants, and to  
21 date no class members have objected to the requested attorney's fees. Accordingly, the fee  
22 request here is warranted and should be granted.

## 23 2. The Lodestar Approach Demonstrates the Fee Request is Justified

24 Some California courts also use a lodestar approach, with a multiplier, in awarding  
25 attorneys' fees and costs. The lodestar method is often used to cross-check the propriety of the  
26 common fund award. *Lealao, supra*, 82 Cal.App.4th at 49; *Salton Bay Marina, Inc. v. Imperial*  
27 *Irrigation Dist.* (1985) 172 Cal.App.3d 914, 954. The issue here is not why the court should  
28 award a fee commensurate with 35% of the fund, but why the court should not award such a fee.

1 The lodestar method requires that a trial court first determine a “lodestar” figure based on  
2 a “careful compilation of the time spent in reasonable hourly compensation for each attorney  
3 involved in the presentation of the case.” *Serrano*, 20 Cal.3d at 48. Presently, the “lodestar”  
4 figure exceed \$282,386. (Bass Decl., ¶¶ 55-57). The lodestar figure may then be increased by the  
5 application of a “multiplier.” *Id.* This settlement comes after protracted litigation, and Class  
6 Counsel has provided this Court with both a summary of their hourly rates and hours billed in this  
7 matter that attest to their diligent efforts. To summarize the lodestar, Class Counsel’s time  
8 summaries show that they worked over 373.2 hours on this case, not even including all the hours  
9 spent on this motion, for the final approval hearing, and through the distribution and accounting  
10 process thereafter. (Bass Decl., ¶¶ 55-57). Based on their hourly rates, the lodestar calculation  
11 produces over \$282,386 in fees, not even requiring a multiplier. (Bass Decl., ¶¶ 55-57).

12 **3. Application of a Positive Multiplier Is Appropriate, but Unnecessary.**

13 The lodestar amount may be increased by applying a multiplier. *See Serrano*, 20 Cal.3d at  
14 49; *Beasley v. Wells Fargo Bank* (1991) 235 Cal.App.3d 1407. In California, “[m]ultipliers can  
15 range from two to four or even higher” and are routinely applied in the range requested by Class  
16 Counsel. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 254; *see also Chavez v.*  
17 *Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 (upholding 2.5 multiplier); *Glendora Community*  
18 *Redevelopment Agency v. Demeter* (1984) 155 Cal.App.3d 465 (affirming a fee award that  
19 included a 12.0 multiplier); *Craft v. County of San Bernardino* (C.D. Cal. 2008) 624 F.Supp.2d  
20 1113, 1125 (awarding a common fund fee which amounted to a 5.2 multiplier); *Vizcaino v.*  
21 *Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051 (approving a 3.65 multiplier); *Van Vranken*  
22 *v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 298-299 (approving multiplier of  
23 3.6). Some of the factors a trial court considers when determining whether to apply a multiplier  
24 are: “(1) the novelty and difficulty of the questions involved, (2) the skill displayed in presenting  
25 them, (3) the extent to which the nature of the litigation precluded other employment by the  
26 attorneys, (4) the contingent nature of the fee award.” *See Ketchum v. Moses* (2001) 24 Cal.4th  
27 1122, 1132 (citations omitted). The ultimate goal is “to entice competent counsel to undertake  
28 difficult public interest cases.” *San Bernardino Valley Audubon Soc. v. County of San*

1 *Bernardino* (1985) 155 Cal.App.3d 738, 755. Fee awards that are too small “chill the private  
2 enforcement essential to the vindication of many rights....” *Lealao v. Beneficial California, Inc.*  
3 (2000) 82 Cal.App.4th 19, 53. Recently, the Honorable Amy D. Hogue approved a multiplier of  
4 3.25 based on similar factors in *Sofia Lopez v. Citris Valley Health Partners, Inc.*, Los Angeles  
5 Superior Court case number BC544139 (Final approval granted November 19, 2015).

6 In *Ketchum*, the California Supreme Court held that fee enhancement in contingency cases  
7 is necessary to (1) fully compensate counsel for the “loan” of legal services in light of the  
8 inherent high risk of “default” posed by losing the case, and (2) encourage competent counsel to  
9 take on fee award cases. *Ketchum*, 24 Cal.4th at 1132-1133. As the court noted, “A lawyer who  
10 both bears the risk of not being paid and provides legal services is not receiving the fair market  
11 value of his work if he is paid only for the second of these functions. If he is paid no more,  
12 competent counsel will be reluctant to accept fee award cases.” *Id.* at 1133 (citations omitted).  
13 Similarly, in *Greene v. Dillingham Construction N.A., Inc.* (2002) 101 Cal.App.4th 418, 426, the  
14 Court of Appeal held that the trial court erred by refusing to consider contingent risk as a factor in  
15 the decision to apply a multiplier. The court recognized that “[t]he adjustment to the lodestar  
16 figure, e.g., to provide a fee enhancement reflecting the risk that the attorney will not receive  
17 payment if the suit does not succeed, constitutes earned compensation; unlike a windfall, it is  
18 neither unexpected nor fortuitous. Rather, it is intended to approximate market-level  
19 compensation for such services, which typically includes a premium for the risk of nonpayment  
20 or delay in payment of attorney fees.” *Id.* (citations omitted).

21 Application of a multiplier would be appropriate but is unnecessary. Having filed the case  
22 on May 14, 2020, Class Counsel will have been litigating this case for nearly 4 years before  
23 receiving any reimbursement, expending significant time and resources which could have been  
24 directed towards other cases. Class Counsel agreed to litigate this case on a contingent fee basis,  
25 and in the process assumed considerable risk given the uncertain proposition these types of cases  
26 entail. (Bass Decl., ¶ 52). As the results in other cases demonstrate, the risk presented in this case  
27 was significant. Courts frequently dismiss class and representative allegations and compel  
28 arbitration in similar cases. Class Counsel takes multiple risks while trying to vindicate the rights

1 of workers and serve to illustrate the recognition by the California Supreme Court in *Ketchum*  
2 that, if multipliers are not awarded to class counsel in the cases that are successfully settled,  
3 counsel's fees are essentially being cut because the lodestar in and of itself would not account for  
4 contingent risk. Thus, application of a multiplier would be appropriate given the contingent risk  
5 incurred by Class Counsel, the difficulty of the questions involved, the substantial benefit  
6 conferred on the Class and State as a result of the Settlement, and the skill displayed by Class  
7 Counsel. Plaintiff respectfully requests that the Court award Class Counsel the requested fees of  
8 \$125,000, under the common fund theory with a lodestar cross-check without a multiplier.

9 **C. Class Counsel's Costs Are Reasonable and Were Incurred for the Class**

10 In the course of this litigation, Class Counsel have incurred costs totaling \$20,284.44 and  
11 will incur additional expenses in filing this motion and through the completion of the  
12 disbursement and accounting process (including, but not limited to, filing this Motion and  
13 appearance at the hearing, and other appearances and communications regarding final  
14 accounting). Such litigation-related costs are reimbursable in class action cases. *In re United*  
15 *Energy Corp. Sec. Litig.*, 1989 U.S. Dist. LEXIS 19146 at \*16 (C.D. Cal. 1989) [quoting  
16 Newberg, Attorney Fee Awards § 2:19 (1987)].

17 As one commentator has noted, "the prevailing view is that expenses are awarded in  
18 addition to the fee percentage." Conte, Attorney Fee Awards, § 2:08 at 50-51 (2d ed. 1977); *In re*  
19 *GNC Shareholder Litig.*, 668 F.Supp. 450, 452 (W.D. Pa. 1987). As such, the costs incurred by  
20 Plaintiff's Counsel in this litigation are reasonable and appropriate as they served the class.

21 **D. The Proposed Service Award to the Plaintiff is Reasonable**

22 The parties have agreed to a service award of no more than \$10,000.00 to Plaintiff (Bass  
23 Decl., Exh. A). The service award is proper for several reasons. First, service awards "are not  
24 uncommon and can serve an important function in promoting class action settlements." *Sheppard*  
25 *v. Consolidated Edison Co. of New York, Inc.*, 2002 WL 2003206, \* 5 (E.D.N.Y. 2002); see also  
26 *Petrovic v. Amoco Oil Co.*, 200 F.3d 1140 (8th Cir. 1999) (noting that class representatives  
27 frequently receive substantial incentive payments); *In re Southern Ohio Correctional Facility*,  
28 175 F.R.D. 270, 272 (S.D. Ohio 1997) ("[c]ourts routinely approve incentive awards to

1 compensate named plaintiffs for the services they provided and the risks they incurred during the  
2 course of the class action litigation”).

3 Second, the incentive is proper considering that Plaintiff spent a substantial amount of her  
4 own time to ensure that the class claims could proceed and to ensure that class members received  
5 a benefit in this case. (Bass Decl., ¶¶ 61-62). Plaintiff worked with counsel to assist in this case.  
6 (Declaration of Nancy Garcia (“Garcia Decl.”)). Plaintiff fully participated in this action  
7 throughout the pendency of the litigation. She was kept well informed of the nature and extent of  
8 settlement discussions and approved the same. As such, the Incentive Payment sought for  
9 Plaintiff is reasonable and represents a small percentage of the Gross Settlement Amount. Absent  
10 the actions taken by Plaintiff, none of the Class Members would have reaped the rewards of this  
11 action. It is estimated that over the course of the lawsuit, Plaintiff spent at least 50-60 hours  
12 working on the case for the benefit of both herself and the other members of the class. *Id.* at ¶ 11.

13 Third, the parties - who conducted arms-length settlement negotiations – have agreed that  
14 the incentive is fair and reasonable in light of: (i) Class Representative’s efforts as plaintiff in the  
15 Litigation and (ii) her execution of a full, general release.

16 Fourth, notice was provided to the class that the service award would be paid, and no class  
17 member has objected as of the filing of this motion. The other class members, who undertook  
18 none of the risks which Plaintiff did, stand to substantially benefit from the Plaintiff’s willingness  
19 to come forward.

20 Lastly, courts have frequently approved substantial incentive payments to class members  
21 for their participation in class action lawsuits. See *In re Southern Ohio Correctional Facility*,  
22 *supra*, 175 F.R.D. at 272 (recognizing that “[c]ourts routinely approve incentive awards to  
23 compensate named plaintiffs for the services they provided and the risks they incurred during the  
24 course of the class action litigation.”); *Ingram v. The Coca-Cola Co.*, 200 F.R.D. 685, 694 (N.D.  
25 Ga. 2001) (\$300,000 incentive award to each named plaintiff); *Enterprise Energy Corp. v.*  
26 *Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 250-251 (S.D. Ohio 1991) (incentive  
27 payments of \$50,000 to each class representative); *In re Dunn & Bradstreet Credit Services*  
28 *Consumer Litigation*, 130 F.R.D. 366, 373-374 (S.D. Ohio 1990) (incentive payments amounting

1 to \$35,000 to \$55,000 for each class representative); see also, *Van Vranken v. Atlantic Richfield*  
2 *Co.*, 901 F.Supp. 294, 299-300 (N.D. Cal. 1995) (approving \$50,000 participation award); *Lo Re*  
3 *v. Chase Manhattan Corp.*, 1979 U.S. Dist. LEXIS 12210, \*16-17 (S.D.N.Y. 1979) (payment of  
4 \$229,000 out of \$1,579,000 settlement fund to settle named plaintiffs claims did not cause the  
5 settlement to be unreasonable).

6 In sum, the named Plaintiff took risks, bore hardships, and made sacrifices that absent  
7 class members did not. Rewarding her efforts is a proper incentive for individuals who come  
8 forward to challenge employment practices on a class-wide level, thus fulfilling the policies and  
9 purposes underlying the Labor Code.

10 **E. Submission to the LWDA and Review by Defendants**

11 Concurrently with this submission to the Court, Plaintiff's Counsel uploaded this motion,  
12 supportive declarations, Proposed Order and Judgment to the LWDA's website. (Bass Decl., ¶ 64,  
13 Exh. E).

14 **VI. CONCLUSION**

15 For the foregoing reasons, Plaintiff respectfully requests that the Court grant final  
16 approval the proposed settlement, certifying the Settlement Class, and entering the Proposed  
17 Order and Proposed Judgment submitted concurrently herewith.

18 Dated: February 27, 2024

**MAKAREM & ASSOCIATES, APLC**

21 By: Daniel Bass  
22 Daniel J. Bass  
23 Attorney for Plaintiff Nancy Garcia