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others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**FOR THE COUNTY OF YUBA**

VERONIZA SANCHEZ, individually, and  
on behalf of all others similarly situated,

Plaintiff,

vs.

LAKEVIEW CENTER, a California  
Corporation, RHONDA HOWE, an  
individual; and DOES 1-20, inclusive;

Defendants.

CASE NO. CVCV20-00425

**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: October 7, 2024

Time: 10:00 a.m.

Department: 4

Complaint Filed: May 20, 2020

1 PLEASE TAKE NOTICE that on October 7, 2024 at 10:00 a.m., or as soon thereafter as  
2 the matter may be heard in Department 4 of the above-entitled court. Plaintiff Veronica Sanchez  
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, Veronica Sanchez  
10 (“Plaintiff”), and Defendants Lakeview Center and Rhonda Howe (“Defendants”), (collectively  
11 “Parties”) is fair, reasonable, and adequate, achieved as the result of informed, arms-length  
12 negotiations, and deserving of approval for the benefit of the Settlement Class members to whom it  
13 pertains.

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

18  
19 Dated: September 10, 2024

**MAKAREM & ASSOCIATES, APLC**

20  
21  
22 By: Daniel Bass  
23 Daniel J. Bass  
24 Attorney for Veronica Sanchez  
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## I. INTRODUCTION

Pursuant to California Rules of Court, Rule 3.769(g), Plaintiff, Veronica Sanchez (“Class Representative” or “Plaintiff”), as Class Representative—of the “Class” which means all individuals employed by Defendant Lakeview Center, as a non-exempt hourly employees employed in the state of California at any time between May 20, 2015 and October 2, 2022 (“Class Members”). (see Declaration of Daniel J. Bass [“Bass Decl.”], ¶ 12).

The Settlement will resolve all of Plaintiff’s class claims against Defendant. As set forth in Plaintiff’s Motion for Preliminary Approval, which was granted by this Court on June 10, 2024, (Bass Decl., Exh. B) this Court should approve as fair and reasonable the class-wide, non-reversionary Class Action Settlement Agreement (“Settlement Agreement”). (Bass Decl., Exh. A). Two Hundred Fifty Thousand Dollars (\$250,000.00), inclusive of all fees and costs (the “Gross Settlement Amount”) shall be paid for settlement of the claims of the Settlement Class. (Bass Decl., ¶ 13).

Only one Settlement Class member has requested exclusion from the Settlement, and the administrator reports that a total of 143 Class Members are part of this Settlement, which represents a 99.31% participation rate. (Declaration of Tim Cunningham [“Cunningham Decl.”], ¶¶ 9-11). Moreover, as no one has objected to the Settlement, this reflects that the Settlement was well-received by all class members. *See* Cunningham Decl., ¶ 10; *see also, Anderson v. Nextel Retail Stores, LLC*, 2010 U.S. Dist. LEXIS 43377 at \*49 (C.D. Cal. 2010) (holding that a relatively high participation rate and extremely low objection rate weighed in favor of approving the settlement). Nor are there any workweek disputes. (Cunningham Decl., ¶ 10). 143 out of 144 Settlement Class Members will be issued settlement payment. (*Id.* ¶¶ 9-11). A nearly unanimous participation rate “supports the fairness, reasonableness, and adequacy of the settlement.” *Williams v. Costco Wholesale Corp.*, 2010 U.S. Dist. LEXIS 67731 at \*13 (S.D. Cal. 2010).

Moreover, the Court should grant Plaintiff's request for a Class Representative's Service Award of \$10,000 (Bass Decl., ¶ 15), Plaintiff's request for attorneys' fees of \$82,500 (Bass Decl., ¶ 64), Class Counsel's costs of \$9,920.76 (*Id.*), and settlement administration costs of \$8,500 (Cunningham 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**

Defendants employed Plaintiff as a non-exempt employee, serving as a cashier and team lead. (Declaration of Daniel J. Bass "Bass Decl.", ¶ 3). During the time that Plaintiff was employed, she was subject to the same policies and procedures as all other non-exempt hourly paid employees, which among other things, Plaintiff contends caused employees to work long hours, sometimes off the clock, and without breaks. As such, Plaintiff and his fellow class members were denied full payment of their wages, including overtime and double time, and legally compliant breaks. (*Id.* at ¶¶ 3-5).

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

This matter involves a lawsuit brought by Plaintiff on behalf of non-exempt employees of Defendants. The action is the putative class action pending in Yuba County, Case No. CVCV20-00425, filed on May 20, 2020.

Defendants contend that they at all times complied with California law. Defendants assert that it properly paid employees for all time worked. Defendants further contend that they provided Plaintiff and other putative class members with compliant meal and rest periods, and that to the extent any employee did not take a compliant meal or rest period, the reason for the non-compliant

meal or rest period would be an individualized issue that would preclude class certification. (Bass Decl. at ¶ 6.)

### C. Investigation

Before filing the lawsuit, Class Counsel investigated and researched the facts and circumstances underlying the pertinent issues and the laws applicable thereto. This required thorough discussions between Class Counsel and the Plaintiff, as well as preliminary research into the various legal issues and employment practices involved in the case. After conducting their initial investigation, Class Counsel determined that Plaintiff's claims were well-suited for class action adjudication owing to what appeared to be a common set of policies and procedures that impacted Plaintiff and other putative class members in a similar fashion. (*Id.* at ¶ 7).

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

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

Defendants, for their part, vigorously contested liability, the amount of claimed damages, and the propriety of class certification. After Class Counsel analyzed the relevant documentary and testimonial evidence, Class Counsel determined that this case was appropriate for resolution via settlement. (*Id.* at ¶ 8).

### D. Mediation and Settlement

On April 28, 2022, the Parties participated in an all-day mediation presided over by experienced employment law mediator David Perrault. A settlement in principle was eventually reached and the Parties thereafter negotiated the details of a long form settlement agreement, which was then renegotiated following the discovery that the class was larger than originally

believed. As a result, the Parties eventually negotiated the details of the settlement agreement which cut-off the settlement class at a specific date to not increase the negotiated class size and which Plaintiff now seeks the Court’s final approval thereof. (*Id.* at ¶¶ 10, Exhs. A-B).

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

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

The “Class” or “Settlement Class” or “Settlement Class Members” means all current and former non-exempt hourly employees employed by Defendant Lakeview Center, Inc. in California at any time from May 20, 2015 to October 2, 2022. Defendant represents that the Class consists of 146 Class Members that worked a total of approximately 2,290 workweeks during the Class Period through October 2, 2022. (Bass Decl., ¶ 12). As of the date of this filing, only one Settlement Class members has requested exclusion from the Settlement and it is anticipated that 143 of 144 Settlement Class members will participate in the Settlement. (Cunningham Decl., ¶¶ 9-11).

#### **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 \$250,000.00. (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 ¶¶ 13-20, Cunningham Decl. ¶ 12):

- **Attorneys’ Fees and Costs:** Up to 33% of the Gross Settlement Amount or \$82,500 plus up to \$15,000 in actual costs and expenses;
- **Class Representative Service Payment:** Up to \$10,000 to the named Plaintiff as a class representative;
- **Settlement Administration Costs:** \$8,500 from the Gross Settlement Amount for the costs associated with administration of the Settlement.
- **LWDA PAGA Penalty Amount:** 75% share of the \$7,500.00 (or \$5,625) allocated from the Gross Settlement Amount for PAGA penalties that will be paid to the LWDA.

- **Individual PAGA Payments:** 25% share of the \$7,500.00 (or \$1,875.00) allocated from the Gross Settlement Amount for PAGA penalties that will be paid to Aggrieved Employees based on their PAGA Period Pay Periods.

Thus, the net Settlement amount was estimated to be around \$126,500 (Cunningham Decl., ¶ 14), though this number will increase by \$5,079.24 in authorized but not spent litigation costs. (Bass Decl., ¶¶ 14, 63, Exh D). Each Participating Class Member shall be eligible to receive an Individual Class Payment, which is calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks. (Bass Decl., ¶ 20). 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 \$884.62, and the highest is \$6,862.16. (Cunningham Decl., ¶ 13).

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

According to the Settlement Agreement "Effective Date" means the date when all of the following events have occurred: (a) this Stipulation has been executed by all Parties and by Class Counsel; (b) the Court has given preliminary approval to the Settlement; (c) notice has been given to the Settlement Class Members providing them with an opportunity to Opt-Out of the Class Settlement; (d) the Court has held a Final Approval and Fairness Hearing and entered a final order and judgment certifying the Class and approving this Stipulation; (e) notice of final judgment has been given to the Settlement Class Members pursuant to California Rules of Court, rule 3.771(b); and (f) the later of the following events: the expiration of the period for filing any appeal, writ, or other appellate proceeding opposing the Class Settlement has elapsed without any appeal, writ or other appellate proceeding having been filed; or the dismissal of any appeal, writ, or other appellate proceeding opposing the Class Settlement with no right to pursue further remedies or relief; or any appeal, writ, or the issuance of such other final appellate order

1 upholding the Court's final order with no right to pursue further remedies or relief. Bass Decl.,  
2 Exh. A at I(21). The Settlement Administrator shall distribute to Class Counsel the attorneys' fees  
3 and expenses approved by the Court to Class Counsel no later than 30 days after the Effective  
4 Date. (*Id.*, Exh. A at VII(3)). The Settlement Administrator shall distribute to the Class  
5 Representative the Incentive Award approved by the Court no later than 30 days after the  
6 Effective Date. (*Id.*, Exh. A at VII(4)).

7         The Settlement Administrator shall make every effort to pay the Employee's Taxes and  
8 Required Withholding associated with each Class Participant's Individual Settlement Amount and  
9 mail the Individual Settlement Amount to each Class Participant, by first class U.S. mail, to the  
10 last-known address no later than thirty (30) days after the Effective Date. If the Settlement  
11 Administrator is not able to do so within the time period set forth above, it shall so inform Class  
12 Counsel and Defense Counsel and provide an approximate date by which the Employee's Taxes  
13 and Required Withholding shall be paid and the Individual Settlement Amounts will be mailed.  
14 Under no circumstances shall the Settlement Administrator distribute checks to Class Participants  
15 until all Individual Settlement Amounts have been considered, calculated, and accounted for, and  
16 all of the remaining monetary obligations have been calculated and accounted for. Within one-  
17 hundred twenty (120) days of mailing the Individual Settlement Amounts to Class Participants,  
18 the Settlement Administrator shall file with the Court and provide to Class Counsel a declaration  
19 of payment. (*Id.*, Exh. A at VII(5)). Any funds associated with checks that have not been cashed  
20 within 90 days, will become void and the Individual Settlement Amount associated with the un-  
21 cashed check will be distributed pursuant to Code of Civil Procedure section 384 to the "Hands of  
22 Hope" or other cy pres beneficiary to be selected by the Parties and approved by the Court. (*Id.*,  
23 Exh. A at VII(6)).

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

10  
11 [p]roper deference to the private consensual decision of the parties, [since] the court’s  
12 intrusion upon what is otherwise a private consensual agreement negotiated between the  
13 parties ... must be limited to the extent necessary to reach a reasoned judgment that the  
agreement is not the product of fraud or overreaching by, or collusion between, the  
negotiating parties, and the settlement, taken as a whole, is fair, reasonable and adequate ...  
(*Hanlon*, 150 F.3d at 1027.)

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

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

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

24 Plaintiff’s counsel understood and appreciated the defenses and position of Defendants but  
25 believed that Plaintiff would ultimately succeed in the action. In light of the strongly divergent

1 views, the parties, were able to negotiate a fair settlement, considering the costs and risks of  
2 continued litigation. The negotiations were at all times conducted professionally and at arm's  
3 length and have produced a result that the Parties believe to be in their respective best interests.  
4 (*Id.*, ¶ 30)

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

13 The trial court has broad discretion to determine whether the settlement is fair. [Citation.]  
14 It should consider relevant factors, such as the strength of Plaintiff's case, the risk, expense,  
15 complexity and likely duration of further litigation, the risk of maintaining class action  
16 status through trial, the amount offered in settlement, the extent of discovery completed  
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.

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

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

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

To allow this Court to make an informed assessment pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 18 Cal.App.4th 116, Plaintiff's Counsel provides the following assessment of the case and settlement. Plaintiff's Counsel believes that the settlement is a very good one for the class members. In this case, Plaintiff sought unpaid wages and statutory penalties as well as equitable remedies of declaratory relief, disgorgement, accounting, and restitution. (Bass Decl., ¶ 34). Plaintiff estimated Defendant's total exposure for unpaid wages at \$223,032.59 and 203 penalties at \$386,491.20. As such, the \$250,000 settlement represents over 100% of the estimated unpaid wages due in this case and approximately 41% of the \$609,523.79 for Defendants' non-penalty exposure plus derivative 203 penalties in Plaintiff's analysis. This is a reasonable recovery, particularly given the number of class members at issue and the size of Defendants' operations. (Bass Decl., ¶ 35).

Courts have determined that settlements are, of course, reasonable even where Plaintiffs recover only a portion of their actual losses. See *Behrens v. Wometco Enters., Inc.* (S.D. Fla. 1988) 118 F.R.D. 534, 542, *aff'd*, (11th Cir. 1990) 899 F.2d 21 ("[T]he fact that a proposed settlement

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

21 Below, Plaintiff details the issues that necessitated deductions from the maximum potential  
22 value of this case to arrive at the reasonable Maximum Settlement Amount derived in this action.  
23 Here there were estimated to be approximately 146 Class Members who collectively worked a total  
24 of 2,290 Workweeks during the Class period. Plaintiff’s analysis of Defendants’ time records  
25

1 between 2016 and 2020 showed that employees worked an average of 4.3 shifts per workweek for  
2 an average of \$11.03 per hour. (Bass Decl. ¶ 36).

3 **Rest Periods:** Plaintiff calculated Defendant's maximum liability to be 4.3 violations per  
4 employee per workweek at the average hourly rate of \$11.03 per violation. As such, with 2,290  
5 workweeks during the class period, Plaintiff estimated that Defendant's exposure could be as high  
6 as \$108,612.41. Plaintiff did not discount this number or the calculations that follow in order to  
7 arrive at the settlement; rather, Plaintiff discounted the number in order to reach a settlement that  
8 understood the risks of continued litigation and difficulties in showing a 100% violation rate for  
9 rest breaks. (Bass Decl. ¶ 37).

10 **Meal Periods:** Plaintiff calculated Defendants' potential liability based on the records  
11 reviewed in advance of mediation. Those time records showed a 66.7% violation rate in meal  
12 periods based on Defendants' time records, most of which were meal break eligible shifts that  
13 simply did not show a meal break was taken. A 66.7% violation rate at 4.3 shifts per week at the  
14 average hourly rate of \$11.03 per violation over 2,290 workweeks, Plaintiff estimated that  
15 Defendant's exposure could be as high as \$ 72,444.48. Plaintiff did not discount this number or  
16 the calculations that follow in order to arrive at the settlement; rather, Plaintiff discounted the  
17 number in order to reach a settlement that understood the risks of continued litigation and  
18 difficulties in showing high violation rate for meal breaks during employee shifts based on a lack  
19 of records. (Bass Decl. ¶ 38).

20 **Unpaid Off-the-Clock:** Based on Plaintiff's experiences and personal observations at  
21 work, Plaintiff estimated that approximately 1 hour (60 minutes) of work was performed off-the-  
22 clock by employees on a weekly basis with about 40.5% of that unpaid time being overtime,  
23 resulting in an approximately \$18.33 ( $11.03 \times .595 = 11.625$ ;  $11.03 \times .405 \times 1.5 = 6.70$ ;  
24  $11.625 + 6.70 = 18.325$ ) underpayment per workweek. Thus, Plaintiff calculated Defendant's  
25

1 potential exposure as  $\$18.33 \times 2.290 \text{ workweeks} = \$42,975.70$  in underpayments for off-the-  
2 clock work. However, the majority of this claim dealt with unrecorded time, which again would  
3 require significant testimony to even certify, much less prove at trial, and the resulting  
4 manageability issues in doing so. As such, Plaintiff's counsel believed a significant discount of  
5 this claim was warranted and settlement appropriate resolution. (Bass Decl. ¶ 39).

6 **Penalties:** Although the Class arguably could have seen a payout of approximately  
7 \$386,491.20 for waiting time penalties (for 146 employees x 30 days x 8 hours/day x \$11.03/hour)  
8 and additional penalties for wage statement penalties and PAGA penalties, Plaintiff's Counsel had  
9 to weigh the likelihood of recovery against probable defenses and the wide discretion Courts have  
10 exercised in awarding Labor code penalties. Along these lines, Plaintiff considered that Defendant  
11 would argue that Plaintiff could not prove the "willful" prong needed to obtain waiting time  
12 penalties under Cal. Lab. Code § 203 and would further argue that Plaintiff could not show that  
13 Class Members suffered an "injury" as a result of wage statement violations, as required by Cal.  
14 Lab. Code § 226. Further, Plaintiff arguably could not recover any waiting time penalties for meal  
15 and rest claims. Moreover, Plaintiff would not recover any derivative penalties if he failed to prove  
16 the underlying claims. In addition, given Defendants' operations, Plaintiff considered the likelihood  
17 of the Court using its discretion to reduce the substantial PAGA penalties as unjust, arbitrary,  
18 oppressive, or confiscatory. *Amaral v. Cintas Corp.* No. 2 (2008) 163 Cal.App.4th 1157. These  
19 reductions can be quite substantial, reducing the proven PAGA penalties down to a few percentage  
20 points of what they were initially, even after being successfully proven. (Bass Decl. ¶ 40).

21 **Certification in General:** The great discretion afforded trial courts in electing to grant or  
22 deny class certification, and the resultant possibility that this Court would deny certification of any  
23 of the claims, resulting in no recovery whatsoever for those unnamed class members further  
24 weighed in favor of settlement. Indeed, going into settlement discussions and during the course of  
25

1 constructing the settlement, Class Counsel bore in mind similar meal and rest break cases wherein  
2 class certification was denied. *See e.g. In re Lamps Plus Overtime Cases* (2012) 209 Cal.App.4th  
3 35; *Washington v. Joe's Crab Shack* (N.D. Cal. 2010) 271 F.R.D. 629 (“individualized inquiry will  
4 be required to determine whether any single employee failed to take a meal break because he/she  
5 was too busy, and also to determine whether a particular employee signed a waiver based on a  
6 decision not to take meal breaks”). *Hernandez v. Chipotle Mexican Grill, Inc.* (2012) 146  
7 Cal.Rptr.3d 424, 2012 WL 3579567, \*10.

8 **Trial and Manageability Issues:** While Plaintiff was confident in the strength of her  
9 claims, as is always the case with a trial, Plaintiff needed to accept that there was a possibility that  
10 she would not prevail at trial. Compromise is inherent and necessary in the settlement process.  
11 Thus, even if “the relief afforded by the proposed settlement is substantially narrower than it would  
12 be if the suits were to be successfully litigated,” this is no bar to a class settlement because “the  
13 public interest may indeed be served by a voluntary settlement in which each side gives ground in  
14 the interest of avoiding litigation.” *Id.* at 250 (quoting *Air Line Stewards, Loc. 550 v. American*  
15 *Airlines, Inc.*, (7th Cir.1972) 455 F.2d 101, 109. The Ninth Circuit observed “the very essence of  
16 a settlement is compromise, ‘a yielding of absolutes and an abandoning of highest hopes.’” *Officers*  
17 *for Justice v. Civil Serv. Commission* (9th Cir.1982) 688 F.2d 615, 624 (citation omitted). Thus,  
18 when analyzing the amount offered in settlement, the Court should examine “the complete package  
19 taken as a whole,” and the amount is “not to be judged against a hypothetical or speculative measure  
20 of what might have been achieved by the negotiators.” *Id.* at pp. 625, 628.

21 Given the difficulties Plaintiff and the Settlement Class faced, both in terms of certification  
22 and in adjudicating their claims on the merits, the litigation discounts afforded by Plaintiff are  
23 appropriate and the settlement is fair, reasonable, and adequate. In the present case, it is clear that  
24 the settlement before this Court is the best course of action as it ensures a fair and adequate recovery  
25

1 for the members of the class. Thus, it was clearly reasonable for Plaintiff to negotiate a smaller  
2 certain award rather than seek the full recovery but risk recovering nothing.

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

11 The settlement amount was a negotiated compromise, factoring in the risks related to  
12 certification, liability, and damages. Taking into account all of the circumstances of the action and  
13 the significant factual and legal defenses raised by Defendants against certification, liability, and  
14 damages, Class Counsel believe that the settlement is fair and reasonable. Each Class Member's  
15 individual share of the settlement amount is tailored to the number of weeks worked by each Class  
16 Member during the class period so the distribution is weighted in favor of those Class Members  
17 who were potentially most affected by the alleged violations. Moreover, because the class consists  
18 of several employees, it was unlikely that the potential monetary claims of individual Class  
19 Members would have proved viable without the class-action mechanism. (Bass Decl. ¶ 42).

### 20 **C. The Experience and Views of Counsel**

21 "Parties represented by competent counsel are better positioned than courts to produce a  
22 settlement that fairly reflects each party's expected outcome in litigation." *In re Pacific*  
23 *Enterprises Security Litigation*, 47 F.3d 373, 378 (9th Cir. 1995). Here, Plaintiff is represented by  
24 competent and experienced counsel who possess extensive experience litigating wage and hour  
25

1 class actions and have been appointed as class counsel in numerous cases alleging similar claims.  
2 (Bass Decl., ¶¶ 46-52).

3       There is an initial presumption that a proposed settlement is fair and reasonable if it is the  
4 result of arms-length negotiations. See *Williams v. Vukovich*, 720 F.2d 909, 922-923 (6th Cir,  
5 1983) (“The court should defer to the judgment of experienced counsel who have competently  
6 evaluated the strengths of his proofs.”); *In re Excess Value Ins. Coverage Litig.*, No. M-21-84  
7 (RMB) 2004 WL 1724980, at \*10 (S.D.N.Y. July 30, 2004) (“Where ‘the court finds the  
8 settlement is the product of arm’s length negotiations conducted by experienced counsel  
9 knowledgeable in complex class litigation, the settlement will enjoy a presumption of fairness.’”);  
10 *In re Inter-Op Hip Prosthesis Liab. Litig.*, 204 F.R.D. 330, 351 (N.D. Ohio 2001) (granting  
11 preliminary approval of settlement “where the settlement is the result of extensive negotiations by  
12 experienced counsel...”); see also 2 Hebert Newberg & Alba Conte, *Newberg on Class Actions*,  
13 §11.41 at 90 (4th Ed. 2001).

14       Counsel for Plaintiff have extensive experience in employment law, particularly wage and  
15 hour class action litigation. (Bass Decl., ¶¶ 46-52). Counsel for Plaintiff and Defendants each  
16 zealously negotiated on behalf of their respective clients’ best interests, and the Settlement was  
17 reach after lengthy negotiations. As a result, the Settlement is presumed to be fair and reasonable,  
18 and was not the product of collusion.

19       **D.       Only One Class Member Has Requested Exclusion from the Settlement, and**  
20       **No Class Members Have Objected to the Settlement**

21       As part of CPT’s preparation for mailing, all 144 names and addresses contained in the  
22 Class List were processed against the National Change of Address (“NCOA”) database,  
23 maintained by the United States Postal Service (“USPS”), for purposes of updating and  
24 confirming the mailing addresses of the Settlement Class Members before mailing of the Notice  
25

1 Packet. (See Cunningham Decl., ¶ 5). On June 25, 2024, the Notices were mailed by U.S. first  
2 class mail to the 144 Settlement Class Members. Thirty-eight Notice Packets were returned as  
3 undeliverable, all of which were skipped traced, thirty-five of which were re-mailed to newly  
4 discovered addresses, and one of which was forwarded by CPT. (*Id.*, ¶¶ 7-8). As of this date, five  
5 of the Notice Packets were deemed undeliverable. (*Id.*, ¶ 8).

6 The Administrator has received only one request for exclusion from the Settlement, and  
7 no disputes or objections. (*Id.*, ¶¶ 9-10). As of the date of this filing, a 99.31% participation rate is  
8 anticipated. (*Id.*, ¶ 11). Accordingly, all factors typically used by California courts to determine  
9 the appropriateness of final approval of a class action settlement weigh in favor of finding that  
10 this Settlement is a fair and reasonable result after well-represented parties who engaged in arms-  
11 length negotiations over hotly-contested and unclear issues of California's wage and hour laws,  
12 culminating in a settlement that provides a substantial benefit to the class members. In other  
13 words, the Settlement as proposed by the parties should be finally approved.

#### 14 **V. CLASS COUNSELS' FEES AND COSTS**

##### 15 **A. Attorneys' Fees and Costs Provided in the Settlement are Fair and Reasonable**

16 In the Settlement, Defendants agreed, subject to Court approval, to pay Class Counsel an  
17 award of reasonable attorneys' fees in the amount of \$82,500 and up to \$15,000 in costs (Bass  
18 Decl., Exh., A), for work performed for the benefit of the Class. To date, Class Counsel has  
19 incurred only \$9,920.76 in litigation costs. (Bass Decl., Exh. D). In terms of their actual time  
20 spent on the matter, Class Counsel will have collectively spent more than 248.8 hours. (Bass  
21 Decl., ¶ 57) Multiplying the hours by their hourly rates, Class Counsel's incurred fees exceed  
22 \$187,860. (Bass Decl., ¶¶ 57-59). Class Counsel anticipate spending additional time attending the  
23 final approval hearing and working with the Settlement Administrator through the disbursement  
24 and accounting process, that will likely exceed more than 20 hours. (*Id.*, ¶ 59).

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

4           The starting point of every fee award, once it is recognized that the court's role in equity is  
5 to provide just compensation for the attorney, must be a calculation of the attorney's  
6 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]

7 *Lealao*, 82 Cal.App.4th 19, 26-27. As stated above, Class Counsel's actual fees incurred litigating  
8 this case already exceed \$187,860. (Bass Decl., ¶¶ 56-57). Beyond a simple review of Class  
9 Counsel's hours worked, the fee award presently requested comports with attorneys' fee awards  
10 issued by other courts under both the "common fund" and "lodestar" methodologies.

11           Because the requested award is well within those typically provided a multiplier when  
12 approved by California courts, and because it is fully supported by the factors that California  
13 courts consider in determining the reasonableness of attorney fee awards in class action cases,  
14 Class Counsel respectfully submit that their request for \$82,500 in fees is appropriate.

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

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

24           California courts recognize two standard methods for calculating attorneys' fee awards in  
25 common fund class actions. The more prevalent "percentage of the fund" (also known as the

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

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

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

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

23 Various federal courts have made similar attorneys' fee awards of a similar or greater  
24 percentage to that requested in this case. (See, e.g., *In re Pacific Enters. Sec. Litig.* (9th Cir. 1995)  
25

1 47 F.3d 373, 379 (affirming an award equal to 33% of the common fund); *In re Activision Sec.*  
2 *Litig.* (N.D. Cal. 1989) 723 F. Supp. 1373, 1375 (awarding plaintiffs' counsel 32.8% of the  
3 common fund created to settle the litigation); *In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526  
4 F. Supp. 494, 500-503 (awarding 45% of \$7.3 million settlement fund); *Beech Cinema, Inc. v.*  
5 *Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F. Supp. 1195, 1197-1199  
6 (approximately 53% of the settlement fund awarded); *Van Gemert v. Boeing Co.* (S.D.N.Y. 1981)  
7 516 F. Supp. 412, 420 (awarding 36% of settlement fund); *Parker v. City of Los Angeles* (1974)  
8 44 Cal.App.3d 556, 557-68 (affirming fee award to counsel of one-third of recovery achieved).)

9 In fact, fees amounting to 35% or more of the settlement fund are often awarded. In  
10 *Crandall v. U-Haul* (Los Angeles County Super. Ct., Case No. BC178775), the Honorable Steven  
11 Czuleger awarded a 40% attorney fee request in an overtime-exemption class action; in *Bushnell*  
12 *v. Cremer, Inc.* (Orange County Super. Ct., Case No. 657778), the Honorable Donald E.  
13 Smallwood awarded attorneys' fees in the amount of 38%; in *Abzug v. Kerkorian* (CA000981,  
14 Los Angeles County Super. Ct., November 1990), the Honorable R. William Schoettler awarded  
15 a 45% fee; in *Haitz v. Meyer, et al.* (Alameda County Super. Court, 8-20-1990 No. 572968-3), the  
16 court awarded a 40% fee; in *Elliott v. Clothestime* (Orange County Super. Ct., Case No. 01-  
17 CC00333), the Honorable Jonathan Cannon awarded a 40% fee in a wage-and-hour class action  
18 which had not yet proceeded to the class certification stage; and in both *Rippee v. Boston Market*  
19 *Corporation* (C.D. Cal. Case No.: 05 CV 1359 BTM (JMA)) and *Barile v. Boston Market*  
20 *Corporation* (C.D. Cal. Case No.: 05 CV 1360 BTM (JMA)), the Honorable Judge Barry T.  
21 Moskowitz awarded a 40% fee to plaintiffs' counsel in wage-and-hour class actions that had not  
22 proceeded to the class-certification stage.

23 In this case, 33% of the Settlement in attorney's fees is fair and reasonable in light of the  
24 time spent by Class Counsel litigating this case and the substantial benefit received by class  
25

1 members. Moreover, the award is approved by the class representative and Defendants, and to  
2 date no class members have objected to the requested attorney's fees. Accordingly, the fee  
3 request here is warranted and should be granted.

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

5 Some California courts also use a lodestar approach, with a multiplier, in awarding  
6 attorneys' fees and costs. The lodestar method is often used to cross-check the propriety of the  
7 common fund award. *Lealao, supra*, 82 Cal.App.4th at 49; *Salton Bay Marina, Inc. v. Imperial*  
8 *Irrigation Dist.* (1985) 172 Cal.App.3d 914, 954. The issue here is not why the court should  
9 award a fee commensurate with 33% of the fund, but why the court should not award such a fee.

10 The lodestar method requires that a trial court first determine a "lodestar" figure based on  
11 a "careful compilation of the time spent in reasonable hourly compensation for each attorney  
12 involved in the presentation of the case." *Serrano*, 20 Cal.3d at 48. Presently, the "lodestar"  
13 figure is over \$47,152.00. (Bass Decl., ¶¶ 56-57). The lodestar figure may then be increased by  
14 the application of a "multiplier." *Id.* This settlement comes after protracted litigation, and Class  
15 Counsel has provided this Court with both a summary of their hourly rates and hours billed in this  
16 matter that attest to their diligent efforts. To summarize the lodestar, Class Counsel's time  
17 summaries show that they worked over 248.8 hours on this case, not even including all the hours  
18 spent on this motion, for the final approval hearing, and through the distribution and accounting  
19 process thereafter. (Bass Decl., ¶¶ 57-59). Based on their hourly rates, the lodestar calculation  
20 produces over \$187,860 in fees, not even requiring a multiplier. (Bass Decl., ¶¶ 57-59).

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

22 The lodestar amount may be increased by applying a multiplier. *See*  
23 *Serrano*, 20 Cal.3d at 49; *Beasley v. Wells Fargo Bank* (1991) 235 Cal.App.3d 1407. In  
24 California, "[m]ultipliers can range from two to four or even higher" and are routinely applied in  
25

1 the range requested by Class Counsel. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th  
2 224, 254; *see also Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 (upholding 2.5  
3 multiplier); *Glendora Community Redevelopment Agency v. Demeter* (1984) 155 Cal.App.3d 465  
4 (affirming a fee award that included a 12.0 multiplier); *Craft v. County of San Bernardino* (C.D.  
5 Cal. 2008) 624 F.Supp.2d 1113, 1125 (awarding a common fund fee which amounted to a 5.2  
6 multiplier); *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051 (approving a 3.65  
7 multiplier); *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 298-299  
8 (approving multiplier of 3.6). Some of the factors a trial court considers when determining  
9 whether to apply a multiplier are: “(1) the novelty and difficulty of the questions involved, (2) the  
10 skill displayed in presenting them, (3) the extent to which the nature of the litigation precluded  
11 other employment by the attorneys, (4) the contingent nature of the fee award.” *See Ketchum v.*  
12 *Moses* (2001) 24 Cal.4th 1122, 1132 (citations omitted). The ultimate goal is “to entice  
13 competent counsel to undertake difficult public interest cases.” *San Bernardino Valley Audubon*  
14 *Soc. v. County of San Bernardino* (1985) 155 Cal.App.3d 738, 755. Fee awards that are too small  
15 “chill the private enforcement essential to the vindication of many rights....” *Lealao v. Beneficial*  
16 *California, Inc.* (2000) 82 Cal.App.4th 19, 53. Recently, the Honorable Amy D. Hogue approved  
17 a multiplier of 3.25 based on similar factors in *Sofia Lopez v. Citris Valley Health Partners, Inc.*,  
18 Los Angeles Superior Court case number BC544139 (Final approval granted November 19,  
19 2015). In *Ketchum*, the California Supreme Court held that fee enhancement in contingency cases  
20 is necessary to (1) fully compensate counsel for the “loan” of legal services in light of the  
21 inherent high risk of “default” posed by losing the case, and (2) encourage competent counsel to  
22 take on fee award cases. *Ketchum*, 24 Cal.4th at 1132-1133. As the court noted, “A lawyer who  
23 both bears the risk of not being paid and provides legal services is not receiving the fair market  
24 value of his work if he is paid only for the second of these functions. If he is paid no more,  
25

1 competent counsel will be reluctant to accept fee award cases.” *Id.* at 1133 (citations omitted).  
2 Similarly, in *Greene v. Dillingham Construction N.A., Inc.* (2002) 101 Cal.App.4th 418, 426, the  
3 Court of Appeal held that the trial court erred by refusing to consider contingent risk as a factor in  
4 the decision to apply a multiplier. The court recognized that “[t]he adjustment to the lodestar  
5 figure, e.g., to provide a fee enhancement reflecting the risk that the attorney will not receive  
6 payment if the suit does not succeed, constitutes earned compensation; unlike a windfall, it is  
7 neither unexpected nor fortuitous. Rather, it is intended to approximate market-level  
8 compensation for such services, which typically includes a premium for the risk of nonpayment  
9 or delay in payment of attorney fees.” *Id.* (citations omitted).

10       Application of a multiplier would be appropriate but is unnecessary. Having filed the case  
11 on May 20, 2020, Class Counsel will have been litigating this case for more than 4 years before  
12 receiving any reimbursement, expending significant time and resources which could have been  
13 directed towards other cases. Class Counsel agreed to litigate this case on a contingent fee basis,  
14 and in the process assumed considerable risk given the uncertain proposition these types of cases  
15 entail. (Bass Decl., ¶ 55). As the results in other cases demonstrate, the risk presented in this case  
16 was significant. Courts frequently dismiss class and representative allegations and compel  
17 arbitration in similar cases. Class Counsel takes multiple risks while trying to vindicate the rights  
18 of workers and serve to illustrate the recognition by the California Supreme Court in *Ketchum*  
19 that, if multipliers are not awarded to class counsel in the cases that are successfully settled,  
20 counsel’s fees are essentially being cut because the lodestar in and of itself would not account for  
21 contingent risk. Thus, application of a multiplier would be appropriate given the contingent risk  
22 incurred by Class Counsel, the difficulty of the questions involved, the substantial benefit  
23 conferred on the Class and State as a result of the Settlement, and the skill displayed by Class  
24  
25  
26

1 Counsel. Plaintiff respectfully requests that the Court award Class Counsel the requested fees of  
2 \$82,500.00, under the common fund theory with a lodestar cross-check without a multiplier.

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

4 In the course of this litigation, Class Counsel have incurred costs totaling \$9,920.76 and  
5 will incur additional expenses in filing this motion and through the completion of the  
6 disbursement and accounting process (including, but not limited to, filing this Motion and  
7 appearance at the hearing, and other appearances and communications regarding final  
8 accounting). Such litigation-related costs are reimbursable in class action cases. *In re United*  
9 *Energy Corp. Sec. Litig.*, 1989 U.S. Dist. LEXIS 19146 at \*16 (C.D. Cal. 1989) [quoting  
10 Newberg, Attorney Fee Awards § 2:19 (1987)].

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

15 **D. The Proposed Incentive Award to the Plaintiff is Reasonable**

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

Second, the incentive is proper considering that Plaintiff spent a substantial amount of her own time to ensure that the class claims could proceed and to ensure that class members received a benefit in this case. (Bass Decl., ¶¶ 15-16). Plaintiff worked with counsel to assist in this case. (Declaration of Veronica Sanchez (“Sanchez Decl.”) ¶¶ 6-7). Specifically, Plaintiff met with her attorneys before the lawsuit was filed and discussed her experience working for Defendants. Plaintiff also searched for all documents related to her employment with Defendant. *Id.* Throughout the litigation, Plaintiff remained in close contact with counsel and engaged in numerous telephone conversations regarding the claims in the case and Defendants’ defenses to those claims. *Id.* Plaintiff assisted in preparation for mediation. *Id.* Plaintiff had numerous conversations with counsel regarding the potential of the lawsuit, as well as the terms of the ultimate Settlement Agreement which Plaintiff reviewed the drafts and versions thereof. *Id.* It is estimated that over the course of the lawsuit, Plaintiff spent over 50-60 hours working on the case for the benefit of both herself and the other members of the class. *Id.* at ¶ 6.

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

Fourth, notice was provided to the class that the service award would be paid, and no class member has objected. The other class members, who undertook none of the risks which Plaintiff did, stand to substantially benefit from the Plaintiff's willingness to come forward.

Lastly, courts have frequently approved substantial incentive payments to class members for their participation in class action lawsuits. See *In re Southern Ohio Correctional Facility*, *supra*, 175 F.R.D. at 272 (recognizing that “[c]ourts routinely approve incentive awards to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation.”); *Ingram v. The Coca-Cola Co.*, 200 F.R.D. 685, 694 (N.D.

1 Ga. 2001) (\$300,000 incentive award to each named plaintiff); *Enterprise Energy Corp. v.*  
2 *Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 250-251 (S.D. Ohio 1991) (incentive  
3 payments of \$50,000 to each class representative); *In re Dunn & Bradstreet Credit Services*  
4 *Consumer Litigation*, 130 F.R.D. 366, 373-374 (S.D. Ohio 1990) (incentive payments amounting  
5 to \$35,000 to \$55,000 for each class representative); see also, *Van Vranken v. Atlantic Richfield*  
6 *Co.*, 901 F.Supp. 294, 299-300 (N.D. Cal. 1995) (approving \$50,000 participation award); *Lo Re*  
7 *v. Chase Manhattan Corp.*, 1979 U.S. Dist. LEXIS 12210, \*16-17 (S.D.N.Y. 1979) (payment of  
8 \$229,000 out of \$1,579,000 settlement fund to settle named plaintiffs claims did not cause the  
9 settlement to be unreasonable).

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

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

15 Concurrently with this submission to the Court, Plaintiff's Counsel uploaded this motion,  
16 supportive declarations, Proposed Order and Proposed Judgment to the LWDA's website. (Bass  
17 Decl., ¶ 65, Exh. E).

18 **VI. CONCLUSION**

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

22 Dated: September 10, 2024

**MAKAREM & ASSOCIATES, APLC**

24 By: Daniel Bass

Daniel J. Bass

Attorney for Veronica Sanchez