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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**

ALISON ANDRADE, an individual,
Plaintiff,

vs.

URBAN OUTFITTERS, INC., and DOES 1-
20, inclusive,
Defendants.

Case No.: 20STCV33377

**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: July 27, 2023

Time: 9:30 a.m.

Dept: 72

Judge: Hon. Curtis A. Kin

Complaint Filed: September 1, 2020

1 PLEASE TAKE NOTICE that on July 27, 2023 at 9:30 a.m., or as soon thereafter as the
2 matter may be heard in Department 72 of the above-entitled court, located at 111 N Hill St, Los
3 Angeles, CA 90012, Plaintiff ALISON ANDRADE (“Plaintiff”) will and hereby does move this
4 Court for: (1) an order determining the good faith of and granting final approval of the proposed
5 class action settlement; (2) entry of the proposed Order of Final Approval and Judgment; (3) an
6 order awarding costs to the claims administrator; and (4) an order awarding attorneys’ fees and costs
7 and a class representative 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 settlement reached with Defendant URBAN OUTFITTERS, INC., is fair, reasonable, and
10 adequate, achieved as the result of informed, arms-length negotiations, and deserving of approval
11 for the benefit of the Settlement Class members to whom it pertains.

12 This Motion is based on this Notice and Motion, the declarations of Daniel J. Bass, Alison
13 Andrade, William Argueta, the other papers on file in this action, and such other and further oral
14 and documentary evidence as may be submitted at or before the hearing on the Motion.

15 Dated: June 15, 2023

MAKAREM & ASSOCIATES, APLC

17 By: Daniel Bass
18 Daniel J. Bass
19 Attorneys for Alison Andrade,
20 individually and on behalf of all others
21 similarly situated
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1 **I. INTRODUCTION**

2 Pursuant to California Rules of Court, Rule 3.769(g), Plaintiff Alison Andrade (“Class
3 Representative” or “Plaintiff”) as Class Representative—of the class of all individuals employed
4 by Urban as non-exempt employees who worked at an Urban Outfitters retail store in California
5 between June 28, 2019 and the earlier of the Preliminary Approval Date or August 31, 2022 and
6 who did not submit a valid and timely request for exclusion—seeks an Order from this Court
7 granting final approval of the settlement reached in this matter.

8 The Settlement will resolve all of Plaintiff’s class claims against Defendant. As set forth in
9 Plaintiff’s Motion for Preliminary Approval, which was granted by this Court on February 23, 2023
10 (see Declaration of Daniel J. Bass [“Bass Decl.”], Exh. B) this Court should approve as fair and
11 reasonable the class-wide, non-reversionary Joint Stipulation of Settlement and Release of Class
12 Action (“Settlement Agreement”) (Bass Decl., Ex. A.) Two Million Five Hundred Thousand U.S.
13 Dollars (\$2,500,000), inclusive of all fees and costs (the “Maximum Settlement Amount”) shall be
14 paid for settlement of the claims of “all individuals employed by Urban as non-exempt employees
15 who worked at an Urban Outfitters retail store in California between June 28, 2019 and the earlier
16 of the Preliminary Approval Date or August 31, 2022.” (Bass Decl., Ex. A at I.2.)

17 No Settlement Class members have opted out and the administrator reports a total of 3,892
18 Settlement Class Members are part of this Settlement, which represents a 100% participation rate.
19 (Declaration of William Argueta with Respect to Settlement Administration and Class Notice
20 [“Argueta Decl.”], ¶¶ 5, 10). Moreover, no one has objected to the Settlement, which reflects that
21 the Settlement was well-received by all class members. *See* Argueta Decl., ¶ 10; *see also*,
22 *Anderson v. Nextel Retail Stores, LLC*, 2010 U.S. Dist. LEXIS 43377 at *49 (C.D. Cal. 2010)
23 (holding that a relatively high participation rate and extremely low objection rate weighed in
24 favor of approving the settlement). Nor are there any requests for exclusion from the Settlement.
25 Argueta Decl., ¶ 10. Therefore, 3,892 Settlement Class Members will be issued settlement
26 payment. *Id.* A unanimous participation rate “supports the fairness, reasonableness, and adequacy
27 of the settlement.” *Williams v. Costco Wholesale Corp.*, 2010 U.S. Dist. LEXIS 67731 at *13
28 (S.D. Cal. 2010).

Moreover, the Court should grant Plaintiff's request for a Class Representative Payment of \$15,000, Plaintiff's request for attorneys' fees in the amount of \$ 875,000.00, Class Counsel costs of \$17,284.79, and settlement administration costs of \$27,750.00, 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 wage and hour action alleging violations of California state law. Defendants Urban Outfitters, Inc. is part of a portfolio of global consumer brands. Urban Outfitters operates over 200 stores in the U.S., including approximately 47 locations in California. (Declaration of Daniel J. Bass ["Bass Decl."], ¶ 3).

Plaintiff was hired by Urban Outfitters, Inc. around July 2019. In mid-March 2020, due to COVID-19, Plaintiff was placed on a two-week furlough along with all other employees, with pay. After the two weeks expired, Plaintiff was placed on indefinite leave, without pay, as the store remained closed. The class Plaintiff seeks to represent includes all non-exempt hourly employees that worked for Defendant 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 Defendant's 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 ¶ 4)

B. Commencement of the Action and Pleadings

This action was initially filed on September 1, 2020, seeking penalties for Defendant's unlawful practices and policies, in violation of California state wage and hour laws, including (a) failure to accurately pay overtime wages, (b) failure to pay minimum wages, (c) failure to provide meal periods and failure to pay an additional hour's pay in lieu of providing a meal period, (d) failure to authorize and permit rest breaks for every four hours or major fraction thereof worked and failure

1 to pay an additional hour's of pay in lieu of providing a rest period, (e) failing to pay all wages
2 earned, (f) failing to pay all wages owed upon separation of employment, (g) failing to provide
3 accurate itemized wage statements, and (h) knowingly or intentionally failing to maintain accurate
4 and complete records. A First-Amended Complaint was filed on December 9, 2020 but did not add
5 any substantive claims. (*Id. at* ¶ 5). As part of the Parties' Settlement, Plaintiff has submitted a
6 Second Amended Complaint asserting class and representative action claims under California law
7 for (1) failure to pay minimum wage, (2) failure to pay overtime or pay overtime at the correct rate
8 of pay, (3) failure to pay for all hours worked (off-the-clock work), (4) failure to provide meal
9 periods, (5) failure to provide rest periods, (6) failure to pay premiums at the correct rate of pay, (7)
10 failure to timely pay final wages and wages earned during employment, (8) failure to provide
11 accurate itemized wage statements, and (9) failure to maintain accurate and complete records. (*Id.*
12 *at* ¶ 6).

13 Defendant contends that it at all times complied with California law. Defendant asserts that
14 it properly paid employees for all time worked. Defendant further contends that it provided Plaintiff
15 and other putative class members with compliant meal and rest periods, and that to the extent any
16 employee did not take a compliant meal or rest period, the reason for the non-compliant meal or rest
17 period would be an individualized issue that would preclude class certification. (*Id. at* ¶ 7).

18 **C. Investigation**

19 Before filing the lawsuit, Class Counsel investigated and researched the facts and
20 circumstances underlying the pertinent issues and the laws applicable thereto. This required
21 thorough discussions between Class Counsel and the Plaintiff, as well as preliminary research into
22 the various legal issues and employment practices involved in the case. After conducting their
23 initial investigation, Class Counsel determined that Plaintiff claims were well-suited for class action
24 adjudication owing to what appeared to be a common set of policies and procedures that impacted
25 Plaintiff and other putative class members in a similar fashion. (*Id. at* ¶ 8).

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

- 28 (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;
- (5) interviewing several putative class members regarding their experiences working for the Defendant. (*Id.* at ¶ 9).

Defendant, for its 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 ¶ 10).

D. Mediation and Settlement

On May 26, 2022, the Parties participated in a mediation with experienced mediator Michael D. Young, Esq. After the mediation, the Parties accepted a mediator's proposal as to certain material terms of the Settlement, including the Maximum Settlement Amount. Over the next months the parties negotiated the details of the long form settlement agreement which was fully executed by January 13, 2023 and for which was granted preliminary approval on February 13, 2023. (*Id.* at ¶ 11). After Preliminary Approval was granted, the Settlement Administrator confirmed for the Parties that the records provided by Defendant showed that there were 3,892 potential Class Members. (Argueta Decl. ¶ 5)

III. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS

A. Settlement Class

"Class Member(s)," means all individuals employed by Urban as non-exempt employees who worked at an Urban Outfitters retail store in California between June 28, 2019 and the earlier of the Preliminary Approval Date or August 31, 2022. (Bass Decl., ¶ 13) As of the date of this filing, no Settlement Class members have opted out and it is anticipated that all 3,892 Settlement Class members will participate in the settlement. (Argueta Decl. ¶¶ 7-10)

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 "Maximum Settlement Amount" of Two Million Five Hundred Thousand Dollars (\$2,500,00.00). (Bass Decl. ¶14). The Maximum Settlement Amount is non-reversionary and no portion of the Settlement Amount will be returned

1 to Defendant. (*Id* at ¶ 15). The following amounts will be deducted from the Maximum Settlement
2 Amount, with the amount remaining after these deductions constituting the Net Settlement Amount
3 (see Argueta Decl. ¶11; Bass Decl. ¶¶ 16-20:

- 4 • **Attorneys' Fees and Costs:** Up to 35% or Eight Hundred and Seventy-Five Thousand
5 Dollars (\$875,000.00), in attorneys' fees and up to \$25,000 in litigation costs (including
6 any expert costs), though such litigation costs have been limited to \$17,284.79;
- 7 • **Class Representative Payment:** Up to \$15,000 to the named Plaintiff for her services as
8 the class representative;
- 9 • **Settlement Administration Costs:** The Settlement Administrator will be paid for the
10 reasonable costs of administration of the Settlement and calculation and distribution of
11 payments, up to a maximum of \$27,750.00;
- 12 • **LWDA PAGA Penalty Amount:** 75% share of the \$100,000.00 (or \$75,000.00) allocated
13 from the Maximum Settlement Amount for PAGA penalties that will be paid to the
14 LWDA.
- 15 • **PAGA Group Payment:** 25% share of the \$100,000.00 (or \$25,000.00) allocated from
16 the Maximum Settlement Amount for PAGA penalties that will be paid to PAGA Members

17 Thus, the net Settlement amount will be approximately \$1,464,965.21, plus the \$25,000.00
18 separately distributed for the PAGA Group Payment to PAGA Members. Each Settlement Class
19 Member shall be eligible to receive an Individual Class Settlement Payment, which is the number
20 of the Class Member's individual Covered Class Workweeks divided by the total Covered Class
21 Workweeks for all Class Members. This fraction shall be multiplied by the Net Settlement Amount.
22 The number of class members in the class, according to the Administrator's report, is 3,892. As a
23 result, the estimated average settlement payment to each Class Member is \$374.42 with the highest
24 estimated settlement payment being \$1,724.11 and the lowest estimated settlement payment of
25 \$3.01. (Argueta Decl. ¶ 13; Bass Decl. ¶ 20).

26 C. Claims and Settlement Fund Distribution Procedure

27 Within 14 days after the Effective Date, Urban will provide payment of the Maximum
28 Settlement Amount to the Settlement Administrator to fund the QSF to be created by the
Settlement Administrator, in addition to Urban's share of employer payroll taxes for the payments
reportable on IRS Form W-2. Bass Decl., ¶ 21, **Exh. A** at ¶ 82. Within 30 days after the Effective
Date, the Settlement Administrator shall distribute and pay Class Settlement Payment checks to
all Settlement Class Members, pay the Class Representative her Service Enhancement payment,
issue a check to the LWDA for the LWDA PAGA Penalty Amount, issue checks to the PAGA

1 Members for their individual PAGA Group Payments, and pay Class Counsel's attorneys' fees
2 and costs. *Id.*, **Exh. A** at ¶ 83.

3 Settlement Class Members who are sent Class Settlement Payments and PAGA Members
4 who are sent PAGA Group Payments will have 90 calendar days after mailing by the Settlement
5 Administrator to cash settlement checks and will be so advised of such deadline. If such
6 Settlement Class Members and/or PAGA Members do not cash their checks within that period,
7 those checks will become void and a stop payment will be placed on the uncashed checks. Within
8 thirty (30) days after the expiration date of the settlement checks, the Settlement Administrator
9 shall provide to Class Counsel and Urban's Counsel a verification/declaration signed under
10 penalty of perjury that it has mailed the settlement checks to Settlement Class Members and/or
11 PAGA Members, and if uncashed, that such amounts have been sent to the Controller of the State
12 of California to be held pursuant to the Unclaimed Property Law, California Code of Civil
13 Procedure Section 1500, et seq. in the name of the Settlement Class Member and/or PAGA
14 Member to whom the uncashed check was addressed, for the benefit of those Settlement Class
15 Members and/or PAGA Members who did not cash their checks until such time as they claim
16 their property. *Id.*, ¶ 22, **Exh. A** at ¶ 84

17 **IV. FAIRNESS ANALYSIS**

18 **A. Standard for Final Approval**

19 The trial court has broad discretion to determine whether a proposed class action
20 settlement is fair. See *Rebney v. Wells Fargo Bank* (1990) 220 Cal.App.3d 1117, 1138. There is a
21 presumption of fairness of a class action settlement when: (1) the settlement is reached as the
22 result of arm's length negotiations; (2) there has been sufficient investigation and discovery; (3)
23 counsel is experienced in similar litigation; and (4) the percentage of objections is low. See *Dunk*
24 *v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802. Before approving a class action settlement,
25 a trial court must have an understanding "of the amount that is in controversy and the realistic
26 range of outcomes of the litigation." *Kullar v. Footlocker Retail, Inc.* (2008) 168 Cal.App.4th
27 116, 120. However, the parties need not provide an explicit statement of the maximum amount
28

1 plaintiffs could have potentially recovered. See *Munoz v. BCI Coca Cola Bottling Co. of Los*
2 *Angeles* (2010) 186 Cal.App.4th 399, 409.

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

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

23 [p]roper deference to the private consensual decision of the parties, [since] the court’s
24 intrusion upon what is otherwise a private consensual agreement negotiated between the
25 parties ... must be limited to the extent necessary to reach a reasoned judgment that the
26 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.)

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

28 Plaintiff believes that the Settlement Class claims in this action are legally meritorious and

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

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

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

15 The Parties have also considered the uncertainty and risk of the outcome of further
16 litigation, and the difficulties and delays inherent in such litigation. Plaintiff is also aware of the
17 burdens of proof necessary to establish liability for the claims asserted in the action, the defenses
18 thereto, and the difficulties in establishing damages. (*Id.*, ¶ 31)

19 In evaluating the settlement, the Court will seek a reasonable estimate of the nature and
20 amount of recovery that each class member could have obtained if the Plaintiff had prevailed in the
21 litigation. Numerous decisions summarize a trial court's task when considering whether to approve
22 the settlement of a putative class action. As Division Five of this Court stated:

23 The trial court has broad discretion to determine whether the settlement is fair. [Citation.]
24 It should consider relevant factors, such as the strength of Plaintiff's case, the risk, expense,
25 complexity and likely duration of further litigation, the risk of maintaining class action
26 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.

27 *Cellphone Fee Termination Cases* (2009) 180 Cal.App.4th 1110, 1117-18 (citations omitted) The
28 court's consideration of relevant factors, however, does not transform the settlement approval

1 “into a trial or rehearsal for trial on the merits.” *7-Eleven Owners for Fair Franchising*, 85
2 Cal.App.4th at 1145 (internal citation omitted). The record need only provide the trial court with
3 an understanding of the amount that is in controversy and the realistic range of outcomes of the
4 litigation. Because settlements are inherently a compromise, once the parties have provided it
5 with the requisite “basic information,” the trial court must only “satisfy itself that the class
6 settlement is within the ‘ballpark’ of reasonableness.” *Tech-Bilt, Inc. v. Woodward-Clyde &*
7 *Assoc.* (1985) 38 Cal.3d 488, 499-500.

8 Here, in preparation for mediation, Plaintiff calculated Defendants’ liability to Class
9 Members to be in excess of the settlement amount. Plaintiff’s valuation assumed that Plaintiff: (1)
10 prevailed in certifying the case; (2) prevailed in establishing liability on the merits; and (3) was
11 awarded the full amount of all discretionary penalties. The realistic range of outcomes for this
12 litigation took into account the present state of the law regarding meal and rest break claims and
13 the other claims brought in the Action, Defendant’s defenses for each claim, and the likelihood of
14 prevailing on a class certification motion as well as trial and any appeals, particularly given the
15 then pending Viking River Cruises appeal to the United States Supreme Court. Moreover,
16 Plaintiff had to consider the significant difficulties in adding class claims against the Defendant
17 and thus factor in how much they could realistically consider for settlement. Where both sides
18 face significant uncertainty, the attendant risks favor settlement. *Hanlon v. Chrysler Corp.* (9th
19 Cir. 1998) 150 F.3d 1011,1026.

20 ***Kullar v. Footlocker Analysis.***

21 To allow this Court to make an informed assessment pursuant to *Kullar v. Foot Locker*
22 *Retail, Inc.* (2008) 18 Cal.App.4th 116, Plaintiff’s Counsel provides the following assessment of
23 the case and settlement. Plaintiff’s Counsel believes that the settlement is a good one for the class
24 members in light of the number of employees and claims at issue. In Plaintiff’s Second Amended
25 Complaint Plaintiff seeks not just PAGA penalties, but unpaid wages and statutory penalties as well
26 as the equitable remedies. As discussed in Plaintiff’s Motion for Preliminary Approval, Plaintiff
27 estimated Defendant’s total non-penalty exposure at \$10,377,924.10. (Bass Decl., ¶ 34) As such,
28 the settlement represents over approximately 24% of Defendant’s non-penalty exposure based on

1 Plaintiff's analysis. This in a reasonable recovery, particularly given Defendant's use of arbitration
2 agreements. (*Id.*).

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

26 Below, Plaintiff details the issues that necessitated deductions from the maximum potential
27 value of this case to arrive at the reasonable Maximum Settlement Amount derived in this action:
28 Here there are approximately 3,840 members of the Settlement Class that worked a total of

1 approximately 118,814 workweeks through June 12, 2022. (Bass Decl. ¶ 35).

2 **Rest Periods:** Plaintiff calculated Defendant's maximum liability to be 3.4 violations per
3 employee per week (the average number of shifts per week) at the average hourly rate of \$19.72
4 per violation or \$67.05 per week. As such, with 118,814 workweeks through June 12, 2022,
5 Plaintiff estimated that Defendant's exposure could be as high as \$ 7,966,478.70. Plaintiff did not
6 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 continued
8 litigation and difficulties in showing a 100% violation rate for rest breaks during employee shifts.
9 (Bass Decl. ¶ 36).

10 **Meal Periods:** Based on analysis of employee time records, Plaintiff estimated that there
11 were approximately 3.4 shifts per week, about 75.6% of which were eligible for meal breaks and
12 approximately 5.3% of shifts showed a potential violation, or 21,268 unique meal period violations.
13 Thus, Plaintiff calculated Defendant's potential exposure as \$19.72 per violation x 21,268 unique
14 meal period violations = \$ 419,404.96. In regard to this number, Plaintiff recognized that even
15 though it was conversative, Defendant would likely argue that late and shortened meal periods
16 stemmed from the choices of class member and that such claims were not amenable to class
17 certification. (Bass Decl. ¶ 37).

18 **Unpaid/Off-The-Clock-Time:** Based on Plaintiff's interviews of class members, Plaintiff
19 estimated that in approximately .25 hours (15 minutes) of work was performed off-the-clock by
20 employees on a daily basis, including time going through mandatory security checks including
21 waiting for supervisors to perform the check, resulting in an approximately \$4.93 underpayment
22 per shift. Thus, Plaintiff calculated Defendants' potential exposure as \$4.93 x an estimated 404,065
23 shifts = \$1,992,040.45. (Bass Decl. ¶ 38).

24 **Penalties:** Although the Class arguably could have seen a payout of millions of dollars for
25 waiting time penalties and wage statement penalties, Plaintiff's Counsel had to weigh the likelihood
26 of recovery against probable defenses and the wide discretion Courts have exercised in awarding
27 Labor code penalties. Along these lines, Plaintiff considered that Defendants would argue that
28 Plaintiff could not prove the "willful" prong needed to obtain waiting time penalties under Cal.

1 Lab. Code § 203 and would further argue that Plaintiff could not show that Class Members suffered
2 an “injury” as a result of wage statement violations, as required by Cal. Lab. Code § 226. Further,
3 Plaintiff arguably could not recover any waiting time penalties for meal and rest claims. Moreover,
4 Plaintiff would not recover any derivative penalties if they failed to prove the underlying claims.
5 (Bass Decl. ¶ 39).

6 **Certification in General:** The great discretion afforded trial courts in electing to grant or
7 deny class certification, and the resultant possibility that this Court would deny certification of any
8 of the claims, resulting in no recovery whatsoever for those unnamed class members further
9 weighed in favor of settlement. Indeed, going into settlement discussions and during the course of
10 constructing the settlement, Class Counsel bore in mind similar meal and rest break cases wherein
11 class certification was denied. *See e.g. In re Lamps Plus Overtime Cases* (2012) 209 Cal.App.4th
12 35; *Washington v. Joe's Crab Shack* (N.D. Cal. 2010) 271 F.R.D. 629 (“individualized inquiry will
13 be required to determine whether any single employee failed to take a meal break because he/she
14 was too busy, and also to determine whether a particular employee signed a waiver based on a
15 decision not to take meal breaks”). *Hernandez v. Chipotle Mexican Grill, Inc.* (2012) 146
16 Cal.Rptr.3d 424, 2012 WL 3579567, *10.

17 Plaintiff, in agreeing to the settlement had to take into account the difficulties in certifying
18 a class and maintaining any such certification. What’s more, Plaintiff had to take into account the
19 Defendant’s operations and the availability of witnesses. Each of these concerns weighed into
20 Plaintiff’s analysis to eventually agree to a settlement that is less than Defendant’s total projected
21 liability even if Plaintiff eventually won every aspect of this case including an appeal. A settlement
22 now guarantees that class members will 1) obtain a recovery and 2) that they will get the recovery
23 in a time period that is shorter than one if the case went through a full trial and appeal. (*Id.*, ¶ 36).

24 **Trial and Manageability Issues:** While Plaintiff was confident in the strength of his
25 claims, as is always the case with a trial, Plaintiff needed to accept that there was a possibility that
26 he would not prevail at trial. Compromise is inherent and necessary in the settlement process. Thus,
27 even if “the relief afforded by the proposed settlement is substantially narrower than it would be if
28 the suits were to be successfully litigated,” this is no bar to a class settlement because “the public

1 interest may indeed be served by a voluntary settlement in which each side gives ground in the
2 interest of avoiding litigation.” *Id.* at 250 (quoting *Air Line Stewards, Loc. 550 v. American*
3 *Airlines, Inc.*, (7th Cir.1972) 455 F.2d 101, 109. The Ninth Circuit observed “the very essence of
4 a settlement is compromise, ‘a yielding of absolutes and an abandoning of highest hopes.’” *Officers*
5 *for Justice v. Civil Serv. Commission* (9th Cir.1982) 688 F.2d 615, 624 (citation omitted). Thus,
6 when analyzing the amount offered in settlement, the Court should examine “the complete package
7 taken as a whole,” and the amount is “not to be judged against a hypothetical or speculative measure
8 of what might have been achieved by the negotiators.” *Id.* at pp. 625, 628.

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

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

16 This “Parties represented by competent counsel are better positioned than courts to
17 produce a settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pacific*
18 *Enterprises Security Litigation*, 47 F.3d 373, 378 (9th Cir. 1995). Here, Plaintiff is represented by
19 competent and experienced counsel who possess extensive experience litigating wage and hour
20 class actions and have been appointed as class counsel in numerous cases alleging similar claims.
21 Bass Decl., ¶¶ 42-50.

22 There is an initial presumption that a proposed settlement is fair and reasonable if it is the
23 result of arms-length negotiations. See *Williams v. Vukovich*, 720 F.2d 909, 922-923 (6th Cir,
24 1983) (“The court should defer to the judgment of experienced counsel who have competently
25 evaluated the strengths of his proofs.”); *In re Excess Value Ins. Coverage Litig.*, No. M-21-84
26 (RMB) 2004 WL 1724980, at *10 (S.D.N.Y. July 30, 2004) (“Where ‘the court finds the
27 settlement is the product of arm’s length negotiations conducted by experienced counsel
28 knowledgeable in complex class litigation, the settlement will enjoy a presumption of fairness.’”);

1 *In re Inter-Op Hip Prosthesis Liab. Litig.*, 204 F.R.D. 330, 351 (N.D. Ohio 2001) (granting
2 preliminary approval of settlement “where the settlement is the result of extensive negotiations by
3 experienced counsel...”); *see also* 2 Hebert Newberg & Alba Conte, *Newberg on Class Actions*,
4 §11.41 at 90 (4th Ed. 2001).

5 Counsel for Plaintiff have extensive experience in employment law, particularly wage and
6 hour class action litigation. Bass Decl., ¶¶ 42-50. Counsel for Plaintiff and Defendant each
7 zealously negotiated on behalf of their respective clients’ best interests, and the Settlement was
8 reach after lengthy negotiations. As a result, the Settlement is presumed to be fair and reasonable,
9 and was not the product of collusion.

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

11 As part of CPT’s preparation for mailing, all 3,892 names and addresses contained in the
12 Class List were processed against the National Change of Address (“NCOA”) database,
13 maintained by the United States Postal Service (“USPS”), for purposes of updating and
14 confirming the mailing addresses of the Settlement Class Members before mailing of the Notice
15 Packet. (See Argueta Decl., ¶¶ 5-6). April 17, 2023, the Notices were mailed by U.S. first class
16 mail to 3,892 Settlement Class Members. The deadline to submit requests for exclusion or
17 objection was June 1, 2023. (*Id.*, ¶ 7) 309 Notice Packets returned as undeliverable, 10 of which
18 had a forwarding address. (*Id.*, ¶ 8) For the Notice Packets returned from the post office without a
19 forwarding address, CPT attempted to locate a current mailing address using Accurint. (*Id.*) As a
20 result of this skip trace, 259 updated addresses were obtained and the Notice Packet was promptly
21 re-mailed. (*Id.*, ¶ 9) Ultimately, 51 Notice Packets were considered undeliverable. (*Id.*)

22 The Administrator has received no requests for exclusion from the Settlement, disputes or
23 objections. (*Id.*, ¶ 10). As of the date of this filing, a 100% participation rate is anticipated. (*Id.*)
24 Accordingly, all factors typically used by California courts to determine the appropriateness of
25 final approval of a class action settlement weigh in favor of finding that this Settlement is a fair
26 and reasonable result after well-represented parties who engaged in arms-length negotiations over
27 hotly contested and unclear issues of California’s wage and hour laws, culminating in a settlement
28

1 that provides a substantial benefit to all class members. In other words, the Settlement as
2 proposed by the parties should be finally approved.

3 **V. CLASS COUNSELS' FEES AND COSTS**

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

5 In the Settlement, Defendants agreed, subject to Court approval, to pay Class Counsel an
6 award of reasonable attorneys' fees in the amount of \$875,000.00 and \$25,000 in costs, for work
7 performed for the benefit of the Class. To date, Class Counsel has incurred over \$17,284.79 in
8 litigation costs. (Bass Decl., ¶ 59, Exh. D). In terms of their actual time spent on the matter, Class
9 Counsel will have collectively spent more than 532.4 hours, and multiplying the hours by their
10 hourly rates, Class Counsel's incurred fees exceed \$435,947.50. (Bass Decl., ¶¶ 52-56, Exh. C).
11 Class Counsel anticipate spending an additional time attending the final approval hearing and
12 working with the Settlement Administrator through the disbursement and accounting process, that
13 will likely exceed 40-50 hours. (*Id.*, ¶ 56).

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

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

22 *Lealao*, 82 Cal.App.4th 19, 26-27. As stated above, Class Counsel's actual fees incurred litigating
23 this case already exceed \$435,947.50. (Bass Decl., ¶¶ 52-57, Exh. C). Beyond a simple review of
24 Class Counsel's hours worked, the fee award presently requested comports with attorneys' fee
25 awards issued by other courts under both the "common fund" and "lodestar" methods of
26 determining fees.

27 Because the requested award is well within the typical multiplier approved by California
28 courts, and because it is fully supported by the factors that California courts consider in
determining the reasonableness of attorney fee awards in class action cases, Class Counsel
respectfully submit that their request for \$875,000.00 in attorneys' fees is appropriate.

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

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

10 California courts recognize two standard methods for calculating attorneys' fee awards in
11 common fund class actions. The more prevalent “percentage of the fund” (also known as the
12 “common fund” or “common benefit”) method calculates attorneys' fees based on a percentage of
13 the common benefit bestowed upon the class. The “lodestar-plus-multiplier” method uses Class
14 Counsel's “lodestar” as a basis - determined by multiplying the hours counsel expended by their
15 hourly rates - which the Court may then enhance by a multiplier, taking into account a variety of
16 factors. The “lodestar-plus-multiplier” method is often considered to cross-check the propriety of
17 the “common fund” award.

18 **1. The “Common Fund” Doctrine**

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

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

8 Various federal courts have made similar attorneys' fee awards of a similar or greater
9 percentage to that requested in this case. (See, e.g., *In re Pacific Enters. Sec. Litig.* (9th Cir. 1995)
10 47 F.3d 373, 379 (affirming an award equal to 33% of the common fund); *In re Activision Sec.*
11 *Litig.* (N.D. Cal. 1989) 723 F. Supp. 1373, 1375 (awarding plaintiffs' counsel 32.8% of the
12 common fund created to settle the litigation); *In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526
13 F. Supp. 494, 500-503 (awarding 45% of \$7.3 million settlement fund); *Beech Cinema, Inc. v.*
14 *Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F. Supp. 1195, 1197-1199
15 (approximately 53% of the settlement fund awarded); *Van Gemert v. Boeing Co.* (S.D.N.Y. 1981)
16 516 F. Supp. 412, 420 (awarding 36% of settlement fund); *Parker v. City of Los Angeles* (1974)
17 44 Cal.App.3d 556, 557-68 (affirming fee award to counsel of one-third of recovery achieved).)

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

1 Corporation (C.D. Cal. Case No.: 05 CV 1360 BTM (JMA)), the Honorable Judge Barry T.
2 Moskowitz awarded a 40% fee to plaintiffs' counsel in wage and-hour class actions that had not
3 proceeded to the class-certification stage.

4 In this case, 35% of the Maximum Settlement in attorney's fees is fair and reasonable in
5 light of the substantial time spent by Class Counsel litigating this case and the substantial benefit
6 received by class members. Moreover, the award is approved by the class representative and
7 Defendant, and to date no class members have objected to the requested attorney's fees.
8 Accordingly, the fee request here is warranted and should be granted.

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

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

16 The lodestar method requires that a trial court first determine a "lodestar" figure based on
17 a "careful compilation of the time spent in reasonable hourly compensation for each attorney
18 involved in the presentation of the case." *Serrano*, 20 Cal.3d at 48. Presently, the "lodestar"
19 figure is over \$375,616.50 (Bass Decl., ¶¶ 54-57). The lodestar figure may then be increased by
20 the application of a "multiplier." *Id.* This settlement comes after protracted litigation, and Class
21 Counsel has provided this Court with both a summary of their hourly rates and hours billed in this
22 matter that attest to their diligent efforts. To summarize the lodestar, Class Counsel's time
23 summaries show that they worked over 532.4 hours on this case, not even including all the hours
24 spent on this motion, for the final approval hearing, and through the distribution and accounting
25 process thereafter. Bass Decl., ¶¶ 54-56. Based on their hourly rates, the lodestar calculation
26 produces over \$435,947.50 in fees, requiring only a modest multiplier of about 2.0. Bass Decl., ¶¶
27 54-58.

28 **3. Application of a Positive Multiplier Is Appropriate.**

1 The lodestar amount may be increased by applying a multiplier. See *Serrano*, 20 Cal.3d at
2 49; *Beasley v. Wells Fargo Bank* (1991) 235 Cal.App.3d 1407. In California, “[m]ultipliers can
3 range from two to four or even higher” and are routinely applied in the range requested by Class
4 Counsel. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 254; see also *Chavez v.*
5 *Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 (upholding 2.5 multiplier); *Glendora Community*
6 *Redevelopment Agency v. Demeter* (1984) 155 Cal.App.3d 465 (affirming a fee award that
7 included a 12.0 multiplier); *Craft v. County of San Bernardino* (C.D. Cal. 2008) 624 F.Supp.2d
8 1113, 1125 (awarding a common fund fee which amounted to a 5.2 multiplier); *Vizcaino v.*
9 *Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051 (approving a 3.65 multiplier); *Van Vranken*
10 *v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 298-299 (approving multiplier of
11 3.6). Some of the factors a trial court considers when determining whether to apply a multiplier
12 are: “(1) the novelty and difficulty of the questions involved, (2) the skill displayed in presenting
13 them, (3) the extent to which the nature of the litigation precluded other employment by the
14 attorneys, (4) the contingent nature of the fee award.” See *Ketchum v. Moses* (2001) 24 Cal.4th
15 1122, 1132 (citations omitted). The ultimate goal is “to entice competent counsel to undertake
16 difficult public interest cases.” *San Bernardino Valley Audubon Soc. v. County of San*
17 *Bernardino* (1985) 155 Cal.App.3d 738, 755. Fee awards that are too small “chill the private
18 enforcement essential to the vindication of many rights....” *Lealao v. Beneficial California, Inc.*
19 (2000) 82 Cal.App.4th 19, 53. Recently, the Honorable Amy D. Hogue approved a multiplier of
20 3.25 based on similar factors in *Sofia Lopez v. Citris Valley Health Partners, Inc.*, Los Angeles
21 Superior Court case number BC544139 (Final approval granted November 19, 2015).

22 In *Ketchum*, the California Supreme Court held that fee enhancement in contingency cases
23 is necessary to (1) fully compensate counsel for the “loan” of legal services in light of the
24 inherent high risk of “default” posed by losing the case, and (2) encourage competent counsel to
25 take on fee award cases. *Ketchum*, 24 Cal.4th at 1132-1133. As the court noted, “A lawyer who
26 both bears the risk of not being paid and provides legal services is not receiving the fair market
27 value of his work if he is paid only for the second of these functions. If he is paid no more,
28 competent counsel will be reluctant to accept fee award cases.” *Id.* at 1133 (citations omitted).

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

9 Application of an approximately 2.0 multiplier is appropriate. Having filed the case on
10 September 1, 2020, Class Counsel will have been litigating this case for over 3 years before
11 receiving any reimbursement, expending significant time and resources which could have been
12 directed towards other cases. Class Counsel agreed to litigate this case on a contingent fee basis,
13 and in the process assumed considerable risk given the uncertain proposition these types of cases
14 entail. Bass Decl. ¶¶ 52-58.

15 As the results in other cases demonstrate, the risk presented in this case was significant.
16 Courts frequently dismiss class and representative allegations and compel arbitration in similar
17 cases. Class Counsel takes multiple risks while trying to vindicate the rights of workers and serve
18 to illustrate the recognition by the California Supreme Court in *Ketchum* that, if multipliers are
19 not awarded to class counsel in the cases that are successfully settled, counsel’s fees are
20 essentially being cut because the lodestar in and of itself would not account for contingent risk.
21 Thus, application of a multiplier is appropriate given the contingent risk incurred by Class
22 Counsel, the difficulty of the questions involved, the substantial benefit conferred on the Class
23 and State as a result of the Settlement, and the skill displayed by Class Counsel. Plaintiff
24 respectfully requests that the Court award Class Counsel the requested fees of \$ 875,000.00,
25 under the common fund theory with a lodestar cross-check or, alternatively, based on Class
26 Counsel’s lodestar with application of an approximately 2.0 multiplier.

27 **4. A Multiplier Is Warranted Because Class Counsel Efficiently Obtained**
28 **Exceptional Results for the Class**

1 In *Lealao*, the Court of Appeal considered counsel’s efficiency and skill in bringing the
2 case to an early resolution: “[T]he promptness of settlement cannot be used to justify the refusal
3 to apply a multiplier to reflect the size of the class recovery without exacerbating the disincentive
4 to settle promptly inherent in the lodestar methodology. Considering that our Supreme Court has
5 placed an extraordinarily high value on settlement ... it would seem counsel should be rewarded,
6 not punished, for helping to achieve that goal....” *Lealao*, 82 Cal.App.4th at 52 (citations
7 omitted). Moreover, courts should not only consider the size of the class or the amount of the
8 recovery as a whole; instead, it should also examine the size of the individual settlement amount
9 of each class member as an indication of counsel’s contribution to the case. *Id.* at 53.

10 Here, Class Counsel was able to obtain an exceptional result—a settlement of
11 \$2,500,00.00, for a class of 3,892 of Defendant’s employees—within a relatively short amount of
12 time. Litigation had been pending for nearly 3 years, and the case had not yet gone to the class
13 certification stage. Class Counsel dedicated a significant amount of time to litigating this case:
14 counsel did extensive discovery, including depositions, analyzed many records, and prepared for
15 mediation. Bass Decl. ¶¶ 5-11, 28-41, 51-60. Because of—and not in spite of—Class Counsel’s
16 diligent efforts and skill, the Parties were able to reach a resolution of the case. In addition, the
17 individual settlement amounts are hardly *de minimis*: the average class member settlement
18 payment is \$374.42, and the highest individual payment in the Settlement is \$1,724.11. Argueta
19 Decl. ¶ 13. Without the efforts of Class Counsel, the California Labor Code and wage order
20 violations alleged in Plaintiff’s complaint would have gone without remedy.

21 Therefore, a multiplier of 2.0 is reasonable given the contingent risk incurred by Class
22 Counsel, the difficulty of the questions involved, the substantial benefit conferred on the Class
23 and State as a result of the settlement, and the skill displayed by Class Counsel. Plaintiff
24 respectfully requests that the Court award Class Counsel the requested fees of \$875,000.00, under
25 the common fund theory with a lodestar cross-check or, alternatively, based on Class Counsel’s
26 lodestar with application of an approximately 2.0 multiplier.

1 **C. Class Counsel’s Costs Are Reasonable and Were Incurred for the Class**

2 In the course of this litigation, Class Counsel have incurred costs totaling \$17,284.79 and
3 will incur additional expenses in filing this motion and through the completion of the
4 disbursement and accounting process (including, but not limited to, filing this Motion and
5 appearance at the hearing, and other appearances and communications regarding final
6 accounting). Such litigation-related costs are reimbursable in class action cases. *In re United*
7 *Energy Corp. Sec. Litig.*, 1989 U.S.Dist. LEXIS 19146 at *16 (C.D. Cal. 1989) [quoting
8 Newberg, Attorney Fee Awards § 2:19 (1987)].

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

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

14 The parties have agreed to a service award of no more than \$15,000 to Plaintiff. The
15 service award is proper for several reasons. First, service awards “are not uncommon and can
16 serve an important function in promoting class action settlements.” *Sheppard v. Consolidated*
17 *Edison Co. of New York, Inc.*, 2002 WL 2003206, * 5 (E.D.N.Y. 2002); see also *Petrovic v.*
18 *Amoco Oil Co.*, 200 F.3d 1140 (8th Cir. 1999) (noting that class representatives frequently
19 receive substantial incentive payments); *In re Southern Ohio Correctional Facility*, 175 F.R.D.
20 270, 272 (S.D. Ohio 1997) (“[c]ourts routinely approve incentive awards to compensate named
21 plaintiffs for the services they provided and the risks they incurred during the course of the class
22 action litigation”).

23 Second, the incentive is proper considering that Plaintiff spent a substantial amount of her
24 own time to ensure that the class claims could proceed and to ensure that class members received
25 a benefit in this case. Bass Decl., ¶¶ 61-62. Plaintiff worked with counsel to assist in this case.
26 Declaration of Alison Andrade (“Andrade Decl.”) ¶ 6. Specifically, Plaintiff met with her
27 attorneys before the lawsuit was filed and discussed her experiences working for Defendants at
28 length while searching for all documents she had related to her employment with Defendant. *Id.*

1 During the litigation Plaintiff remained in close contact with Class Counsel and engaged in
2 numerous telephone conversations regarding the claims in the case and Defendants' defenses to
3 those claims. *Id.* Plaintiff was also deposed by Defendant's counsel and responded to discovery
4 requests. *Id.* Plaintiff also had numerous conversations with Class Counsel regarding the potential
5 of the lawsuit, as well as the terms of the ultimate Settlement Agreement and the addendum
6 thereto, of which Plaintiff reviewed the drafts. *Id.* It is estimated that over the course of the
7 lawsuit, Plaintiff spent between 60-80 hours working on the case for the benefit of both herself
8 and the other members of the class. *Id.* at ¶ 7

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

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

15 Lastly, courts have frequently approved substantial incentive payments to class members
16 for their participation in class action lawsuits. See *In re Southern Ohio Correctional Facility*,
17 *supra*, 175 F.R.D. at 272 (recognizing that "[c]ourts routinely approve incentive awards to
18 compensate named plaintiffs for the services they provided and the risks they incurred during the
19 course of the class action litigation."); *Ingram v. The Coca-Cola Co.*, 200 F.R.D. 685, 694 (N.D.
20 Ga. 2001) (\$300,000 incentive award to each named plaintiff); *Enterprise Energy Corp. v.*
21 *Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 250-251 (S.D. Ohio 1991) (incentive
22 payments of \$50,000 to each class representative); *In re Dunn & Bradstreet Credit Services*
23 *Consumer Litigation*, 130 F.R.D. 366, 373-374 (S.D. Ohio 1990) (incentive payments amounting
24 to \$35,000 to \$55,000 for each class representative); see also, *Van Vranken v. Atlantic Richfield*
25 *Co.*, 901 F.Supp. 294, 299-300 (N.D. Cal. 1995) (approving \$50,000 participation award); *Lo Re*
26 *v. Chase Manhattan Corp.*, 1979 U.S. Dist. LEXIS 12210, *16-17 (S.D.N.Y. 1979) (payment of
27 \$229,000 out of \$1,579,000 settlement fund to settle named plaintiffs claims did not cause the
28 settlement to be unreasonable).

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

5 **VI. CONCLUSION**

6 For the foregoing reasons, Plaintiff respectfully requests that the Court grant final
7 approval the proposed settlement, certifying the Settlement Class, and entering the Proposed
8 Judgment submitted concurrently herewith.

9
10 Dated: June 15, 2023

MAKAREM & ASSOCIATES, APLC

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12 By: Daniel Bass
13 Daniel J. Bass
14 Attorneys for Alison Andrade
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