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12 Hernandez, and Elora Dorn, individually and on behalf
13 of all others similarly situated

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

16 GIOVANNI MITCHELL, AMMON
MENDES, MACKENZIE HERNANDEZ and
17 ELORA DORN, individually and on behalf of
all others similarly situated,

18 Plaintiffs,

19 v.

20 THE MADERA GROUP LLC, a Nevada
limited liability company; TOCAYA
21 ORGANICA, LLC, a California limited
liability company; TOCAYA
22 MANAGEMENT LLC, a Nevada limited
liability company; TOCA MADERA WEHO
23 LLC, a California limited liability company;
TOCA MADERA MANAGEMENT LLC, a
24 Nevada limited liability company; NOBLE 33
MANAGEMENT, LLC, a Nevada limited
25 liability company; and DOES 1 through 100,
inclusive,

26 Defendants.
27
28

Case No.: 20STCV24075
Assigned for all purposes to:
Hon. Bruce G. Iwasaki, Dept. 58

**NOTICE OF MOTION AND PLAINTIFFS'
MOTION FOR FINAL APPROVAL OF
CLASS AND REPRESENTATIVE ACTION
SETTLEMENT, ATTORNEYS' FEES AND
COSTS, AND CLASS
REPRESENTATIVES' ENHANCEMENT
PAYMENTS; MEMORANDUM OF
POINTS AND AUTHORITIES**

[Declarations of Anthony J. Orshansky, Keith A.
Custis & Abel E. Morales, Proof of Service, and
[Proposed] Final Order and Judgment submitted
concurrently herewith]

Final Approval Hearing

Date: October 27, 2022
Time: 9:30 a.m.
Dept.: 58
Reservation ID: 059908026589

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:**

2 **PLEASE TAKE NOTICE** that on October 27, 2022 at 9:30 a.m., or as soon thereafter as
3 the matter may be heard before the Honorable Bruce G. Iwasaki in Department 58 of the above-
4 captioned court located at 111 North Hill Street Los Angeles, California 90012, plaintiffs Giovanni
5 Mitchell, Ammon Mendes, Mackenzie Hernandez, and Elora Dorn (“Plaintiffs” or “Class
6 Representatives”), individually and on behalf of all others similarly situated, will and hereby do
7 move this Court pursuant to California Code of Civil Procedure section 382 and California Rules of
8 Court, Rule 3.769 for an order:

9 1. Confirming certification of the conditionally certified Class for settlement purposes
10 under Code of Civil Procedure section 382;

11 2. Confirming the appointment of Plaintiffs as Class Representatives for settlement
12 purposes;

13 3. Confirming the appointment of CounselOne, P.C. and Custis Law, P.C. as Class
14 Counsel for settlement purposes;

15 4. Granting final approval of the parties’ Stipulation of Class and Representative Action
16 Settlement (“Settlement Agreement”), along with the Amendment to the Joint Stipulation of Class
17 and Representative Action Settlement (“Amendment”; collectively, the “Amended Settlement
18 Agreement”);

19 5. Approving an award of \$700,000 in attorneys’ fees to Class Counsel;

20 6. Approving an award of \$33,560.39 in litigation costs reimbursement to Class
21 Counsel;

22 7. Approving an award of \$45,000 in actual costs to CPT Group, Inc. for its settlement
23 administration services; and

24 8. Approving enhancement payments in the amount of \$5,000 to each Plaintiff, for a
25 total amount of \$20,000, for their services as Class Representatives.

26 Plaintiffs further request that the Court enter final judgment in the form of the Proposed
27 Final Order and Judgment, which is concurrently submitted herewith.

28 ///

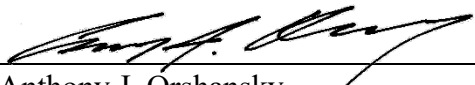
1 This motion is made on the following grounds: (1) the conditionally certified Class continues
2 to meet the requirements for class certification for settlement purposes only under Code of Civil
3 Procedure section 382; (2) Plaintiffs and Class Counsel continue to be adequate representatives of
4 the Class; (3) the settlement is a fair, adequate, and reasonable compromise of disputed wage and
5 hour claims; (4) the requested awards of attorneys' fees and costs, enhancement payments, and
6 settlement administration costs are all fair, adequate, and reasonable; and (5) in light of the
7 foregoing, the Proposed Final Order and Judgment Granting Plaintiffs' Motion for Final Approval
8 of Class and Representative Action Settlement, Attorneys' Fees and Costs, and Class
9 Representatives' Enhancement Payments submitted concurrently herewith should be entered to give
10 finality to, and allow for disbursements from, the settlement.

11 This motion is based on this Notice, the attached Memorandum of Points and Authorities,
12 the supporting declarations of Anthony J. Orshansky, Keith A. Custis, and Abel E. Morales of CPT
13 Group, Inc. and the exhibits attached thereto, the Amended Settlement Agreement, all other
14 pleadings and papers on file in this action, and on any further oral or documentary evidence or
15 argument presented at the time of hearing. Finally, as this Motion is unopposed, and given the
16 multiplicity of issues addressed in this motion, Plaintiffs believe there is good cause to exceed the
17 20-page limit set forth in California Rules of Court, Rule 3.764(c)(2), and respectfully request that
18 the Court consider the attached Memorandum of Points and Authorities, which is 23 pages in length.

19
20 Dated: October 4, 2022

Respectfully submitted,

COUNSELONE, PC

21
22 By: 

Anthony J. Orshansky

Jennifer L. Connor

Justin Kachadoorian

23
24
25 Keith A. Custis

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Giovanni Mitchell, Ammon Mendes, Mackenzie Hernandez, and Elora Dorn (“Plaintiffs” or “Class Representatives”) hereby submit this Memorandum of Points and Authorities in support of their Motion for Final Approval of this class and representative action settlement on behalf of all current and former non-exempt employees who worked for defendants Tocaya Management LLC, Tocaya Organica LLC, Toca Madera Management LLC, The Madera Group LLC, and Noble 33 Management LLC, and/or their predecessor or merged entities, at Tocaya Organica and/or Toca Madera Restaurants (“Defendants”) in the State of California at any time from April 6, 2016 to February 15, 2022 (the “Class” or “Class Members”).¹

The Stipulation of Class and Representative Action Settlement (“Settlement Agreement”),² along with the Amendment to the Joint Stipulation of Class and Representative Action Settlement³ (“Amendment”; collectively, the “Amended Settlement Agreement”) between Plaintiffs and Defendants (together, the “Parties”), if approved, will resolve specific claims of Plaintiffs, Settlement Class Members,⁴ and PAGA Group Members⁵ in exchange for Defendants’ agreement to pay ***Two Million Dollars (\$2,000,000) into a non-reversionary common settlement fund***. In this non-reversionary settlement, all Settlement Class Members will ***automatically receive*** payments

¹ “Class Period” is defined as the period beginning on April 6, 2016 and ending on February 15, 2022. (Settlement Agreement ¶ 7.)

² A true and correct copy of the Settlement Agreement is attached as Exhibit 1 to the Declaration of Anthony J. Orshansky (“Orshansky Decl.”), filed concurrently herewith.

³ After executing the Settlement Agreement, Defendants raised concerns about the schedule for funding. (Orshansky Decl. ¶ 5 fn. 1.) Accordingly, on August 30, 2022, the Parties executed the Amendment, which allows Defendants to make the two payments of the Gross Settlement Amount of \$1,000,000 (for a total of \$2,000,000), in addition to the employer’s share of employment taxes, up to six months after the original payment deadlines, but requires Defendants to pay four percent simple interest per annum, that will accrue during the period the settlement payments are made after the originally agreed-upon dates, and that will be added to the Gross Settlement Amount. (*Ibid.*) On September 2, 2022, the Court approved the Amendment and the Amended Class Notice. (*Ibid.*) A true and correct copy of the Amendment is attached as Exhibit 2 to the Orshansky Decl. filed concurrently herewith.

⁴ “Settlement Class” or “Settlement Class Members” means all Class Members who have not submitted a timely and valid request for exclusion from the settlement. (Settlement Agreement ¶ 35.)

⁵ “PAGA Group Members” are defined as all Class Members employed by Defendants at any time during the PAGA Period (which is March 6, 2019 through February 15, 2022). (Settlement Agreement ¶¶ 23, 26.)

1 without the need to submit a claim form, resulting in an average individual settlement award
2 payment of approximately \$303.77. (See Declaration of Abel E. Morales Regarding Notification
3 and Settlement Administration (“Morales Decl.”), filed concurrently herewith, ¶ 11.) This is a very
4 favorable resolution of the disputed wage and hour claims in this case. *Not a single Class Member*
5 *has filed an objection* to the settlement after receiving notice of the proposed settlement and the
6 projected individual settlement payments, and *only one Class Member requested exclusion* from
7 the settlement, resulting in a **99.96% settlement participation rate**. (Morales Decl. ¶¶ 9-11.)

8 As explained below, the Court should grant Plaintiffs’ motion because: (1) the conditionally
9 certified Class continues to meet the requirements for class certification for settlement purposes
10 under Code of Civil Procedure section 382; (2) the settlement is a fair, adequate, and reasonable
11 compromise of the disputed claims in this case; and (3) the amounts requested for Class Counsel’s
12 attorneys’ fees and costs, Plaintiffs’ enhancement payments, and settlement administration costs are
13 all fair, adequate, and reasonable. In light of the foregoing, this Court should enter the Proposed
14 Final Order and Judgment Granting Plaintiffs’ Motion for Final Approval of Class and
15 Representative Action Settlement, Attorneys’ Fees and Costs, and Class Representatives’
16 Enhancement Payments, submitted concurrently herewith.

17 **II. FACTUAL AND PROCEDURAL BACKGROUND**

18 On March 6, 2020, counsel for Plaintiff Giovanni Mitchell (“Mitchell”) provided pre-filing
19 written notice pursuant to California Labor Code section 2699 to the California Labor and
20 Workforce Development Agency (“LWDA”), outlining the factual and legal bases for Plaintiff
21 Mitchell’s allegations of Defendants’ wrongdoing on behalf of himself and aggrieved employees,
22 and mailed a certified copy to Defendants. (Orshansky Decl. ¶ 25.)

23 On June 16, 2020, counsel for Plaintiffs Ammon Mendes (“Mendes”), Mackenzie
24 Hernandez (“Hernandez”), and Elora Dorn (“Dorn”) provided pre-filing written notice to the LWDA
25 outlining the factual and legal bases for their allegations of Defendants’ wrongdoing on behalf of
26 themselves and aggrieved employees, and mailed a certified copy to Defendants in accord with the
27 PAGA. (Orshansky Decl. ¶ 26.)

1 On June 25, 2020, Plaintiff Mitchell filed his initial complaint asserting a single cause of
2 action pursuant to California’s Private Attorneys General Act of 2004, Labor Code sections 2698,
3 *et seq.* (PAGA), based on alleged violations of Labor Code sections 201, 202, 203, 204, 226(a),
4 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1198, 2800 and 2802. (Orshansky Decl. ¶ 27.) In
5 a related action, Plaintiffs Hernandez, Dorn, and Mendes asserted wage and hour class and
6 representative action claims against Defendants. (*Ibid.*; *see also* Declaration of Keith Custis in
7 Support of Motion for Final Approval (“Custis FA Decl.”), filed concurrently herewith, at ¶ 20.)

8 On August 24, 2020, counsel for Plaintiffs Hernandez, Dorn, and Mendes provided an
9 amended written notice to the LWDA and, by certified mail, to Defendants outlining the factual and
10 legal bases for their allegations of Defendants’ wrongdoing on behalf of themselves and aggrieved
11 employees in accord with the PAGA. (Orshansky Decl. ¶ 28.)

12 The Court granted leave to file a First Amended Class and Representative Complaint adding
13 Plaintiffs Hernandez, Dorn, and Mendes, as well as the wage and hour class claims asserted by them.
14 (Orshansky Decl. ¶ 29.) Thereafter, Plaintiffs Mitchell, Hernandez, Dorn, and Mendes filed their
15 First Amended Class and Representative Complaint. (*Ibid.*) The First Amended Class and
16 Representative Complaint alleges causes of action for: (1) failure to pay minimum wages; (2) failure
17 to pay overtime wages; (3) failure to provide meal periods; (4) failure to provide rest periods; (5)
18 failure to provide accurate itemized wage statements; (6) failure to pay all wages owed timely and
19 upon separation of employment; (7) failure to reimburse business expenses; (8) failure to provide
20 split shift premium pay; (9) failure to provide reporting-time pay; (10) violation of Labor Code §
21 1174(d); (11) violation of Business & Professions Code §§ 17200, *et seq.*; and (12) civil penalties
22 pursuant to California’s Private Attorneys General Act of 2004 (Labor Code §§ 2698, *et seq.*).
23 (Orshansky Decl. ¶ 29.)

24 Plaintiffs’ lawsuit thus sought to recover unpaid wages, premiums for non-compliant meal
25 and rest breaks, reimbursement of business expenses, penalties for improper wage statements,
26 waiting time penalties, restitution, liquidated damages, civil penalties pursuant to the PAGA,
27 injunctive and other equitable relief, prejudgment interest, and attorneys’ fees and costs. (Orshansky
28

Decl. ¶ 30.) Defendants filed their Answer pleading general denial of wrongdoing and asserting affirmative defenses. (*Id.* at ¶ 31.)

Defendants deny Plaintiffs' allegations of wrongdoing. (Settlement Agreement ¶ 47.) Defendants do not believe that any liability to Plaintiffs or other Class Members exists, or that Plaintiffs or Class Members are entitled to any recovery. (*Id.* ¶¶ 45, 47.) In settling, Defendants do not admit liability with respect to the alleged claims made by Plaintiffs and make no admission regarding any facts or law related to the action. (*Ibid.*)

A. Discovery and Investigation.

Here, the Parties engaged in extensive discovery, exchanging information and documents, and analyzing extensive data made available by Defendants which enabled the Parties to thoroughly evaluate Plaintiffs' claims, the claims of the putative class members, and the aggrieved employees' PAGA claim, along with Defendants' affirmative defenses, and the likely outcomes, risks, and expense of pursuing litigation.

Prior to initiating the action, Class Counsel independently and thoroughly investigated the claims and considered the facts and circumstances underlying the pertinent issues and applicable law. (Orshansky Decl. ¶ 24; Custis FA Decl. ¶ 19.) This required thorough discussions and interviews with Plaintiffs and other Class Members as well as research into the various legal issues involved in the case. (Orshansky Decl. ¶ 24; Custis FA Decl. ¶ 19.) After conducting their initial investigation, Class Counsel determined that the claims were well suited for class action adjudication owing to what appeared to be a common course of conduct affecting a similarly situated group of employees. (Orshansky Decl. ¶ 24.)

Class Counsel conducted substantial discovery, including propounding three sets of Special Interrogatories, one set of Requests for Production of Documents, one set of Form Interrogatories. (Orshansky Decl. ¶ 34.) Defendants produced information and documentation concerning the alleged violations, such as Defendants' written policies concerning those claims, including Defendants' employee handbooks, policies and procedures regarding the payment of wages, the provision of meal and rest breaks, time keeping policies, such as recording hours, issuance of wage statements, and providing all wages at separation, as well as composite data regarding the number

1 of Class Members and the mix of current versus former employees, total number of pay periods,
2 total number of workweeks, and the average hourly rate in effect. (*See* Settlement Agreement ¶ 41;
3 *see also* Orshansky Decl. ¶ 34.) Defendants also produced time and pay records for Class Members.
4 (*Ibid.*) Counsel met and conferred at length regarding the information and documents produced.
5 (*Ibid.*) Class Counsel interviewed Class Members, analyzed the documents and data produced, and
6 spent significant time consulting with an expert to determine Defendants' degree of liability and
7 potential amounts due in damages. (*See* Settlement Agreement ¶ 41; *see also* Orshansky Decl. ¶ 35.)

8 **B. Mediation and Settlement.**

9 Thereafter, the Parties participated in a full-day mediation with Hon. Peter D. Lichtman
10 (Ret.) of Signature Resolution, where they debated and discussed their respective positions.
11 (Orshansky Decl. ¶ 36.) During the mediation, the Parties exchanged further information and
12 discussed all aspects of the case, including the risks and delays of litigation and the risk to both
13 Parties for proceeding with a motion for class certification, liability under the claims asserted, and
14 the implications of a PAGA representative action. (*Ibid.*) These were contentious issues because of
15 the factual and legal complexity of the case. (*Ibid.*) The settlement discussions were conducted at
16 arm's length. (*Ibid.*) No settlement was reached. (*Ibid.*)

17 In July 2021 and November 2021, the Parties participated in additional mediation sessions
18 with Paul Grossman, Esq. of Paul Hastings LLP. (Orshansky Decl. ¶ 37.) These settlement
19 discussions were also conducted at arm's length. (*Ibid.*) The Parties accepted the mediator's proposal
20 for settlement after participating in these additional mediation sessions; the Parties finally came to
21 agreement on all material terms of this settlement and resolution of the lawsuit. (*Ibid.*)

22 Because the settlement negotiations were hard fought and conducted in good faith and at
23 arm's length between attorneys with substantial experience litigating class actions, representative
24 actions, and wage and hour cases, the settlement was the product of a non-collusive settlement
25 process in which the Parties were forced to make significant compromises in the interest of reaching
26 a full and complete settlement of the action. (Orshansky Decl. ¶ 39.)

27 From Class Counsel's review of the facts, strengths, and weaknesses of the case, the risks
28 and delays posed by further litigation, and Class Counsel's own prior litigation experience, Class

Counsel believe that the recovery being made available to Settlement Class Members and PAGA Group Members is fair, reasonable, and adequate taking into consideration the amounts received in other wage and hour class and representative actions, the risks inherent in litigation of this genre, and the reasonable tailoring of each Settlement Class Member's and PAGA Group Member's claim to the settlement award he or she will receive. (Orshansky Decl. ¶ 40.) Class Counsel believe that the settlement serves the best interests of Settlement Class Members and PAGA Group Members. (*Ibid.*) The Parties have concluded that it is in their best interests to compromise, settle, and accept the terms of the Settlement Agreement. (Settlement Agreement ¶ 44.)

The Parties engaged in extensive negotiations to finalize the long-form Settlement Agreement, along with the Notice of Pendency of Class and Representative Action Settlement, and Plaintiffs filed a Motion for Preliminary Approval of Class and Representative Action Settlement. (Orshansky Decl. ¶ 38.) On June 29, 2022, after the Motion for Preliminary Approval was filed, and the hearing conducted, the Court issued its Order Granting Preliminary Approval of Class and Representative Action Settlement, attached as **Exhibit "3"** to the Orshansky Decl. filed concurrently herewith. (*Id.* at ¶ 17.) On August 30, 2022, the Parties executed an Amendment to the Settlement Agreement which, along with an amended Notice of Pendency of Class and Representative Action Settlement ("Amended Class Notice"), was approved by the Court on September 2, 2022. (*See fn. 3, supra*; Orshansky Decl. ¶ 5 fn. 1; Morales Decl. Exh. A [Amended Class Notice].)

On August 19, 2022, after performing a National Change of Address ("NCOA") search to update and verify addresses for Class Members, the Settlement Administrator, CPT Group, Inc. ("CPT"), mailed the Amended Class Notice via U.S. first class mail to all Class Members and PAGA Group Members. (*See* Morales Decl. ¶¶ 6, 7 and Exhibit A [Amended Class Notice].) The Amended Class Notice was printed in both English and Spanish. (Morales Decl. ¶ 4.) Class Members had until October 3, 2022 to submit disputes, requests for exclusion, or objections. (*Id.* at ¶ 7.) As of the date of this filing, CPT received *no objections*, and *a single request for exclusion*, rendering an overall *settlement participation rate of 99.96%*. (*Id.* at ¶¶ 9-11.) Given the participation rate and estimated deductions from the Gross Settlement Amount, the average gross individual settlement payment is

1 approximately \$303.77. (*Id.* at ¶ 11.) Plaintiffs now respectfully submit the settlement for this
2 Court’s final approval.

3 **III. SUMMARY OF THE SETTLEMENT AND NOTICE PROCESS**

4 **A. The Class Definition**

5 For settlement purposes only, the Class to be confirmed for certification is as follows: all
6 current and former non-exempt employees who worked for defendants Tocaya Management LLC,
7 Tocaya Organica LLC, Toca Madera Management LLC, The Madera Group LLC, and Noble 33
8 Management LLC, and/or their predecessor or merged entities, at Tocaya Organica and/or Toca
9 Madera Restaurants in the State of California at any time from April 6, 2016 to February 15, 2022.⁶
10 (Settlement Agreement ¶¶ 4, 7.)

11 **B. Monetary Terms**

12 Defendants have agreed to pay a *non-reversionary settlement amount* (“Gross Settlement
13 Amount”) of ***Two Million Dollars (\$2,000,000)***. (*See* Settlement Agreement ¶¶ 17, 51; Orshansky
14 Decl. ¶ 5.) The Gross Settlement Amount shall be inclusive of all individual settlement payments to
15 Settlement Class Members, the enhancement payments to the Class Representatives, the costs to the
16 Settlement Administrator, the attorneys’ fees and litigation costs to Class Counsel, and the PAGA
17 Payment, including payment to PAGA Group Members and to the LWDA for civil penalties
18 pursuant to statute. (Orshansky Decl. ¶ 6.) The Net Settlement Amount is the amount remaining
19 from the Gross Settlement Amount after deducting Court-approved amounts for attorneys’ fees (*i.e.*,
20 \$700,000), actual litigation costs reimbursement (*i.e.*, \$ 33,560.39 [which is less than the agreed
21 upon \$35,000]), Class Representatives’ Enhancement Payments (*i.e.*, \$20,000), PAGA Payment
22 (*i.e.*, \$200,000—of which 75% is allocated for payment to the LWDA for civil penalties pursuant
23 to statute and 25% is to be distributed on a *pro rata* pay periods basis to all PAGA Group Members),
24 and actual settlement administration expenses (*i.e.*, \$45,000 [which is less than the agreed upon
25 \$60,000]). (*See* Settlement Agreement ¶ 51(a)-(d); Orshansky Decl. ¶ 7.) Based on these figures,
26
27

28 ⁶ *See* footnote 1, *supra*.

1 the Net Settlement Amount is approximately \$1,001,439.61.⁷ (Orshansky Decl. ¶ 7.) The average
2 individual settlement payment is estimated to be \$303.77. (Morales Decl. ¶ 11.)

3 The entire Net Settlement Amount will be paid out to Settlement Class Members. Settlement
4 Class Members will automatically receive payments without the need to submit claim forms, and
5 PAGA Group Members will receive individual PAGA payments irrespective of whether they opt
6 out of the class settlement. (Settlement Agreement ¶¶ 51, 55.)

7 The Net Settlement Amount will be the amount that is available for distribution to Settlement
8 Class Members on a *pro rata* basis based on workweeks during the Class Period. (Settlement
9 Agreement ¶¶ 37, 51(f).) Each Individual Settlement Share shall be calculated as follows: the Net
10 Settlement Amount shall be divided by the total of all Workweeks of Settlement Class Members
11 during the Class Period in order to yield the “Workweek Value.” (*Ibid.*) The Individual Settlement
12 Share to each Settlement Class Member shall be calculated by multiplying his or her individual
13 Workweeks by the Workweek Value. (*Ibid.*)

14 In addition, each PAGA Group Member will receive a proportional share of the 25% of the
15 PAGA Payment based on his or her pay periods during the PAGA Period. (Settlement Agreement
16 ¶¶ 28, 51(d).) Specifically, 25% of the PAGA Payment (or \$50,000) shall be divided by the total of
17 all Pay Periods worked by PAGA Group Members during the PAGA Period in order to establish the
18 value of each Pay Period. (*Ibid.*) The individual PAGA payment to be made to each PAGA Group
19 Member shall be calculated by multiplying the value of a Pay Period by the number of Pay Periods
20 worked by the PAGA Group Member during the PAGA Period, and irrespective of whether he or
21 she is a Settlement Class Member. (*Ibid.*) The settlement award amounts for Settlement Class
22 Members and PAGA Group Members are separately calculated and stated in the Amended Class
23 Notice (*See* Morales Decl. Exhibit A [Amended Class Notice] at ¶¶ III.B-D.) The timeline for the
24 issuance of settlement payments is explained in the Amended Settlement Agreement and Amended

25
26 ⁷ The Parties originally estimated the Net Settlement Amount at \$985,000. However, the actual Net
27 Settlement Amount is \$1,001,439.61 because Class Counsel’s actual litigation costs are \$33,560.39
28 (*see* Orshansky Decl. ¶¶ 75-78 [CounselOne, P.C.’s costs are \$18,014.80 and Custis Law, P.C.’s
costs are \$15,545.59]), which is less than the allocated costs amount of \$35,000, and the Settlement
Administrator’s actual expenses are \$45,000, which is less than the allocated expenses of \$60,000
(*see* Morales Decl. ¶ 12).

1 Class Notice. (See Settlement Agreement ¶¶ 61(b)-(c); Amendment page 1; Morales Decl. Exh. A
2 [Amended Class Notice] at ¶ III.B.)

3 After reduction for the employee's share of taxes on the wage portion, the net payment to
4 each Settlement Class Member will be the sum of his or Individual Settlement Share plus, if
5 applicable, the individual PAGA payment (collectively, "Individual Settlement Payment").
6 (Orshansky Decl. ¶ 10.) As a result of the distribution formulas, the consideration paid to each
7 Settlement Class Member and PAGA Group Member is tailored to the impact of Defendants'
8 alleged violations as well as to the claims he or she is releasing. (*Ibid.*)

9 Payments to the Settlement Class Members will be classified as twenty percent (20%) wages
10 to be reported on an IRS Form W-2, and eighty percent (80%) penalties and interest to be reported
11 on an IRS Form 1099. (Settlement Agreement ¶ 53(a).)

12 **C. Summary of Notice Process**

13 On July 21, 2022, counsel for Defendants provided CPT Group, Inc. ("CPT"), the Court-
14 approved Settlement Administrator, with a list of Class Members containing the full names, last
15 known mailing addresses, Social Security numbers, and number of pay periods during the PAGA
16 Period and number of workweeks during the Class Period. (See Morales Decl. ¶ 5.) After performing
17 a NCOA (National Change of Address) search to update and verify addresses, CPT mailed the
18 Amended Class Notice to all Class Members and PAGA Group Members via U.S. first class mail
19 (*Id.* at ¶¶ 6-7.) As a result of either a skip trace, request from counsel or the Class Member, a total
20 of 229 Amended Class Notices have been re-mailed. (*Id.* at ¶ 8.) Class Members had until October
21 3, 2022 to submit disputes, requests for exclusion, or objections. (*Id.* at ¶ 7.) As of the date of this
22 filing, not a single Class Member has objected to the settlement, and only one Class Member opted
23 out of the settlement; accordingly, this results in a **99.96% settlement participation rate**. (*Id.* at ¶¶
24 9-11.) The average individual settlement payment is \$303.77. (*Id.* at ¶ 11.)

25 **D. Timing of Payments & Uncashed Checks**

26 The settlement calls for fifty percent (50%) of the Gross Settlement Amount and fifty percent
27 (50%) of the employers' share of payroll taxes to be funded within two-hundred ten (210) calendar
28 days after the Effective Date, and the other fifty percent (50%) of the Gross Settlement Amount and

1 the other fifty percent (50%) of the employers' share of payroll taxes to be funded within twelve
2 (12) months plus 30 calendar days after the Effective Date. (Settlement Agreement ¶¶ 61(a)-(b);
3 Amendment page 1.) Within ten (10) calendar days after Defendants fund each installment of the
4 Gross Settlement Amount, the Settlement Administrator shall distribute the following: (i) one half
5 of the Enhancement Payments to Plaintiffs/Class Representatives; (ii) one half of the LWDA
6 payment to the LWDA; (iii) one half of the Individual Settlement Payments to Settlement Class
7 Members and PAGA Group Members; (iv) one half of the Attorneys' Fees and Costs to Class
8 Counsel; and (v) one half of the Administration Costs to the Settlement Administrator. (*Id.* at ¶
9 61(c).)

10 In the event any settlement checks are not cashed, deposited, or negotiated within one
11 hundred eighty (180) calendar days from the date of issuance, then the check(s) will be cancelled
12 and the funds associated with the cancelled check(s) will be transmitted to the Controller of the State
13 of California to be held pursuant to the Unclaimed Property Law, Civil Code sections 1500, *et seq.*,
14 for the benefit of those Settlement Class Members and PAGA Group Members who did not timely
15 cash their checks. (Settlement Agreement ¶ 61(d).)

16 **E. Posting of Final Order and Judgment upon Final Approval**

17 The Court's Final Approval Order and Judgment will be posted on the Settlement
18 Administrator's website pursuant to California Rules of Court, Rule 3.771(b). (Orshansky Decl. ¶
19 84; *see* Settlement Agreement ¶ 62(c); Morales Decl. Exhibit A [Amended Class Notice] at ¶ VI.)

20 **IV. ARGUMENT**

21 **A. This Court Should Confirm Its Conditional Certification of the Settlement Class** 22 **for Settlement Purposes Because It Meets All of the Requirements for Class** 23 **Certification under Code of Civil Procedure § 382**

24 Under Code of Civil Procedure section 382, a class may be certified if: (1) it is ascertainable
25 and its members are too numerous for joinder to be practical; (2) the representative and absent class
26 members share a community of interest, and questions of law and fact common to the class
27 predominate over questions unique to individual class members; (3) the representative's claims are
28 typical of the class's claims; and (4) the representative will fairly and adequately represent the

1 class's interests. (*See Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470.) Here, this Court
2 found that the proposed Class meets all the requirements for class certification for settlement
3 purposes when it granted preliminary approval of the Settlement Agreement on June 29, 2022. (*See*
4 *Orshansky Decl.* ¶ 17 and Exh. 3 [Order Granting Preliminary Approval].) Since then, no events
5 have cast doubt on the propriety of this determination, and in fact, the reaction of the Class Members
6 has been overwhelmingly supportive of the settlement, with no Class Member objecting to the
7 settlement and only a single Class Member opting out of the settlement, for a 99.96% settlement
8 participation rate. (*See Morales Decl.* ¶¶ 9-11.) This Court should therefore confirm its conditional
9 certification of the Class.

10 **B. This Court Should Finally Approve the Settlement Because It Is a Fair,**
11 **Adequate, and Reasonable Compromise of Disputed Wage and Hour Claims**

12 California courts have a strong policy in favor of settlement. (*See, e.g., Stambaugh v.*
13 *Superior Court* (1976) 62 Cal.App.3d 231, 236.) Unlike individual settlements, class action
14 settlements involve a court approval process that exists to prevent fraud, collusion, and unfairness
15 to class members. (*Malibu Outrigger Bd. of Governors v. Superior Court* (1980) 103 Cal.App.3d
16 573, 578-79.) This approval process consists of preliminary settlement approval, notice given to
17 class members, and a final fairness and approval hearing at which class members have the
18 opportunity to be heard with respect to the settlement. (*Ibid.*) Now that notice has been provided to
19 Class Members, Plaintiffs respectfully request that the Court finally approve the settlement as fair,
20 adequate, and reasonable.

21 **1. The Settlement Was Reached at Arm's Length, through Experienced**
22 **Counsel and Respected Mediators, and Was Based on Sufficient**
23 **Information to Intelligently Negotiate a Fair Settlement in Light of the**
24 **Claims Asserted and Risks of Continued Litigation**

25 A settlement is presumptively fair where it is reached through arm's-length bargaining, it is
26 based on sufficient discovery and investigation to allow counsel and the court to act intelligently,
27 counsel is experienced in similar litigation, and the percentage of objectors to the settlement is small.
28 (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802.) In deciding whether to approve a

1 proposed settlement, a trial court has broad powers to determine if the proposed settlement is fair
2 under the circumstances of the case. (*Mallick v. Superior Court* (1979) 89 Cal.App.3d 434, 438.) In
3 exercising these powers, the overriding concern is to ensure that a proposed settlement is “fair,
4 adequate, and reasonable.” (*Dunk, supra*, 48 Cal.App.4th at p. 1801 [internal quotations omitted].)

5 Relevant factors for the Court to consider include, but are not limited to:

6 [T]he strength of plaintiffs’ case, the risk, expense, complexity and likely duration of
7 further litigation, the risk of maintaining class action status through trial, the amount
8 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.

9 (*Ibid.*) These factors require balancing, are non-exhaustive and, as such, trial courts should tailor the
10 factors to each case and give due regard to “what is otherwise a private consensual agreement
11 between the parties.” (*Ibid.*)

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

20 Here, the settlement resulted from extensive arm’s-length settlement negotiations between
21 qualified and experienced counsel with the assistance of two well-respected mediators. (*See*
22 *Orshansky Decl.* ¶¶ 36-37.) While Plaintiffs maintain that their claims are meritorious, Plaintiffs
23 acknowledge the substantial risks and uncertainty in proceeding with class certification and
24 eventually trial, which justify a downward departure from the maximum exposure that Plaintiffs
25 calculated that each claim carried. (*Id.* at ¶¶ 43.) For the reasons discussed herein, Class Counsel
26 posit that the settlement is fair, adequate, and reasonable for all Settlement Class Members.

27 As detailed in Plaintiffs’ Motion for Preliminary Approval (the “MPA”), Defendants argued
28 that Plaintiffs would be unable to certify a class outside of the settlement context for a variety of

1 reasons. For example, Class Members worked in different job positions and had different managers,
2 and as a result Defendants contended there was variation to the circumstances that could allegedly
3 cause the employees to work off-the-clock and/or be deprived of the opportunity to take legally
4 compliant, duty-free meal and rest periods, and this variation in circumstances raised highly
5 individualized questions of fact. (Orshansky Decl. ¶ 46.) Further, Plaintiffs would face significant
6 hurdles to certification given that some Class Members signed arbitration agreements with class
7 action waivers as a condition of their employment. (*Id.* at ¶ 47; *see Epic Sys. Corp. v. Lewis* (2018)
8 138 S.Ct. 1612 [class action waivers in arbitration agreements are enforceable].) If Defendants'
9 arbitration agreement defense is successful, it would severely limit the potential relief available to
10 those Class Members who signed arbitration agreements with class action waivers. (Orshansky Decl.
11 ¶ 47.) Even if Plaintiffs prevailed and certified a class action, there is no guarantee that Defendants
12 would not later move for and obtain decertification. (*Ibid.*) If the Court either denied class
13 certification or later decertified it, the Settlement Class would recover nothing and Settlement Class
14 Members would be forced to retain their own counsel and proceed on the basis of individual claims
15 only. (*Ibid.*)

16 Looking at the merits of Plaintiffs' claims, Defendants contended that there is substantial
17 uncertainty due to the factual and legal complexity of the case (*i.e.*, factual variance and evidentiary
18 difficulty of proving off-the-clock claims and legal complexity as to defenses such as waiver of meal
19 and rest breaks, the legality of on-premises rest breaks absent other indicia of control, and/or unpaid
20 meal and rest break premiums as predicate for wage statement and waiting time penalties).

21 Class Counsel carefully vetted the claims at issue to arrive at a comprehensive damages
22 model for Defendants' liability. In the end, it was determined that the \$2,000,000 Gross Settlement
23 Amount represents an approximate 39.5% of the possible damages recoverable at trial. (Orshansky
24 Decl. ¶ 49.) Plaintiffs presented a detailed *Clark* and *Kullar* analysis in connection with their MPA,
25 which has not changed in the interim. Thus, for reasons of economy and space, Plaintiffs refer the
26 Court to their prior preliminary approval filing for detailed claim valuation estimates. While the
27 above-described risks are far from exhaustive, they demonstrate that the settlement is fair, adequate,
28 and reasonable in light of them.

1 **2. The Settlement Fairly, Reasonably, and Adequately Compensates**
2 **Settlement Class Members and PAGA Group Members Because Each**
3 **Settlement Class Member and PAGA Group Member Will Be Paid**
4 **Based on the Extent of His or Her Injury**

5 Individual settlement payments will be calculated based on (1) the number of workweeks
6 worked by each Settlement Class Member during the Class Period, and (2) the number of pay periods
7 worked each PAGA Group Member during the PAGA Period. This method of distribution
8 compensates Settlement Class Members and PAGA Group Members based on the estimated extent
9 of their injuries, as individuals employed for a longer period would have been subject to more of the
10 alleged wage and hour violations than those who employed for a shorter period. Thus, the formulas
11 for compensating Settlement Class Members and PAGA Group Members are fair, adequate, and
12 reasonable, as they are tethered to the damages and penalties that could be recovered by them. (*See*
13 discussion at section III.B, *supra*.)

14 **3. The 99.96% Participation Rate and Absence of Any Objections**
15 **Confirms That the Settlement Is Fair, Adequate, and Reasonable**

16 The Class Members’ response to the settlement is relevant in evaluating whether it merits
17 final approval. (*Dunk, supra*, 48 Cal.App.4th at p. 1801.) Further, the absence of objections and the
18 fact that only a single class member requested exclusion support a fairness presumption. (*See 7-*
19 *Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1152-53
20 [finding 9 objections and 80 opt-outs showed a “particularly impressive” response from class
21 members].) Here, ***not a single Class Member objected*** to the settlement and ***only one Class Member***
22 ***opted out*** of the settlement, resulting in a ***99.96% settlement participation rate***. (Morales Decl. ¶¶
23 9-11.) This extremely positive reaction from the Class further confirms that the settlement is fair,
24 adequate, and reasonable.

25 **C. The Requested Award of Attorneys’ Fees Is Reasonable as a Percentage of the**
26 **Common-Fund Total Settlement Amount**

27 A percentage method may be used to calculate a reasonable fee in a common fund case such
28 as this. (*Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th 480, 503.) A fee award is justified where

1 the legal action has produced its benefits by way of a voluntary settlement. (*See, e.g., Maria P. v.*
2 *Riles* (1987) 43 Cal.3d 1281, 1290-91; *Westside Community for Independent Living, Inc. v. Obledo*
3 (1983) 33 Cal.3d 348, 352-53.) When a settlement results in a common fund for the benefit of a
4 class, class counsel may be awarded fees as a percentage of the common fund. (*See Wershba, supra,*
5 91 Cal.App.4th at p. 254 [recognizing the “percentage of recovery” method].) The California
6 Supreme Court confirmed in *Laffitte v. Robert Half Int’l, Inc.* that “[t]he percentage of fund method
7 survives in California class action cases.” (*Laffitte, supra*, 1 Cal.5th at p. 506.) Specifically, the
8 *Laffitte* Court held:

9 The recognized advantages of the percentage method - including relative ease of
10 calculation, alignment of incentives between counsel and the class, a better
11 approximation of market conditions in a contingency case, and the encouragement it
12 provides counsel to seek an early settlement and avoid unnecessarily prolonging the
13 litigation - convince us the percentage method is a valuable tool that should not be
14 denied our trial courts.

15 (*Id.* at p. 503 [internal citation omitted]; *see also, e.g., Serrano v. Priest* (1977) 20 Cal.3d 25, 34
16 [“when a number of persons are entitled in common to a specific fund, and an action brought by a
17 plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund, such
18 plaintiff or plaintiffs may be awarded attorney’s fees out of the fund.”]; *Serrano v. Unruh* (1982) 32
19 Cal.3d 621, 627 [in awarding a fee from the common fund obtained for the benefit of all parties, the
20 trial court acts within its equitable power to prevent the other parties’ unjust enrichment]; *Rawlings*
21 *v. Prudential-Bache Properties, Inc.* (6th Cir. 1993) 9 F.3d 513, 516 [the percentage of the fund
22 method for calculating attorneys’ fees more accurately reflects the results achieved for the putative
23 class than the lodestar method and “establishes reasonable expectations on the part of plaintiffs’
24 attorneys as to their expected recovery; and it encourages early settlement, which avoids protracted
25 litigation.”]; *In re Rite Aid Corp. Securities Litigation* (3d Cir. 2005) 396 F.3d 294, 300 [“The
26 percentage-of-recovery method is generally favored in common fund cases because it allows courts
27 to award fees from the fund ‘in a manner that rewards counsel for success and penalizes it for
28 failure.’”].)

29 The settlement calls for the payment of up to 35% of the Gross Settlement Amount for
30 attorneys’ fees. (Settlement Agreement ¶ 51(a).) This request is fair, reasonable, and adequate to

1 compensate Class Counsel for the excellent results achieved with average settlement payments of
2 \$303.77, no objectors, and a 99.96% settlement participation rate. (See Morales Decl. ¶¶ 9-11;
3 Orshansky Decl. ¶ 64.) First, Class Counsel negotiated a substantial recovery for Class Members
4 resulting in a settlement participation rate of 99.96%. (Morales Decl. ¶ 11; Orshansky Decl. ¶ 64.)
5 Second, not a single Class Member objected to the settlement or to Class Counsel’s requested fees.
6 (See Morales Decl. ¶ 9.) That Class Counsel achieved these results in the face of serious defense
7 challenges (*i.e.*, evidentiary challenges of off-the-clock work, waiver of meal and rest break
8 arguments), and in the face of an uncertain legal landscape (*i.e.*, potential distinguishability of
9 *Augustus* as to on-premises rest breaks, existence of arbitration agreements, and the then-pending
10 California Supreme Court’s *Naranjo* decision) confirms the strength of the results achieved.⁸
11 (Orshansky Decl. ¶¶ 64, 70.)

12 The attorneys’ fees award requested is consistent with Class Counsel’s experience in similar
13 wage and hour class action matters. (Orshansky Decl. ¶ 66.) Additionally, the fee request is
14 consistent with the contingency-fee agreement entered into by Plaintiffs. (*Id.* at ¶ 68.) Further, the
15 attorneys’ fees award requested is also consistent with what courts have awarded in other class and
16 representative action cases. In fact, numerous courts have awarded attorneys’ fees of up to, or in
17 excess of 40% of the common fund. (See *Ammari Electronics, et al. v. Pacific Bell Directory*,
18 Alameda County Sup. Ct., Case No. RG05198014 [awarded 43.8%]; *Zelada v. Majestic Terminal*
19 *Services*, San Bernardino Super. Ct., Case No. CIVDS1916968 [38% fee awarded on \$1,800,000
20 settlement]; *In re California Indirect Purchaser X Ray Film Antitrust Litigation*, San Francisco
21 Super. Ct. [citing *Abzug v. Kerkorian*, Los Angeles Super. Ct., Case No. CA-00981 [45%] and *Haitz*
22 *v. Meyer*, Alameda County Sup. Ct., Case No. 5729683 [45%]]; *Banda v. Verizon California, Inc.*,
23 Los Angeles Super. Ct., Case No. BC434587 [35% fee on \$15,000,000 settlement]; *Hall v. Cinema*

24
25 ⁸ *Naranjo v. Spectrum Security Service, Inc.* (2019) 40 Cal.App.5th 444, 474 [holding that
26 violations of Labor Code’s meal break provisions do not entitle employees to pursue the
27 derivative wage statement penalties]; *c.f.*, but *review granted*, *Naranjo v. Spectrum Security*
28 *Services, Inc.* (Cal., Jan. 02, 2020, No. S258966) 455 P.3d 704, 257 Cal.Rptr.3d 188.) It was
not until after this case settled that, on May 23, 2022, the California Supreme Court ruled
that premium pay for missed meal and rest breaks constitutes “wages” that must be reported
on wage statements and paid within the statutory deadlines for when an employee leaves the
job, thereby overturning the decision of the Court of Appeal.

1 7, *Inc.*, San Francisco Super. Ct., Case No. CGC-01-409105 [53%]; *Birch v. Office Depot*, United
2 States District Court for the Southern District of California, Case No. 06-cv-1690-DMS [40% fee
3 awarded on \$16,000,000 settlement]; and *Rundberg v. Intrawest Napa Dev. Co.*, Napa County
4 Super. Ct., Case No. 26-56886 [40%].)

5 Class Counsel's application for attorneys' fees in light of the facts and circumstances
6 surrounding the case is well within the range of reasonableness. In fact, historically courts have
7 awarded fees as high as fifty percent (50%) of the settlement in complex actions. (*See In re*
8 *Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494 [**awarding attorneys' fees in the**
9 **amount of 45%** of the \$7.3 million total settlement amount]; *Beech Cinema, Inc. v. Twentieth-*
10 *Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F.Supp. 1195 [awarding approximately **53% of the**
11 **settlement as attorneys' fees**]; *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 fn.11 [lower
12 court found the range of contingency fees in marketplace to be **up to 40 percent** and determined
13 such a percentage fee was appropriate]; *Van Vranken v. Atlantic Richfield Co.* (N.D.Cal. 1995) 901
14 F.Supp. 294, 297-298 [observing that "[m]ost of the cases Class Counsel have cited in which high
15 percentages such as **30-50 percent of the fund** were awarded involved relatively smaller funds of
16 less than \$10 million"]; *see also* 4 Newberg on Class Actions § 14.6 (4th Ed. 2013) ["No general
17 rule can be articulated on what is a reasonable percentage of a common fund. Usually 50% of the
18 fund is the upper limit on a reasonable fee award from a common fund in order to assure that the
19 fees do not consume a disproportionate part of the recovery obtained for the class, although
20 somewhat larger percentages are not unprecedented."].)

21 The fee award requested here is also justified because Class Counsel achieved a significant
22 monetary recovery for the Settlement Class in an uncertain, complex, and risky case while bearing
23 the substantial burdens of representation on a contingency basis, and the fees requested are in line
24 with the market rate. (Orshansky Decl. ¶ 69; *see Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290
25 F.3d 1043, 1048-1051 [finding that exceptional results in a contingency case, significant risk, and
26 the absence of supporting precedents are proper considerations in awarding attorneys' fees].) Here,
27 Class Counsel negotiated a substantial recovery for the Settlement Class, and not a single Class
28 Member objected to the settlement, nor to Class Counsel's requested fees. (*See Morales Decl.* ¶ 9.)

1 Further, the average individual settlement payment of approximately \$303.77 far exceeds average
2 settlement payments in other wage and hour class action settlements.⁹ Class Counsel achieved these
3 results in the face of serious defense challenges (*i.e.*, evidentiary challenges of off-the-clock work,
4 waiver of meal and rest break arguments), and in the face of an uncertain legal landscape (*i.e.*,
5 potential distinguishability of *Augustus* as to on-premises rest breaks, existence of arbitration
6 agreements, and the then-pending California Supreme Court’s *Naranjo* decision). (Orshansky Decl.
7 ¶ 70.)

8 As discussed above, this case presented significant risks of both non-certification as well as
9 potential challenges on the merits of Plaintiffs’ claims. (Orshansky Decl., *passim*.) Accordingly, it
10 is fair and reasonable to account for these risks in compensating Class Counsel. Class Counsel
11 should also be compensated for the risks involved in undertaking this litigation and expending
12 considerable effort, all while working on a pure contingency basis. (*Id.* at ¶ 73.) Since undertaking
13 representation of Plaintiffs, Class Counsel expended costs and devoted substantial time to this
14 litigation. (*Id.* at ¶¶ 62-63, 68.) Given the considerable potential for adverse outcomes in this case,
15 including, but not limited to, being unable to proceed on a class-wide basis and/or risking
16 unfavorable adjudication on the merits, the contingent risk borne by Class Counsel was great. (*Id.*
17 at ¶ 74.)

18 Class Counsel’s previous experience litigating wage and hour class actions also supports the
19 reasonableness of the fee request. Class Counsel are well-versed in plaintiff-side wage and hour
20 class and representative action litigation, with substantial experience litigating claims for unpaid
21 wages, meal and rest period violations, and related penalties, and have been certified as class counsel
22

23 ⁹ (*See, e.g., Ressler v. Federated Department Stores, Inc.* (L.A. County Super. Ct. Jan. 2, 2009) Case
24 No. BC335018 [average recovery of \$90]; *Palencia v. 99 Cents Only Stores* (Sacramento County
25 Super. Ct.) Case No. 34-2010-00079619 [average recovery of \$80]; *Lim v. Victoria’s Secret Stores,*
26 *Inc.* (Orange County Super. Ct. Jan. 20, 2006) Case No. 04CC00213 [average recovery of \$35];
27 *Gomez v. Amadeus Salon, Inc.* (L.A. County Super. Ct. July 23, 2010) Case No. BC392297 [average
28 recovery of \$20]; *Sorenson v. PetSmart, Inc.* (E.D. Cal. 2008) Case No. 2:06-CV-02674-JAM-DAD
[wage and hour class action settlement approved where average class member recovery was
approximately \$60]; *Williams v. Centerplate, Inc.* (S.D.Cal. 2013) 2013 WL 4525428, at *4
[granting final approval of class action settlement where average recovery for each class member
was approximately \$108]; and *Schiller v. David’s Bridal, Inc.* (E.D.Cal. 2012) 2012 WL 2117001,
at *17 [finding that average payment to class members of less than \$200 was a “good” result].)

1 in numerous other cases. (Orshansky Decl. ¶¶ 50-54, 71; Custis FA Decl. ¶¶ 4-17.) Class Counsel's
2 experience in similar matters was integral to evaluating the strengths and weaknesses of this case
3 and the reasonableness of the settlement. (Orshansky Decl. ¶ 72; Custis FA Decl. ¶¶ 25, 27.) Practice
4 in the narrow field of wage and hour litigation requires skill and knowledge concerning the rapidly
5 evolving substantive state and federal law, as well as the procedural law of class and representative
6 action litigation. (Orshansky Decl. ¶ 72.) Because it is reasonable to compensate Class Counsel
7 commensurate with their skill, reputation, and experience, the requested fee award is fair and
8 reasonable, in accord with the principles outlined by the California Supreme Court in *Laffitte*, and
9 should therefore be approved.

10 The attorneys' fees award is intended to reimburse Class Counsel for all uncompensated
11 work that they have already done and for all the work they will continue to do. (Orshansky Decl. ¶
12 63.) To investigate, litigate, and ultimately negotiate and craft the settlement, Class Counsel
13 expended a significant amount of time involved in activities, including but not limited to, the
14 following: (1) regular discussions with Plaintiffs; (2) thorough pre-litigation investigation of facts
15 with a focus on class certification elements; (3) investigation of Defendants' organizational and
16 corporate structure, and executive reporting structure as it relates to the employment and
17 management of employees; (4) comparative analysis and cross-checking of all available job postings
18 by Defendants in order to determine any variation and identify job duties and responsibilities that
19 would be susceptible to being performed off the clock or during meal or rest breaks; (5) research
20 and investigation re: staffing models and staffing levels; (6) drafting the PAGA notices to the
21 LWDA and pleadings; (7) extensive legal research and analysis into substantive law; (8) developing
22 and executing settlement and litigation strategies; (9) conducting discovery; (10) ongoing meet and
23 confer efforts with defense counsel; (11) interviewing Class Members; (12) reviewing policies and
24 procedures regarding Defendants' payment of wages, provision and tracking of meal and rest breaks,
25 and timekeeping protocol, including recording hours, issuance of wage statements, and providing
26 all wages at separation; (13) research and investigation re: various software programs Defendants
27 use to conduct everyday business, including timekeeping software, with a focus on what documents
28 are created in the normal course of business relating to overtime worked, off-the-clock time worked

1 pre-/post-shift, and time worked during meal periods; (14) examining Class Members’ time records
2 and wage statements in conjunction with Class Member interviews to determine Defendants’ degree
3 of liability; (15) consulting with a damages expert; (16) building a comprehensive damages model;
4 (17) preparing mediation briefs; (18) preparing for and attending three mediations; (19) negotiating
5 and preparing the Memorandum of Understanding; (20) negotiating and preparing the long-form
6 Settlement Agreement and related documents; (21) preparing the motion for preliminary approval
7 and supporting documents; (22) negotiating and preparing the Amendment to the Settlement
8 Agreement and Amended Class Notice; (23) overseeing the class notice process; (24) responding to
9 questions from Class Members; and (25) preparing the motion for final approval and supporting
10 documents. (*Ibid.*) The requested attorneys’ fees are reasonable for the services provided to
11 Settlement Class Members and PAGA Group Members and for the benefits they are to receive. (*Id.*
12 at ¶ 74.)

13 **D. The Requested Costs Reimbursement Warrants Final Approval as Fair,**
14 **Adequate, and Reasonable**

15 Class Counsel incurred and respectfully request reimbursement of \$33,560.39—which is
16 less than the Amended Settlement Agreement’s allocation of up to \$35,000—in litigation costs.
17 (Orshansky Decl. ¶ 76 and Exhibit 4 [Itemized Cost Chart]; Custis FA Decl. ¶ 29 and Exhibit 1
18 [Itemized Cost Chart].) Class Counsel’s request is fair, adequate, and reasonable, as all of these
19 costs are documented and reasonably incurred. Moreover, the costs for which Plaintiffs seek
20 reimbursement are all the types of costs routinely approved by courts. (*See, e.g., Harris v. Marhoefer*
21 (9th Cir. 1994) 24 F.3d 16, 19 [counsel should recover “those out-of-pocket expenses that would
22 normally be charged to a fee paying client”]; *Ashker v. Sayre* (N.D.Cal. 2011; No. 05-03759-CW)
23 2011 WL 825713, at *3 [“costs of reproducing pleadings, motions and exhibits are typically billed
24 by attorneys to their fee-paying clients” and are reimbursable]; *Trustees of Const. Industry &*
25 *Laborers Health and Welfare Trust v. Redland Ins. Co.* (9th Cir. 2006) 460 F.3d 1253, 1258-1259
26 [legal research costs are reimbursable]; *In re Immune Response Securities Litigation* (S.D.Cal. 2007)
27 497 F.Supp.2d 1166, 1177-78 [mediation expenses, legal research, copies, postage, filing fees,
28 messenger and overnight delivery costs are reimbursable].) The requested reimbursement of costs

1 of up to \$35,000 was fully disclosed to Class Members and there have been no objections. (*See*
2 Morales Decl. ¶ 9.) Because the expenses by Class Counsel were reasonably incurred, and no Class
3 Member has objected to them, the Court should grant the request for reimbursement of \$33,560.39
4 for litigation costs.

5 **E. The Court Should Finally Approve the Requested Settlement Administrator**
6 **Expenses**

7 Plaintiffs also request that the Court approve \$45,000 in administration costs to the
8 Settlement Administrator. (*See* Settlement Agreement ¶¶ 51(b) [agreeing to an amount up to
9 \$60,000]; Morales Decl. ¶ 12.) As detailed in the Declaration of Abel E. Morales submitted
10 concurrently with this Motion, CPT performed duties in connection with this settlement that were
11 instrumental in effectuating the settlement and the notice process. Among other things, CPT
12 calculated each Class Member's individual settlement payment, updated addresses contained in the
13 class data supplied by Defendants (*e.g.*, NCOA and skip-traces), formatted the Amended Class
14 Notices for mailing, mailed Amended Class Notices to all Class Members and PAGA Group
15 Members, kept the Parties informed of any communications received from the Class Members and
16 PAGA Group Members, and otherwise administered the settlement. (*See* Morales Decl., *passim*.)
17 For these reasons, CPT's requested costs are fair, reasonable, and adequate, and should be finally
18 approved.

19 **F. The Court Should Finally Approve Plaintiffs' Requested Class Representatives'**
20 **Enhancement Payments Because the Amounts Are Fair, Adequate, and**
21 **Reasonable in Light of Plaintiffs' Efforts and Risks Assumed on Behalf of the**
22 **Class**

23 A class representative must possess the same interest and suffer the same injury as the class
24 members. "To assure 'adequate' representation, the class representative's personal claim must not
25 be inconsistent with the claims of other members of the class." (*J.P. Morgan & Co., Inc. v. Sup. Ct.*
26 (*Heliotrope General, Inc.*) (2003) 113 Cal.App.4th 195, 212.) Thus, the adequacy requirement is
27 satisfied when the class representative's interests are not antagonistic to those of the class. (*McGhee*
28 *v. Crocker-Citizens Nat. Bank* (1976) 60 Cal.App.3d 442, 451.) Plaintiffs each have no conflicts

1 with the Settlement Class and, in fact, their interests are aligned with those of the Settlement Class.
2 (*See* Orshansky Decl. ¶ 78 and Exhibit 5 [Declaration of Giovanni Mitchell (“Mitchell Decl.”)] at
3 ¶¶ 9, 10, 14; Custis FA Decl. ¶ 31 and Exhibit 2 [Declaration of Elora Dorn (“Dorn Decl.”)] at ¶¶
4 12-14, Exhibit 3 [Declaration of Mackenzie Hernandez (“Hernandez Decl.”)] at ¶¶ 12-14, and
5 Exhibit 4 [Declaration of Ammon Mendes (“Mendes Decl.”)] at ¶¶ 12-14.) Because Plaintiffs’ claims
6 are the same as those that would be asserted by unnamed class members were they before the Court,
7 Plaintiffs have every interest in zealously representing the unnamed class members. (*See* Orshansky
8 Decl. Exh. 5 [Mitchell Decl.], *passim*; Custis FA Decl. Exhs. 2-4 [Dorn, Hernandez, and Mendes
9 Decls.], *passim*.) Plaintiffs have not shirked from their responsibilities; on the contrary, Plaintiffs,
10 along with their counsel, prosecuted this case with allegiance and dedication. (Orshansky Decl. ¶ 78
11 and Exh. 5 [Mitchell Decl.] ¶¶ 10-12; Custis FA Decl. ¶ 32 and Exh. 2 [Dorn Decl.] ¶¶ 11-13, Exh.
12 3 [Hernandez Decl.] ¶¶ 11-13, Exh. 4 [Mendes Decl.] ¶¶ 11-13.)

13 Courts routinely approve enhancement payments to compensate named plaintiffs for the
14 services they provide and the risks they incur during class action litigation. (*See, e.g., Bell v.*
15 *Farmers Ins. Exchange* (2004) 115 Cal.App.4th 715, 726 [upholding “service payments” to named
16 plaintiffs for their efforts in bringing the case]; *Van Vranken v. Atlantic Richfield Co.* (N.D.Cal.
17 1995) 901 F.Supp.294 [approving \$50,000 service payment].

18 Here, Plaintiffs seek enhancement payments in the amount of \$5,000 each (\$20,000 in the
19 aggregate), and believe that this request is reasonable given their time and effort in this case, the
20 positive response by Class Members, the risks they undertook on behalf of Class Members, the
21 potential of being assessed Defendants’ costs of suit, prosecuting the action during economically
22 uncertain times engendered by a public health crisis, and their general release of all claims against
23 Defendants subject to a waiver of Civil Code section 1542. (Settlement Agreement ¶¶ 50, 51(c);
24 Orshansky Decl. ¶¶ 78-82; Custis FA Decl. ¶¶ 30-36.) Plaintiffs actively participated in the
25 prosecution of this matter in particular, but not exclusively, through their discussions with Class
26 Counsel, identifying potential witnesses, providing factual information to Class Counsel about
27 Defendants’ policies, practices, and procedures, providing documents, monitoring the progress of
28 the case, participating in settlement discussions, evaluating the terms of the settlement, and

1 reviewing and signing the Settlement Agreement and Amendment. (See Orshansky Decl. ¶ 79 and
2 Exh. 5 [Mitchell Decl.] ¶¶ 11-13; Custis FA Decl. ¶ 31 and Exhs. 2-4 [Dorn, Hernandez & Mendes
3 Decls.] ¶¶ 12-14.) Plaintiffs invested significant time and effort into seeing this litigation through
4 resolution. (See Orshansky Decl. ¶ 79 and Exh. 5 [Mitchell Decl.] ¶¶ 11-13; Custis FA Decl. ¶ 31
5 and Exhs. 2-4 [Dorn, Hernandez & Mendes Decls.] ¶¶ 12-14.)

6 Plaintiffs have diligently, adequately, and fairly represented Class Members, are members
7 of the Settlement Class, have no conflicts as outlined above, and have not placed their interests
8 above those of any member of the Class. (Orshansky Decl. ¶ 80 and Exh. 5 [Mitchell Decl.], *passim*;
9 Custis FA Decl. ¶ 32 and Exhs. 2-4 [Dorn, Hernandez & Mendes Decls.], *passim*.) Furthermore, the
10 requested enhancement payments to the Class Representatives were fully disclosed to Class
11 Members in the Amended Class Notice and no objections were made. (See Morales Decl. ¶ 9.)

12 Thus, the requested enhancement payments in the amount of \$5,000 to each Plaintiff (in
13 total, \$20,000) are appropriate and justified as part of the settlement and should be finally approved.

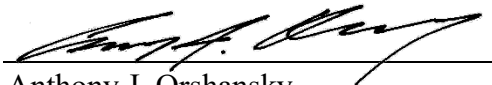
14 **V. CONCLUSION**

15 For the reasons stated herein, Plaintiffs respectfully request that this Court grant Plaintiffs'
16 Motion and enter the Proposed Final Order and Judgment Granting Plaintiffs' Motion for Final
17 Approval of Class and Representative Action Settlement, Attorneys' Fees and Costs, and Class
18 Representatives' Enhancement Payments, submitted concurrently herewith.

19 Dated: October 4, 2022

Respectfully submitted,

COUNSELONE, PC

22 By: 

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Jennifer L. Connor

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Court Reservation Receipt

Reservation

Reservation ID:
059908026589

Status:
RESERVED

Reservation Type:
Motion re: (PLAINTIFFS MOTION FOR FINAL
APPROVAL OF CLASS AND REPRESENTATIVE ACTION
SETTLEMENT, ATTORNEYS FEES AND COSTS, AND
CLASS REPRESENTATIVES ENHANCEMENT AWARD)

Number of Motions:
1

Case Number:
20STCV24075

Case Title:
GIOVANNI MITCHELL vs THE MADERA GROUP LLC, et
al.

Filing Party:
Giovanni Mitchell (Plaintiff)

Location:
Stanley Mosk Courthouse - Department 58

Date/Time: *October 27, 2022*
~~November 22nd 2022, 9:30AM~~ *9:30 a.m.*

Confirmation Code:
CR-QYC5EC4W6NZ5KVVXR

Fees

Description	Fee	Qty	Amount
Motion re: (name extension)	60.00	1	60.00
Credit Card Percentage Fee (2.75%)	1.65	1	1.65
TOTAL			\$61.65

Payment

Amount:
\$61.65

Type:
MasterCard

Account Number:
XXXX8841

Authorization:
47154Z

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