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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE**

BRAYDEN HUMPHERYS, and JEREMY
HATCHER, each individually, on behalf of all
similarly situated former and current
employees, and LOGAN SHANE
CRABTREE, on behalf of the similarly
situated aggrieved employees,

Plaintiffs,

v.

VIVINT, INC., a Delaware corporation;
VIVINT SMART HOME, INC., a Delaware
corporation; SMART HOME PROS, INC., a
Delaware corporation; ARM SECURITY,
INC., a corporation state unknown; and DOES
1 through 50, inclusive,

Defendants.

CASE NO. 30-2020-01141910-CU-OE-CXC

CLASS ACTION

**NOTICE OF MOTION AND MOTION
FOR FINAL APPROVAL OF CLASS
ACTION AND REPRESENTATIVE
ACTION SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

[Includes Application for Enhancement
Awards, Attorneys Fees, Administration
Expenses and Costs of Suit].

Date: December 8, 2023
Time: 1:30 p.m.
Dept: CX103
Judge: Hon. Lon Hurwitz

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

2 **PLEASE TAKE NOTICE** that on December 8, 2023 at 1:30 p.m., or as soon thereafter as this
3 matter may be heard in Department CX103 of the Orange County Superior Court, located at 751 W.
4 Santa Ana Boulevard, Santa Ana, CA 92701, Class Plaintiffs Brayden Humpherys and Jeremy Hatcher
5 and Private Attorneys General Act of 2004 (“**PAGA**”) Plaintiff Logan Shane Crabtree will and hereby
6 move the Court, pursuant to California Rule of Court, Rule 3.769, for an Order:

7 1. Confirming certification of the Settlement Class for settlement purposes pursuant to Code
8 of Civil Procedure § 382;

9 2. Granting final approval of the settlement between Plaintiffs and Defendants Vivint, Inc.,
10 a Delaware corporation; Vivint Smart Home, Inc., a Delaware corporation; Smart Home Pros, Inc., a
11 Delaware corporation; and Arm Security, Inc., a corporation (collectively referred to as the
12 “**Defendants**”), as set forth in the parties’ Amended and Restated Joint Stipulation for Class Action
13 Settlement, as amended by the First Amendment (collectively, the “**Settlement Agreement**”), attached
14 collectively as ***Exhibit A*** to the Notice of Lodgment (“**NOL**”);

15 3. Confirming the appointment of Attorneys Jason E. Baker and John J. Weber of Keegan &
16 Baker, LLP and Eric Norvell of Eric D. Norvell, Attorney, P.A. as Class Counsel;

17 4. Confirming the appointment of Brayden Humpherys and Jeremy Hatcher as Class
18 Representatives for the Settlement Class; and Plaintiff Logan Shane Crabtree as representative plaintiff
19 under PAGA;

20 5. Approving payments from the \$6,500,000 Gross Settlement Fund of:

21 a. PAGA Penalties of \$130,000, allocated 75% to the LWDA and 25% to the PAGA
22 Represented Employees;

23 b. Settlement administration costs of \$32,500 to CPT Group, Inc.;

24 c. Enhancement Awards of \$80,000, allocated as \$30,000 to Plaintiff Logan Shane
25 Crabtree, and \$10,000 each to Brayden Humpherys, Jeremy Hatcher, Tristan Yoder,
26 Kieffer Taylor and Jake Kaempfer.

27 d. Attorneys’ Fees of \$2,359,164 to Class Counsel; and

28 e. Litigation costs of \$17,425.74 to Class Counsel;

6. Directing that the [proposed] Order of Final Approval of Class Action and Representative Action Settlement and Judgment be entered to give finality to the Settlement pursuant to Code of Civil Procedure § 382 and California Rule of Court, Rule 3.769; and

7. Setting a Final Accounting hearing date on or after September 6, 2024.

This Motion is made on the following grounds: (1) the settlement meets all the requirements for class certification under Code of Civil Procedure § 382; (2) Plaintiffs and Class Counsel are adequate to represent the Settlement Class; (3) the terms of the settlement are fair, adequate, and reasonable; (4) the notice process performed by the Settlement Administrator comports with all applicable due process requirements; and (5) in view of the foregoing, the [proposed] Order of Final Approval of Class Action and Representative Action Settlement and Judgment submitted herewith should be entered pursuant to California Rule of Court, Rule 3.769(h).

The Motion will be based of this Notice of Motion, the Memorandum of Points and Authorities, the Declarations of Attorneys Jason E. Baker, John J. Weber and Eric Norvell and Exhibits attached to the NOL; the Declarations of Plaintiffs Brayden Humpherys, Jeremy Hatcher and Logan Shane Crabtree; the Declarations of Cooperating Class Members Tristan Yoder, Jacob Kaempfer and Kieffer Taylor; the Declaration of Laura Singh from CPT Group, Inc. and Exhibits attached thereto; the Joint Opposition to the Objection of Rodney Ratheal; and the papers and records filed herein, and on such oral and documentary evidence as may be presented at the hearing of the motion.

KEEGAN & BAKER, LLP

Dated: November 20, 2023

By: /s/ Jason E. Baker
Jason E. Baker, Esq.
John J. Weber, Esq.
Plaintiff BRAYDEN HUMPHERYS,
JEREMY HATCHER individually, on
behalf of the Class and LOGAN SHANE
CRABTREE, on behalf of all similarly
situated aggrieved employees

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs seek final approval of a wage and hour class action settlement benefitting 5,540 Class
4 Members who sold residential alarm and solar systems on a door-to-door basis. After nearly four years
5 of litigation, the parties reached a class and PAGA settlement on May 3, 2022 and June 15, 2022.¹ On
6 July 27, 2023, the Court granted Plaintiffs' Motion for Preliminary Approval. (ROA 356). The notice
7 and response periods are now complete and there have been only seven (7) "Opt-Outs" and one (1)
8 objection from Class Members. (Declaration of Jason E. Baker (Baker Dec.) ¶4; Declaration of Laura
9 Singh from CPT, Inc. (CPT Dec.) ¶¶ 16-18, Ex A. thereto; *Exhibit B* to the NOL).

10 This Settlement provides significant relief for the Settlement Class consisting of Defendants'
11 agreement to: (1) pay \$6,500,000 ("**Gross Settlement Fund**"); and (b) release and waive claims against
12 certain Settlement Class Members who separated from employment during the Class Period for (i)
13 unearned wage advances retained by Class Members (\$1,927,148.09); and (ii) violations of post-
14 termination employee non-solicitation restrictions which occurred on or before July 27, 2023, for a total
15 settlement value of \$8,427,148.09. (Baker Dec. ¶3).

16 For all of the reasons set forth in the accompanying Baker Dec. (¶¶1-127) and the Joint
17 Opposition to the Objection of Rodney Ratheal, the Settlement is fair, reasonable, and the product of
18 diligent efforts and extensive arms-length negotiations by Class Counsel to obtain the best possible
19 result for the Settlement Class, in light of the risks of recovering less than the Settlement. As such, the
20 Objection should be overruled and the Settlement should receive final approval.

21 **II. FACTUAL AND PROCEDURAL BACKGROUND**

22 **A. Summary of Claims.**

23 Defendants are Utah based subsidiaries, predecessors, and affiliates doing business as "VIVINT
24 SMART HOME," a company that sells residential alarm systems and solar systems to homeowners in
25 many states, including California. Defendants make sales primarily through door-to-door sales
26 employees, who often drive their own vehicles to the field and use their personal communication devices
27 for business purposes, such as to pull credit and log sales. As detailed in the accompanying Baker Dec.

28 _____
¹ Capitalized terms used, but not defined in this Memorandum, are used as defined in the Settlement Agreement.

at ¶5-9, Plaintiffs claimed that Utah based Defendants engaged in: (a) independent contractor and direct seller misclassification; (b) minimum wage violations for non-exempt work time; (c) expense reimbursement violations; (d) unlawful deductions from wages; (e) wages statement violations; (f) unlawful commission forfeiture; and (g) imposing unlawful contractual terms. Additionally, Defendants also paid wage advances that, if not earned, would be due upon termination and imposed post-termination employee non-solicitation restrictions with a \$25,000 liquidated damage penalty *per violation* and employer attorneys' fees for enforcement. Plaintiffs contended these provisions were unlawful, anti-competitive, and unlawfully impeded employee mobility because of the ever-recurring threat of litigation, liquidated damages, and attorneys' fees. Plaintiffs sought damages, disgorgement and penalties under PAGA and an injunction against enforcement of the repayment agreements and post-termination non-solicitation clauses. (Baker Dec. ¶¶5-9).

Defendants disputed the merits and class treatment and contended the Class owed over \$2,000,000 in unearned wage advances and an indeterminate amount of liquidated damages for violations of non-solicitation provisions. Defendants also contended that many Class Members were subject to Utah law. Defendants further contended that Plaintiffs' claims were not certifiable because a large portion of the Class signed arbitration agreements (which Plaintiffs dispute), making classwide relief unobtainable. (Baker Dec. ¶102). An extensive discussions of Defendants' claimed defenses was provided in the Baker Third Supplemental Declaration in Support of Preliminary Approval (ROA 345, ¶¶38-71).

B. Litigation and Settlement Efforts.

Plaintiff Crabtree's case commenced in January 2020, with a PAGA notice submitted to the LWDA on June 9, 2020 (*Exhibit C* to the NOL) and a First Amended Complaint to include PAGA claims filed September 15, 2020. Plaintiff Crabtree's individual claims were ordered to arbitration on August 9, 2021 and the Class and PAGA claims stayed. Fortunately, Class Counsel mobilized 149 current and former employees of Defendants, including some formerly in management, to provide evidence, conduct wage audits and assist with prosecution of this case. (Baker Dec. ¶¶15, 24). Mobilizing these class members was tedious and time-consuming work, but was the primary catalyst to counteracting Defendants' class certification defenses and presenting an alternate risk model whereby

Defendants could face tri-furcated proceedings of a class action, a distinct PAGA action, and a multitude of serial arbitrations. (Baker Dec. ¶¶16, 19-20). Plaintiffs also engaged in extensive motion practice, including contested motions for leave to amend the complaint, to quash a subpoena, to compel arbitration, to dismiss the arbitration, two motions for preliminary injunction, and extensive work for approval of the Settlement. Indeed, there are over 380 entries in the Register of Actions.

The case took nearly four years to fully resolve. (Baker Dec. ¶¶9-29). The Settlement was achieved after the Parties engaged in three continuing mediation sessions on January 25, 2021, April 19, 2021, and January 4, 2022 with the Honorable Francisco Firmat (Ret.), who is a preeminent wage and hour class action mediator in Orange County, California and formerly in Orange County Superior Court - Complex Division. (Baker Dec. ¶29). Mediation was only pursued after voluminous written discovery, several significant motions, extensive wage audits, testimony from putative class members, a review and analysis of wage statements and records produced by putative class members (independent of Defendants' production), and analysis of more than four (4) years of payroll data for many Class Members. (Baker Dec. ¶¶9-29).

C. Preliminary Approval of the Settlement.

Plaintiffs and Class Counsel submitted detailed declarations in support of Preliminary Approval providing details of, and justification for, the Settlement. (ROA 280, 323 and 345). The Settlement was submitted to the LWDA on June 17, 2022 and preliminarily approved by this Court on July 27, 2023. (*Exhibit D*; ROA 356). Plaintiffs submitted the Second Amended Complaint and Order Granting Preliminary Approval to the LWDA on August 1, 2023. (ROA 364; Baker Dec. ¶70; *Exhibit D*).

III.SUMMARY OF THE SETTLEMENT AND NOTICE PROCESS

A. The Gross Settlement Fund and Payments to Class Members.

This Settlement provides significant monetary relief for the Settlement Class consisting of Defendants' agreement to: (1) pay \$6,500,000.00; and (2) release and waive certain Class Members for claimed outstanding or unearned wage advances given by Defendants (\$1,927,148.09). (Baker Dec. ¶3). The Settlement includes 2% of the Gross Settlement Fund allocated to PAGA Penalties.

The Settlement Class is defined as:

1 All persons **currently and formerly** employed by Defendants in solar or alarm sales in the State
2 of California on a door-to-door basis who made at least one sale in California between June 3,
2016 and June 1, 2022 (the “**Class Period**”). (Baker Dec. ¶41).

3 The Class Notice was sent to 5,888 individuals, of which 5,546 (now 5,547) were Class Members
4 and 342 are only PAGA aggrieved employees (hired after end of the Class Period and before Preliminary
5 Approval), which did not trigger the escalator clause in the Settlement Agreement. (CPT Dec. ¶¶19-20).
6 As such, the Gross Settlement Fund remains at \$6,500,000, **plus** the \$1,927,148.09 retained by Class
7 Members in wage advances. (CPT Dec. ¶¶19-22). Based on the reasonable value of the predominant
8 wage claims, the Settlement results in a recovery of approximately 6% to 30% when compared to the
9 new monetary recovery, and approximately 8% to 40% when including the total settlement value.
10 However, each claim has a potential value of \$0 if certification was not achievable and for many Class
11 Members, could have resulted in owing Defendants wage advance repayment, liquidated damages, and
12 attorneys’ fees. (Baker Dec. ¶37).

13 The Gross Settlement Fund will be used to satisfy all payments due under the Settlement.
14 Plaintiffs seek the following payments from the Gross Settlement Fund: (a) PAGA Penalties of
15 \$130,000, which is 2% of the Gross Settlement Fund; (b) \$80,000 in Enhancement Awards; (c) costs of
16 the Settlement Administrator of \$32,500; (d) \$2,359,164 to Class Counsel for attorneys’ fees; and (e)
17 \$17,425.74 in costs of litigation. (Baker Dec. ¶62). Assuming full awards, the Net Settlement Amount
18 to be paid out would be \$3,913,410.55 and would result in an overall net recovery to the Class of
19 \$5,840,559.55 (considering the wage advances retained), which, even assuming full awards, nets 60-
20 70% of the Settlement to Class Members. (Baker Dec. ¶62).

21 The Gross Settlement Fund is a common fund with no reversion and will be used to satisfy all
22 payments due under the Settlement. After Court-approved payments from the Gross Settlement Fund,
23 the Net Settlement Amount will be disbursed on a weighted allocation formula system taking into
24 account a Class Member’s California work activity during the Class Period, as described in the Class
25 Notice. Based on the weighted points system (and without crediting the wage advances released), each
26 weighted point is worth \$8.44/\$5.04 (gross/expected net), making the highest individual recovery
27 \$38,265.55/\$22,823.48 (gross/expected net), the lowest individual recovery \$42.25/\$25.22, and the
28 average individual recovery \$1,106.95/\$660. The average is misleading and not illustrative of the

1 strength of the Settlement, however, because of great variance in the California production of
2 seasonal/part-time/occasional California workers versus full time California workers. For example, 39%
3 of the Class worked *in California* less than 10 days and the median average of California workdays was
4 16. While the bottom half of the Class (based on California activity) will still receive a share of the Net
5 Settlement Amount for their California activity, the weighted allocation formula justifiably results in
6 more recovery for those Class Members with higher California activity. As a further example, the total
7 number of California sales during the Class Period was 242,817, which should average 43 sales.²
8 However, 929 Class Members (16.7% of the Class) closed only one California sale and 2,942 (53% of
9 the Class) closed nine or fewer California sales. Put another way, well over half of the Class closed
10 fewer than 5% of total sales during the Class Period. By comparison, the top 25% of Class Members
11 (1,346 Class Members) closed nearly 86% of total sales (208,383) averaging 150 California sales. As
12 such, the large pool of seasonal/part-time/occasional California workers drags down the average. For
13 the top 1,346 Class Members (25% of the Class), the average recovery is \$3,797.72 (gross) and
14 \$2,282.05 (expected net). (Baker Dec. ¶53)

15 In addition formerly employed Class Members can keep \$1,927,148.09 in wage advances given
16 but alleged to be unearned. This release has tangible value because Defendants have sued former
17 employees for unpaid advances and Defendants have sent repayment and arbitration demands to other
18 Class Members pursuing collection.³ (Baker Dec. ¶45).

19 Additionally, formerly employed Class Members will also be relieved of any post-termination
20 employee non-solicitation restrictions. This release is also valuable because Defendants have vigorously
21 enforced these restrictions to impede employee mobility and deter competition. Pursuant to the
22 employment contract, violations of such restrictions could result in a **\$25,000 liquidated damage**

23
24 ² Similarly, the low performing Class Members averaged 3.2 closed sales, whereas the high performing Class Members
25 averaged 136 closed sales. Therefore, given the varying level of performance within the Class, referencing the entire data
26 set's aggregate average does not represent a clear perspective on reasonableness. A large portion of the Class will have a
nominal to moderate recovery when compared to the rest of the Class. However, each Class Member's recovery is
proportionate to their California work activity or potential individual recovery.

27 ³ As detailed in the Opposition to the Motion to Compel Arbitration (ROA 112, 114 & 116) and Motion for Preliminary
28 Injunction (ROAs 41, 47, 102, 212 & 224), Defendants have a documented history of taking legal action against former
employees for unpaid advances, misappropriation of customers and leads and other claims, as a deterrent against employee
mobility and competition. For some period of time, Utah companies secured repayment through Confessions of Judgment
filed upon default, causing employees to fear post-termination retribution. (ROA 345 ¶62).

1 **penalty per violation plus attorneys' fees.** Challenging this anti-solicitation provision was a major
2 goal of this litigation. (Baker Dec. ¶46). Indeed, the parties argued a Motion for Preliminary Injunction
3 to enjoin enforcement of the post-termination employee non-solicitation clause on November 12, 2021.
4 This was such an important unresolved issue (and commonly abused employment tactic) that on
5 September 1, 2023 California added *Bus. & Professions Code §16600.5* to extend the prohibitions
6 against non-compete agreements to those entered outside California and added a private right of action
7 with attorneys' fees for enforcement. This Settlement, reached long before California enacted the new
8 protections, allows formerly employed Class Members to be free from threats and risk of litigation for
9 past violations. (Baker Dec. ¶46).

10 This case has also resulted in positive changes to Defendants' employment policies, which now
11 provide for training pay separate from commissions and added expense reimbursement tracking
12 capabilities and mileage reimbursement obligations. With this Settlement and enactment of *Bus. &*
13 *Professions Code §16600.5*, Plaintiffs claims have been rectified. (Baker Dec. ¶47).

14 As part of the Settlement, the Settlement Class will release claims against Defendants arising
15 from allegations specifically alleged in the Operative Complaint. (Sett. Agr. ¶5.01; Baker Dec. ¶50).
16 There is a separate release for PAGA claims during the PAGA Period. (Sett. Agr. ¶5.06; Baker Dec.
17 ¶51). Entry of Final Approval Order and Judgment will be posted on the Settlement Administrator's
18 website for a period of no less than 180 days. (Baker Dec. ¶127).

19 **IV. ARGUMENT**

20 **A. The Court Should Reaffirm Its Conditional Certification of the Settlement** 21 **Class Because the Requirements for Class Certification Have Been Met.**

22 Code of Civil Procedure § 382 provides that a party seeking class certification must show "(1)
23 the existence of an ascertainable class and (2) a well-defined community of interest among the class
24 members." (*Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 469-470; *Occidental Land v.*
25 *Superior Court* (1976) 18 Cal.3d 355, 360). "The community of interest requirement embodies three
26 factors: (1) predominant common questions of law or fact; (2) class representatives with claims or
27 defenses typical of the class; and (3) class representatives who can adequately represent the class."
28 (*Richmond*, 29 Cal.3d at 470).

1 Here, Plaintiffs and the Class have suffered common alleged wage and hour wrongs. (Baker
2 Dec. ¶¶ 55-56; Crabtree Dec. ¶ 4-8; Humphreys Dec. ¶ 4-7; Hatcher Dec. ¶ 4-7). The Class is
3 ascertainable and numerous because Defendants identified through their records 5,547 persons who
4 qualify as Class Members; the common questions of law and fact, as alleged by the Plaintiffs, are
5 present, specifically the question of whether the door-to-door sales employees employed by Defendants
6 were misclassified; were “exempt” from minimum wage, overtime, and expense reimbursement under
7 California law; and were subjected to the same compensation plans and wage and hour procedures.
8 Plaintiffs contend that Defendants had engaged in a uniform course of conduct with respect to the
9 Settlement Class and the only question is whether Defendants’ conduct supports a meritorious claim.
10 Indeed, the parties have agreed that subject to final approval of the Settlement, and for the purpose of
11 settling their dispute, there is sufficient basis for the Court to find that these requirements have been
12 met. (Sett. Agr. ¶¶3.01 & 6.12; Baker Dec. ¶¶55-56). This Court found that the Settlement meets class
13 certification for settlement purposes when it granted Preliminary Approval and there have been no
14 subsequent events that cast doubt on this determination. Accordingly, this Court should reaffirm
15 certification and grant final approval.

16 **B. Notice to the Class Was Provided; There Was One (1) Objection and Only**
17 **Seven (7) Requests for Exclusion Indicating An “Overwhelming Positive”**
18 **Response to the Settlement.**

19 The standard for notice approval is whether the notice had “a reasonable chance of reaching a
20 substantial percentage of the class members.” (*Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 974).

21 Here, Class Members were sent the Class Notice using the Court approved procedure of mailing
22 and emailing the Class Notice using Defendants’ employment records, updated using the United States
23 Postal Service’s NCOALink system, which included personalized calculations for the weighted points
24 system. (CPT Dec. ¶¶5-12). The Class Notice and key settlement documents were also posted on the
25 CPT website. (CPT Dec. ¶10). Of the 5,888 persons notified, and despite diligent efforts to locate them,
26 only 5 notices were deemed undeliverable through either mail or email – **a 99.91% successful delivery**
27 **rate.** (CPT Group Dec. ¶12).

28 ///

1 Class Members were able to dispute personalized settlement data or Opt-Out of the Settlement
2 before the Objection/Exclusion Deadline Date of November 6, 2023. (CPT Dec. ¶¶16-18). Only four (4)
3 Class Members disputed their personalized settlement data and all were satisfactorily resolved. (CPT
4 Dec. ¶ 16). Only seven (7) requests for exclusion (i.e., “Opt-Outs”) have been received and there was
5 one objection, which is opposed on the merits in the accompanying Joint Opposition to the Sole
6 Objection. (CPT Dec. ¶¶17-18). Class Members’ 99.85% acceptance rate is an “overwhelmingly
7 positive” response and testament to the fairness, reasonableness, and adequacy of the Settlement.⁴

8 **C. The Court Should Grant Final Approval of the Class Action Settlement**
9 **Because It Represents a Fair and Reasonable Compromise of Disputed**
10 **Claims in Light of Defendants’ Potential Liability Exposure and the Risks of**
11 **Continued Litigation.**

12 In deciding whether to grant final approval to a proposed class action settlement under C.C.P. §
13 382, the Court’s overriding concern is whether the proposed settlement is “fair, adequate, and
14 reasonable.” (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801). Among the interrelated
15 factors to consider are: (1) whether the settlement was reached through arm’s length bargaining; (2) the
16 strength of plaintiff’s case; (3) the risk, expense, complexity and likely duration of further litigation; (4)
17 the benefits conferred by the settlement; (5) the experience and views of counsel; (6) the extent of
18 discovery completed and the stage of the proceedings and whether they are sufficient to allow counsel
19 and the court to act intelligently; (7) the presence of a governmental participant and (8) the reaction of
20 the class members to the proposed settlement including the percentage of objectors. (*See, Kullar v. Foot*
21 *Locker Retail, Inc.* (2008) 168 Cal. App. 4th 116, 128; *Wershba v. Apple Computer* (2001) 91
22 Cal.App.4th 224, 244-45 (disapproved on other grounds in *Hernandez v. Restoration Hardware, Inc.*
23 (2018) 4 Cal.5th 260). “The list of factors is not exclusive and the court is free to engage in a balancing
24 and weighing of factors depending on the circumstances of each case.” (*Wershba*, 91 Cal.App.4th at
25 245; *Dunk*, 48 Cal.App.4th at 1801).

26 For the reasons discussed below, the Court should grant final approval of the Settlement:

27 _____
28 ⁴ (*See, 7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1152–1153 (the court
found the response of the class members “overwhelmingly positive” where “a mere 80 of the 5,454 noticed class members
elected to opt out” and nine objected)).

1. The Settlement Was Reached through “Arm’s Length,” Non-Collusive and Informed Negotiations.

Although the proponent of the settlement bears the burden of showing that it is fair and reasonable, California courts generally recognize a presumption of fairness where the settlement agreement is the result of arms-length bargaining. (*Wershba*, 91 Cal.App.4th at 245).

Here, the settlement was reached after nearly four years of litigation and many months of hard fought and vigorously contested litigation and negotiations. (Baker Dec. ¶¶12-28). The parties negotiated at arm's length over many months through the Hon. Francisco Firmat (Ret.) before the deal was finalized on or about May 3, 2022 which was amended and restated on June 15, 2022. (*Id.*). Mediation was only pursued after voluminous discovery and analysis and extensive motion practice (*Id.*). Based on information obtained our efforts, Class Counsel were able to assess the strengths and weaknesses of the case and the Settlement benefits. Only when Class Counsel was confident that the settlement was reasonable and adequate, did the parties reach and memorialize the Settlement.

2. Plaintiffs' Case Is Strong, Yet the Risk, Expense, Complexity, and Likely Duration of Further Litigation Favor Settlement.

“Compromise is inherent and necessary in the settlement process. Thus, even if the relief afforded by the proposed settlement is narrower than it would be if the suit were to be successfully litigated, this is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation.” (*Wershba*, 91 Cal.App.4th at 250). The Court must satisfy itself, “that the consideration being received for the release of the class members’ claims is reasonable in light of the strengths and weaknesses of the claims and the risks of the particular litigation.” (*Kullar*, 168 Cal.App.4th at 129). The *Kullar* court further acknowledged that “as the court does when it approves a settlement as in good faith under Code of Civil Procedure § 877.6, the court must at least satisfy itself that the class settlement is within the ‘ballpark’ of reasonableness.” (*See, Tech-Bilt, Inc. v. Woodward-Clyde & Associates* (1985) 38 Cal.3d 488, 499-500).

Although at mediation Class Counsel calculated damages totaling approximately \$21,332,850 to \$110,265,900 (exclusive of interest, penalties and attorneys' fees), this case presented several issues that favored Settlement on the proposed terms and justified the 50/50/50/50 discount analysis. (Baker Dec. ¶¶35 & 58). Although the reasons are presented in more detail in the accompanying Baker Declaration

at ¶¶57-58, they can be summarized as: (a) unfavorable new precedent relating to PAGA and class certification; (b) the granular level of proof possibly required to prove up some claims; (c) the outside sales exemption applied to most of their employment periods; (d) disputed proof of when and where unpaid training occurred (perhaps not California); (e) California law allows some “sales meeting time” to be exempt work time under the outside sales exemption, potentially minimizing the value of that claim; (f) some commission deduction claims could be individualized and therefore, difficult to certify; (g) wage statements were issued intermittently (and not weekly); (h) there are potentially conflicting bodies of law about commission forfeitures at termination; (i) ancillary claims, such as unlawful deductions and individualized commission arrangements, were not likely common and pervasive throughout the Class Period; (j) a portion of the Class signed arbitration agreements which could hamper certification efforts; and (k) the two releases obtained for the Class are each significant and equally as important for some Class Members as the monetary recovery. Additionally, this Settlement provides certainty to formerly employed Class Members to retain advance monies already paid and allows risk-free mobility from the non-solicitation restrictions. If Class Members Opt-Out and pursued wage claims independent of this Settlement, they could face cross-claims and offsets from Defendants, whereas this Settlement brings prompt significant monetary relief and finality.

3. The Settlement Confers Substantial Benefits to the Settlement Class.

One important factor that courts consider in assessing the fairness of a proposed settlement is the extent of the benefit conferred by the settlement. (*Dunk*, 48 Cal.App.4th at 1802). “In the context of a settlement agreement, the test is . . . whether the settlement is reasonable under all of the circumstances.” (*Wershba*, 91 Cal.App.4th at 250).

Here, the Settlement provides significant monetary relief for the Settlement Class totaling \$8,427,148.09. Additionally, although there is no assigned monetary value to the restrictive covenant release and positive changes to Defendants’ practices, there is substantial immeasurable benefit to the Class nonetheless. Defeating this anti-solicitation provision was a major goal of this litigation. Indeed, the parties argued a Motion for Preliminary Injunction to enjoin enforcement of the post-termination employee non-solicitation clause on November 12, 2021. This was such an important unresolved issue (and commonly abused employment tactic) that on September 1, 2023 California added *Bus. &*

1 *Professions Code §16600.5* to extend the prohibitions against non-compete agreements to those entered
2 outside California and added a private right of action with attorneys' fees for enforcement. This
3 Settlement, reached long before California enacted the new protections, allows formerly employed Class
4 Members to be free from threats and risk of litigation for past violations. Moreover, the Settlement also
5 provides the Settlement Class with another significant benefit – prompt relief. Indeed, if this matter were
6 to proceed to trial, it would almost undoubtedly take several more years to resolve, given the legal and
7 factual issues raised and the likelihood of appeals and Class Members could have faced cross-claims or
8 offset for unpaid wage advances and liquidated damage claims.

9 **4. Class Counsel Is Experienced and Recommends Settlement.**

10 The opinion of experienced counsel who litigated the case, negotiated the settlement, and support
11 the settlement, is entitled to considerable weight. (*Wershba*, 91 Cal.App.4th at 245).

12 Here, Class Counsel has substantial experience in employment law and employment class actions,
13 especially against the solar industry, has worked diligently to advance the interests of the class, and
14 recommends settlement on the proposed terms. (Baker Dec. ¶¶ 80-88; Weber Dec. ¶3-12; Norvell Dec.
15 ¶¶3-6). After significant litigation and discovery, including working with over 149 Class Members,
16 reviewing at least 57,703 pages of employment records and data, and conducting extensive wage audits
17 with Class Members, Class Counsel is well positioned to give a reasoned and intelligent assessment of
18 the Settlement, which is entitled to due consideration. Class Counsel strongly supports granting final
19 approval of the Settlement. (*Id.*)

20 **5. Sufficient Discovery Has Been Completed to Evaluate the Case.**

21 The stage of the proceedings, and the amount of discovery that has been completed, are important
22 factors that courts consider in determining the fairness, reasonableness, and adequacy of a class action
23 settlement. (*Dunk*, 48 Cal.App.4th at 1802).

24 Here, this case has been vigorously litigated for nearly four years with extensive litigation
25 resulting in over 380 docket entries. (Baker Dec. ¶27 & ¶103). Plaintiffs mobilized at least 149
26 cooperating Class Members to assist with prosecution of this case. Once settlement negotiations began,
27 Defendants were reasonably cooperative in providing detailed class data and additional information that
28 Plaintiffs requested without formal discovery, to both dissuade us from perceived marginal claims, and

1 allow inquiry into others under the mediation privilege. Additionally, the parties held approximately ten
2 comprehensive meetings (utilizing the mediation and settlement privileges) with Defendants' litigation
3 counsel, and Defendants' in-house General Counsel Kent Hansen, Esq., to discuss and verify facts,
4 claims, legal theories, and related issues. This method resulted in direct and efficient investigative and
5 settlement efforts. (Baker Dec. ¶21).

6 Class Counsel had over 57,000 pages of documents to review, including documents obtained
7 from Defendants under mediation privilege; documents obtained from Labor Code records demands;
8 publicly available records such as from the CSLB; and Class-Member-provided documents, including
9 tax returns, wage statements, cell phone records, driving records and emails. As detailed in the Baker
10 Declaration (¶¶12-28), the investigation and discovery conducted have been sufficient to assure the
11 Court that "given the magnitude and apparent merit of the claims being released, discounted by the risks
12 and expenses of attempting to establish and collect on those claims by pursuing the litigation," a fair
13 settlement has been reached. (*Kullar v. Foot Locker Retail* (2008) 168 Cal.App.4th 116, 129).

14 **6. There Is No Government Participant, yet the Settlement Provides**
15 **Significant PAGA Penalties.**

16 No government agency is directly involved in this case; *however*, Plaintiffs successfully
17 prosecuted the PAGA claims on behalf of the LWDA. (Baker Dec. ¶¶63-71). Where PAGA penalties
18 are negotiated in good faith and "there is no indication that [the] amount was the result of self-interest
19 at the expense of other Class Members," such amounts are generally considered reasonable. (*Hopson*
20 *v. Hanesbrands, Inc.* (N.D. Cal. Apr. 3, 2009) 2009 WL 928133 at 9). Indeed, Courts may even approve
21 class settlements with no allocation to PAGA. (*In re: Nordstrom Comm. Cases* (2010) 186 Cal.App.4th
22 576, 589).

23 **7. Class Members Have Overwhelmingly Approved All Aspects of the**
24 **Settlement.**

25 Here, there is one objection and only 7 Opt-Outs from the Settlement. As such, it is fair to say
26 the Settlement has received overwhelming approval from Class Members. Class Members' 99.85%
27 acceptance rate is testament to the fairness, reasonableness, and adequacy of the Settlement. "A
28 favorable reception by the Class constitutes 'strong evidence' of the fairness of a proposed settlement
and supports judicial approval." (*In re: Paine Webber Ltd. Pships. Litig.* (2d Cir. 1997) 171 F.R.D. 104,

1 126, *aff'd*, 117 F.3d 721; *Compare, 7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000)
2 85 Cal.App.4th 1135, 1152–1153 [the court found the response of the class members “overwhelmingly
3 positive” where “a mere 80 of the 5,454 noticed class members elected to opt out” and nine objected]).

4 **D. The Court Should Approve PAGA Penalties of \$130,000 from the Gross**
5 **Settlement Fund.**

6 Unfortunately, “neither the California legislature, nor the California Supreme Court, nor the
7 California Courts of Appeal, nor the [LWDA] has provided any definitive answer’ as to what the
8 appropriate standard is for approval of a PAGA settlement.” (*Jordan v. NCI Grp., Inc.* (C.D. Cal. Jan.
9 5, 2018) No. EDCV161701JVSSPX, 2018 WL 1409590, at *2 (quoting *Flores v. Starwood Hotels &*
10 *Resorts Worldwide, Inc.* (C.D. Cal. 2017) 253 F.Supp.3d 1074, 1075)). However, where PAGA claims
11 are settled in the same agreement with the underlying Labor Code claims, courts have looked to the
12 interplay of the two recoveries to determine whether PAGA’s purposes have been served. (*O'Connor v.*
13 *Uber Techs., Inc.* (N.D. Cal. 2016) 201 F. Supp. 3d 1110, 1133). The *O'Connor* court, for instance,
14 adopted a “sliding scale,” noting that “[b]y providing fair compensation to the class members as
15 employees and substantial monetary relief, a settlement not only vindicates the rights of the class
16 members as employees, but may have a deterrent effect upon the defendant employer and other
17 employers, an objective of PAGA.” (*Id.* at 1134). In other words, where the settlement of Labor Code
18 claims provides “robust” relief to the class, it supports a greater reduction in PAGA penalties. (*Viceral*
19 *v. Mistras Grp., Inc.* (N.D. Cal. Oct. 11, 2016) No. 15-cv-02198-EMC, 2016 WL 5907869, at *9).

20 Here, because of the robust relief obtained for the Class, the PAGA Penalties requested should
21 be approved. (Baker Dec. ¶¶63-71). Plaintiffs provided all statutorily required notices of the claims
22 raised in the operative complaints and the claims resolved by the Settlement Agreement to the LWDA
23 through its website in compliance with Labor Code §§2699(1)(2),(1)(4). (See ***Exhibits C, D & E***; Baker
24 Dec. ¶70). To date, Class Counsel has not been contacted by the LWDA to dispute or object to the
25 proposed PAGA Penalties or any other aspect of the Settlement. (Baker Dec. ¶71). Many courts have
26 approved allocations to PAGA Penalties lower than 2%. (Baker Dec. ¶69).

27 ///

28 ///

1 **E. The Court Should Approve \$80,000 in Enhancement Awards from the Gross**
2 **Settlement Fund.**

3 The Settlement Agreement provides for “**Enhancement Awards**” of \$80,000 (1.2% of the Gross
4 Settlement Fund and .95% of the total Settlement value) proposed to be allocated as: (a) Thirty Thousand
5 (\$30,000) for the PAGA Plaintiff, which includes the waiver of his individual claims raised in arbitration
6 (*See*, Baker Dec. ¶10 & ¶64); and Ten Thousand Dollars (\$10,000) for each Lead Plaintiff and
7 Cooperating Class Member.

8 Enhancement awards (also known as incentive awards) to class representatives have traditionally
9 been intended to compensate for the work and risk undertaken on behalf of the class, to reimburse
10 expenses incurred in the class litigation, and sometimes to recognize the willingness of class
11 representatives to act as a private attorney general. (*Golba v. Dick's Sporting Goods, Inc.* (2015) 238
12 Cal.App.4th 1251, 1272). Stated another way, “[i]t is established that named plaintiffs are eligible for
13 reasonable incentive payments to compensate them for the expense or risk they have incurred in
14 conferring a benefit on other members of the class.” (*Munoz v. Coca Cola Bottling Company of Los*
15 *Angeles* (2010) 186 Cal.App.4th 399; *See also, Cook v. Nidert* (7th Cir. 1998) 142 F.3d 1004, 1016
16 (affirming a **\$25,000 incentive award** to the named plaintiff in a suit alleging pension fund
17 mismanagement where the lawsuit resulted in “substantial structural reforms” to the pension fund as
18 well as a cash recovery of more than \$13M)). In determining whether a service award is appropriate,
19 courts consider several factors, including: (1) the actions the plaintiff has taken to protect the interests
20 of the class; (2) the degree to which the class has benefitted from those actions; and (3) the amount of
21 time and effort the plaintiff expended in pursuing the litigation. (*Clark v. Am. Residential Servs. LLC*
22 (2009) 175 Cal.App.4th 785, 805). Furthermore, the Court may consider “the risk to the class
23 representative in commencing suit, both financial and otherwise,” “the notoriety and personal difficulties
24 encountered by the class representative,” and “the personal benefit (or lack thereof) enjoyed by the class
25 representative as a result of the litigation.” (*Id.*).

26 Here, *Golba* and *Clark* are amply satisfied. Plaintiff Crabtree deserves the enhancement award
27 of \$30,000 because not only has he been a steward of this case since commencement, but he sacrificed
28 his individual claims in arbitration (prior to proving up aggregate PAGA claims), to avoid delay in

1 reaching the Settlement. (Baker Dec. ¶10; Crabtree Dec. ¶¶ 18-29). In reality, Defendants’ agreement to
2 the \$30,000 allocation for Crabtree was a way to get Crabtree value for his individual claim waiver but
3 conditioned on Final Approval of a global settlement. The \$30,000 Enhancement Award for Crabtree is
4 modest in comparison to the Class recovery. In this case, \$30,000 is approximately .462% (less than
5 half of one percent) of the Gross Settlement Fund and .356% of the total settlement value of
6 \$8,427,148.09. Notably, there were no objections to Crabtree’s requested Enhancement Award of
7 \$30,000.

8 As detailed in the accompanying declarations of Plaintiffs Hatcher and Humphreys, each was
9 instrumental in maintaining the case when it was at risk of dismissal, took actions to protect the Class,
10 and obtained great relief on behalf of the Class. Further, each Plaintiff has executed a “general release,”
11 giving up *all* claims he may have against their former employer, which no other Class Member was
12 required to do. (Baker Dec. ¶¶73-77). Undoubtedly, without Plaintiffs’ participation and efforts on
13 behalf of the Class, there would have no recovery for the Class. Notably, the proposed \$10,000
14 Enhancement Awards for Plaintiffs Hatcher and Humphreys were presented to the Class Members and
15 no one objected. (CPT Dec. ¶18, Ex. A thereto).

17 Additionally, Courts may award an enhancement award to class members, other than named
18 plaintiffs, if the recipients show they contributed to the prosecution of the litigation or experienced some
19 type of potential retaliation, which were not shared by the class as a whole. (*Trujillo v. City of*
20 *Ontario* No. EDCV 04-1015-VAP (C.D.Cal. Aug. 24, 2009), at *13.) For instance, in *Satchell v. Fed.*
21 *Express Corp.*, No. 3:03-cv-02659 SI (N.D. Cal. Aug. 14, 2007), the Hon. Susan Illston approved service
22 awards to each of the 18 declarants in the case because the Court recognized that the declarants provided
23 significant and valuable assistance to the class in that they were interviewed repeatedly, participated in
24 conference calls and meetings, and were deposed.⁵ Here, the Cooperating Class Members—Tristan
25

26 ⁵ Similarly, in *Boyd v. Bank of America Corp.*, No. 8:13-cv-00561-DOC (C.D. Cal. Jan. 19, 2016), the Hon. David Carter
27 approved service awards of \$25,000 for each of the four representative plaintiffs for their time and effort in the litigation and
28 their broader releases, and \$2,000 for each of the class member deponents for their time and effort in providing deposition
testimony supporting class claims. (*Id.*, at * 3.). In *Wineland v. Casey’s Gen. Stores, Inc.*, (S.D.Iowa 2009) 267 F.R.D. 669,
the court approved incentive payments for the named plaintiff and for each deponent. The court found that witnesses who
submitted to depositions furthered the litigation in immeasurable ways and, through these actions, significant benefits on

Yoder, Kieffer Taylor, and Jacob Kaempfer—furthered the litigation substantially and provided significant benefit at notable personal cost. Each put their reputation, employability, and financial security at risk (Yoder Dec. ¶¶ 6-14; Taylor Dec. ¶¶ 5-13; Kaempfer Dec. ¶¶7-11); each sacrificed recovery of their individual significant individual claims against Defendants for the benefit of the class (Yoder Dec. ¶¶ 15-19; Taylor Dec. ¶¶ 14-18; Kaempfer Dec. ¶¶ 12-14); and each contributed notable time, effort, and energy into this case to drive recovery on behalf of the class (Yoder Dec. ¶¶ 20-22; Taylor Dec. ¶¶15-19; Kaempfer Dec. ¶¶15-19). Beyond the typical roles filled, without the Cooperating Class Members willingness to assert threats of serial individual arbitrations, Defendants would not likely have entered into the Settlement. Cooperating Class Members should be compensated for their time and for the risk assumed in actively and publicly participating against a former employer who is a public company and a behemoth in its industry. This amount is reasonable by reference to similar awards by other trial courts.⁶ Notably, the proposed \$10,000 Enhancement Awards for the Cooperating Class Members were presented to the Class Members and no one objected. (CPT Dec. ¶18, Ex. A thereto).

The \$80,000 in Enhancement Awards are well deserved. They represent a mere 1.2% of the Gross Settlement Fund and .95% of the total Settlement value. Considering the extensive size of the Class, the Enhancement Awards cost Class Members a mere \$.10 per point for the valuable service provided by Plaintiffs and the Cooperating Class Members.

**F. The Court Should Approve Payment of \$32,500 to the Settlement
Administrator from the Gross Settlement Fund.**

CPT seeks \$32,500, for services provided to administer the Settlement – which was consistent with its original bid. (CPT Dec. ¶¶22-23, Ex. B thereto). CPT adequately performed its obligations as settlement administrator and should be paid the \$32,500 as requested from the Gross Settlement Fund. (Baker Dec. ¶¶78-79). Additionally, CPT Group charged \$1,500 separately for some additional costs associated with enabling Class Members to be paid via ACH, digital payment, or direct deposit through

behalf of all settlement class members were achieved. For that reason, the court concluded that “the preferential treatment of the named plaintiffs and deponents is not excessive, but is fair and reasonable under the circumstances.” (*Id.*, at 678).

⁶ See also, *Zamora v. Balboa Life & Casualty, LLC*, Case No. BC360036, Los Angeles County Superior Court (Mar. 7, 2013)(awarding \$25,000 service award); *Aguiar v. Cingular Wireless, LLC*, Case No. CV 06-8197 DDP (AJWx)(C.D. Cal. Mar. 17, 2011)(awarding \$14,767 service award); *Magee v. American Residential Services, LLC*, Case No. BC423798, Los Angeles County Superior Court (Apr. 21, 2011)(awarding \$15,000 service award)).

1 a third-party website. That charge is included on the Class Counsel cost bill as a reimbursable case cost,
2 subject, of course, to Court approval of reimbursement. (Baker Dec. ¶125).

3 **G. The Court Should Approve Attorneys' Fees of \$2,359,164 from the Gross**
4 **Settlement Fund.**

5 Trial courts have equitable power to award attorneys' fees and costs when litigation proceeding
6 in a representative capacity secures a substantial benefit for the plaintiffs. (*Serrano v. Priest* (1977) 20
7 Cal.3d 25, 38 ("Serrano III"); accord *Glendora Cmty. Redev. Agency v. Demeter* (1984) 155 Cal.App.3d
8 465, 474). Courts recognize two methods for calculating attorney's fees in class action cases. The first
9 and preferred method calculates attorney fees based on a percentage of the common fund bestowed on
10 the class. An outgrowth of the "common fund" doctrine is the percentage of the "substantial benefit"
11 created when the settlement results in a substantial, actual benefit, either pecuniary or non-pecuniary.
12 (See, *Serrano v. Priest, supra*, at 38; *Woodland Hills Residents Ass'n v. City Council* (1979) 23 Cal.3d
13 917, 943). The second uses a "lodestar," determined by multiplying the hours counsel reasonably
14 expended by reasonable hourly rates-which may be enhanced by a multiplier. (*Lealao v. Beneficial*
15 *California, Inc.* (2000) 82 Cal.App.4th 19, 26).

16 Here, the Settlement Agreement provides for attorneys' fees of \$2,808,768 comprised of 33.33%
17 of the Gross Settlement Fund and the wage advances retained by Class Members. However, Class
18 Counsel seeks a reduced amount of \$2,359,164 comprised of 33.33% of the Gross Settlement Fund and
19 10% of the wage advances retained by Class Members. The reduced request is a fair measure of fees
20 under both the "common fund/benefit" and "lodestar" methods.

21 **1. Attorneys' Fees of \$2,359,164 is Justified Under the Common Fund**
22 **Methodology.**

23 California courts have recognized that an appropriate method for awarding attorney's fees in
24 class actions is to award a percentage of the "common fund" created as a result of the settlement. (*City*
25 *& County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, 110-11; *Lealao*, 82 Cal.App.4th 19, 26).
26 The California Supreme Court joined the overwhelming majority of federal and state courts in holding
27 that when class action litigation establishes a monetary fund to benefit the class members, the court may
28 determine the amount of a reasonable fee by choosing an appropriate percentage of the fund

created. (*Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 573). In determining whether the requested percentage fee is reasonable, courts generally consider: (1) the results achieved; (2) the risk of litigation; (3) the skill required and the quality of work; (4) the contingent nature of the fee and the financial burden carried by the plaintiffs; and (5) awards made in similar cases. (*Wershba*, 91 Cal.App.4th at 250-51).

California courts routinely approve class action attorneys' fees awards "averag[ing] around one-third of the recovery." (*Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 fn. 11 (lower court found up to 40% range of contingency fee in marketplace was appropriate in class actions)). However, courts have awarded fees as high as 50% of the settlement, depending on the circumstances of the case. (*See, Conte & Newberg, Newberg on Class Actions* (4th Ed., 2002) § 14.03; *See also, In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494 (awarding fees in the amount of 45% of the settlement); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F.Supp. 1195 (awarding fees of approximately 53% of the settlement amount)).

Here, the monetary value and substantial benefit to the Settlement Class is the \$6,500,000 Gross Settlement Fund **plus** \$1,927,148.09 in advances retained (wage claims released) – for a total settlement value of \$8,427,148.09. Additionally, although there is no assigned monetary value to the non-solicitation restriction release and positive changes to Defendants' practices, there is immeasurable benefit to the Class nonetheless. The reduced fee request of \$2,359,164 equates to 36% of the Gross Settlement Fund, but only 28% of the total monetary value of the Settlement. Both percentages are within the range of marketplace contingency fees, yet **less than** provided by Plaintiffs' contingency fee agreement and **less than** provided by the Settlement Agreement. Solely based on the commonly used "percentage of the benefit" or "common fund" theory of recovery, the requested fees of \$2,359,164, should be granted. Class Counsel has obtained a Settlement with substantial benefit for the Class and the results justify the award of attorneys' fees requested.

2. The Results Achieved for the Class Supports the Fee Request.

Assuming full awards, based on the weighted points system (and without crediting the wage advances released), each weighted point is worth \$8.44/\$5.04 (gross/expected net), making the highest individual recovery \$38,265.55/\$22,823.48 (gross/expected net), the lowest individual recovery

1 \$42.25/\$25.22, and the average individual recovery \$1,106.95/\$660. (CPT Dec. ¶27). For the top 1,346
2 Class Members (25% of the Class), the average recovery is \$3,797.72 (gross) and \$2,282.05 (expected
3 net). Class Members will also retain \$1,927,148.09 in wage advances and benefit from release of the
4 non-solicitation restrictions and the positive changes to Defendants' practices.

5 **a. The Risk of Litigation, Skill Required, and Quality of the Work.**

6 Employment class litigation requires knowledge and skill in the constantly evolving substantive
7 law, as well as the class action procedural requirements. The issues presented in this case required more
8 than just a general appreciation of employment laws and class action procedure because the laws at the
9 heart of this dispute are constantly evolving, and there remains conflicting case law on many issues.
10 Further, this case involved matters that required significant expenditure of attorney time such as: (a)
11 facing a Utah based defendant who believed its compensation plans were not unlawful under Utah law;
12 (b) numerous affiliates who were potentially subject to joint employer liability; (c) novel and nuanced
13 legal issues in an evolving legal landscape on arbitration, PAGA, joint employer liability, independent
14 contractor misclassification, direct seller exemption, outside sales exemption, training pay, expense
15 reimbursement obligations, commission forfeiture, class certification, extra-territorial jurisdiction, and
16 anti-competitive laws; (d) varied record keeping practices by Defendants because of a lack of similar
17 requirements in Utah; and (e) mobilization of 149 active Class Member participants resulting in
18 extraordinary expenditures of time for client management, communications, record keeping, and
19 individual record review and wage audit analysis. Indeed, the strategy, commitment and diligence
20 required to mobilize 149 Class Members to demonstrate an alternate risk model whereby Defendants
21 could face trifurcated proceedings of a class action, a distinct PAGA action, and a multitude of serial
22 arbitrations was the key to reaching this Settlement.

23 **b. The Contingent Nature and the Financial Burden Supports the Fee.**

24 Perceived large fee awards in class action cases do not equate to pure profits and sometimes
25 merely offset other losses. In order to properly handle and prosecute this case, Class Counsel was
26 precluded from taking other cases, and in fact, had to turn away other meritorious fee generating cases.
27 When this case was taken on a contingent fee basis, with advancing litigation costs, the ultimate result
28 was far from certain. Practicing in this area of law involves a great deal of risk in that these cases can

1 be lost on both class action procedural rulings as well as on the merits. (Baker Dec. ¶¶118-123). For
2 example, in a recent case that was lost on certification on the eve of trial, Class Counsel lost many
3 thousands of billable hours, \$200,000 in expert and survey costs and was potentially responsible for the
4 national corporate defendant's costs of litigation. (Baker Dec. ¶118). In another example, the 2017 *Toys*
5 *R Us* bankruptcy resulted in no recovery to Class Counsel despite having achieved a substantial
6 settlement. (Baker Dec. ¶119).

7 In defining a reasonable fee, the Court should mimic the marketplace for cases involving a
8 significant contingent risk such as this one. Our legal system places unique reliance on private litigants
9 to enforce substantive provisions of employment law through class actions. Therefore, attorneys
10 providing these substantial benefits should be paid an award equal to the amount negotiated in private
11 bargaining that takes place in the legal marketplace. There is a substantial difference between the risk
12 assumed by attorneys being paid by the hour and attorneys working on a contingent fee basis. The
13 attorney being paid by the hour can go to the bank with his fee. The attorney working on a contingent
14 basis can only log hours while working without pay towards a result that will hopefully entitle him to a
15 marketplace contingent fee, taking into account the risk and other factors of the undertaking. Otherwise,
16 the contingent fee attorney receives nothing. This case was litigated on a contingent basis with all of
17 the concomitant risk factors inherent in such an uncertain undertaking. (Baker Dec. ¶121). Indeed,
18 Plaintiffs' firms are only able to undertake risky and expensive wage and hour cases because of the
19 availability of the enhanced fee awards in cases in which we prevail. (Baker Dec. ¶122). If counsel is
20 not adequately compensated for the risks inherent in difficult class actions, competent attorneys will be
21 discouraged from prosecuting similar cases vindicating employee rights.

22 **3. Attorneys' Fees of \$2,359,164 is Justified Under the Lodestar**
23 **Methodology Cross-Check with a Nominal Multiplier.**

24 Since the percentage of the common fund is endorsed as the better measure of a fee in a class
25 action settlement creating a common fund, courts have discretion to forego a lodestar cross-check or use
26 a total lodestar approach simply to double check the reasonableness of the requested fee. (*Laffitte v.*
27 *Robert Half International, Inc. supra*, at 506). If the lodestar analysis is conducted, the trial court should
28 give credence to the verified billing statements submitted by attorneys. (*Bender v. County of Los*

1 *Angeles* (2013) 217 Cal.App.4th 968).

2 The total amount of time expended by my firm in the 47-month pendency of this case (through
3 Final Accounting) is 2,270 hours for a lodestar of \$1,294,742.46 as summarized below and detailed in
4 the contemporaneously kept Timeslips records attached to the NOL as ***Exhibit F***. (See also, Declaration
5 of Attorney John J. Weber).

6

Keegan & Baker, LLP					
<i>Name</i>	<i>Title</i>	<i>Bar Number</i>	<i>Rate</i>	<i>Total Hours</i>	<i>Lodestar</i>
Jason E. Baker	Partner	197666	\$695 - \$790	1,318.50	\$974,595.96
John Weber	Associate	313824	\$450 - \$525	499.50	\$232,105.50
Yadira Samaniego	Paralegal	n/a	\$185 - \$205	452.40	\$88,041.00

11

12 The total combined lodestar of both firms is \$1,801,792.46. (See, Declaration of Eric Norvell
13 ¶22, with 822.50 hours and lodestar of \$507,050; Baker Dec. ¶99).

14
15 **a. The Number of Hours Claimed Is Reasonable.**

16 Prevailing counsel are entitled to be compensated “for all time reasonably expended in pursuit
17 of the ultimate result achieved in the same manner that an attorney traditionally is compensated by a fee
18 paying client for all time reasonably expended on a matter.” (*Hensley v. Eckerhart* (1983) 461 U.S. 424,
19 431 (internal quotations and citations omitted); *Serrano v. Unruh* (1982) 32 Cal.3d 621, 633 (“*Serrano*
20 *IV*”) (parties may recover for all hours reasonably spent)). Also, “necessary support services for
21 attorneys, e.g., secretarial and paralegal services, are includable within an award of attorney fees.”
22 (*Salton Bay Marina, Inc. v. Imperial Irrigation Dist.* (1985) 172 Cal.App.3d 914, 951; See also,
23 *Sundance v. Municipal Court* (1987) 192 Cal.App.3d 268, 274 (awards of attorneys’ fees for paralegal
24 time are commonplace)).

25 Here, Class Counsel have submitted declarations evidencing the number of hours spent working
26 on this case and lodged the contemporaneous time records as ***Exhibits F & J*** to the NOL. (See Baker
27 Dec. ¶¶98-106; Norvell Dec. ¶21). This litigation required an extraordinary expenditure of resources as
28 discussed herein. (Baker Dec. ¶¶102-106). Additionally, unlike many class action settlements, this case

1 was actively litigated, with over 380 docket entries – more than double many class action cases pending
2 before this court. (Baker Dec. ¶103). Indeed, by the date of final approval, this case has been pending
3 for nearly 48 months, which averages 47 hours expended per month and considering there were 149
4 engaged Class Members, equates to 8-10 hours invested per Class Member.

5 The hours Class Counsel spent litigating this matter are not only reasonable, but entirely
6 necessary for the successful prosecution of this case, for the purposes of due diligence and effective
7 negotiation at mediation, and for achieving the recovery obtained on behalf of the Settlement Class.

8 **b. The Requested Hourly Rates Are Reasonable.**

9 Class Counsel are entitled to be compensated at hourly rates that reflect the reasonable market
10 value of their legal services, based on their experience and expertise. (*See Serrano IV*, 32 Cal.3d at 640-
11 43 n.31; *San Bernardino Valley Audubon Soc'y v. County of San Bernardino* (1984) 155 Cal.App.3d
12 738, 755). “The reasonable hourly rate is that prevailing in the community for similar work.” (*PLCM*
13 *Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095). Courts have explained that payment at the full
14 market rate is essential to entice well-qualified counsel to undertake difficult cases that they might
15 otherwise be unwilling to take. (*See San Bernardino Valley Audubon Soc'y* (1984) 155 Cal.App.3d 745,
16 755).

17 Here, Class Counsel have submitted declarations supporting their hourly rates identified above,
18 as evidenced by their experience and reputation in handling complex employment litigation and other
19 Courts awards. (Baker Dec. ¶¶107-113; Weber Dec. ¶3-12; Norvell Dec. ¶¶7-20). Additionally, Class
20 Counsel have provided corroborating hourly rate data, such as prior awards, a NALFA rate survey, and
21 the *Laffey Matrix*. (*See, Exhibits G & H; Syers Properties III, Inc. v. Rankin* (2014) 226 Cal.App.4th
22 691, 702 (approved use of adjusted *Laffey* rates)). Counsel charges hourly rates commensurate with the
23 prevailing market rates in the greater San Diego and Orange Counties for attorneys of comparable
24 experience and skill handling complex litigation and have had such rates approved by other Superior
25 Courts. (Baker Dec. ¶¶107-113). Indeed, this Court has approved (or did not reject) higher rates for
26 attorneys with similar (or even less) experience. (Baker Dec. ¶111).

27 **c. Applying a Lodestar Multiplier of 1.31 is a Reasonable Way to**
28 **Harmonize the Common Fund and Lodestar Methodologies.**

1 In making a lodestar analysis, a court may apply a multiplier in consideration for risk, efficiency,
2 and/or obtaining a substantial result, to enhance the lodestar for purpose of cross-check. (*See, Ketchum*
3 *v. Moses* (2001) 24 Cal.4th 1122, 1133-34 (holding that a risk multiplier may be applied to compensate
4 contingency fee attorneys at a fair market rate). In making this determination, the Court “take[s] into
5 account a variety of other factors, including the quality of the representation, the novelty and complexity
6 of the issues, the results obtained, and the contingent risk presented.” (*Laffitte*, 1 Cal.5th at
7 489 (*quoting Lealao*, 82 Cal.App.4th at 26)). Such an enhancement “mirrors the established practice in
8 the private legal market of rewarding attorneys for taking the risk of nonpayment by paying them a
9 premium over their normal hourly rates for winning contingency cases.” (*Ketchum*, 24 Cal.4th at 1132-
10 1134). A risk multiplier also serves to bring the financial incentives for enforcing important rights “into
11 line with incentives [attorneys] have to undertake claims for which they are paid on a fee-for-services
12 basis.” (*Id.* at 1132).

13 As the California Supreme Court has addressed, explaining the importance of compensating
14 attorneys in contingency fee cases:

15 “The contingent fee compensates the lawyer not only for the legal services he renders
16 but for the loan of those services. The implicit interest rate on such a loan is higher
17 because the risk of default (the loss of the case, which cancels the debt of the client
18 to the lawyer) is much higher than that of conventional loans. A lawyer who both
19 bears the risk of not being paid and provides legal services is not receiving the fair
market value of his work if he is paid only for the second of these functions. If he is
paid no more, competent counsel will be reluctant to accept fee award cases.”
(*Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 580 (internal quotations
and citations omitted)).

20 Multipliers can range from 2 to 4 or even higher. (*See, e.g., Coalition for L.A. County Planning*
21 *etc., Interest v. Board of Supervisors* (1977) 76 Cal.App.3d 241, 251; *City of Oakland v. Oakland*
22 *Raiders* (1988) 203 Cal.App.3d 78 (affirming a **2.34** multiplier); *Wershba*, 91 Cal.App.4th at 224, 255
23 (“Multipliers can range from **2 to 4** or even higher”); *Sutter Health Uninsured Pricing Cases* (2009) 171
24 Cal.App.4th 495, 512 (applying a **2.52** multiplier on a lodestar cross-check); *Chavez*, 162 Cal.App.4th
25 at 66 (applying a **2.5** multiplier in a consumer class action)).

26 Here, a nominal lodestar multiplier of 1.31 would achieve complete harmony between the
27 common fund and the lodestar methodologies, which helps to corroborate the reasonableness of the
28 requested fee requested by Class Counsel. (Baker Dec. ¶¶114-123). Class Counsel’s request not only

1 passes the lodestar crosscheck for reasonableness but is entirely reasonable on its own, given the risks
2 and complexities involved, the defenses asserted, and the results obtained on behalf of the Settlement
3 Class.

4 **H. The Court Should Approve Litigation Costs of \$17,425.74 from the Gross**
5 **Settlement Fund.**

6 Class Counsel also advanced the necessary costs associated with complex litigation, including
7 court fees, mediation, consultant fees, expert fees, video conferencing, cloud hosting services, attorney
8 service costs, copying, research, docket retrieval, and other necessary costs. (Baker Dec. ¶124). These
9 expenses are all of a type normally charged to a fee-paying client in the private legal marketplace. The
10 expenses pertaining to this case are reflected in the books and records and an accurate record of the
11 expenses incurred. (See, *Exhibits I and K*). Included in the costs is a \$1,500 charge owed to CPT Group
12 for some additional costs associated with enabling Class Members to be paid via ACH, digital payment,
13 or direct deposit through a third-party website. (Baker Dec. 125). Included within the costs are \$1,659
14 incurred by the Norvell firm and the reasonably estimated costs to get through Final Approval and post-
15 judgment reporting. (Baker Dec. ¶¶125-126; Norvell Dec. ¶32). The requested costs of \$17,425.74 are
16 less than the \$25,000 in costs allowed by the Settlement Agreement and disclosed to the Class.

17 **V. CONCLUSION**

18 The Settlement is fair, reasonable, and adequate. It resolves the case favorably to the Settlement
19 Class by providing substantial monetary payments to the Class Members and providing a broad release
20 and retention of wage advances. It is non-collusive and was achieved as the result of informed,
21 extensive, and arms-length negotiations conducted by counsel for respective parties who are experienced
22 in wage and hour class action litigation. Nearly all Class Members (99.85%) have tacitly approved the
23 Settlement by participating in the Settlement and only objection to the Settlement has been submitted
24 and should be overruled.

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28 ///

1 For the reasons set forth herein, Plaintiffs respectfully request this Court grant final approval and
2 set a Final Accounting hearing date for September 6, 2024 or later.

3 **RESPECTFULLY SUBMITTED,**

4 **KEEGAN & BAKER, LLP**

5
6 Dated: November 20, 2023

By: /s/ Jason E. Baker
Jason E. Baker, Esq.
John J. Weber, Esq.
Plaintiff BRAYDEN HUMPHERYS,
JEREMY HATCHER individually, on
behalf of the Class and LOGAN SHANE
CRABTREE, on behalf of all similarly
situated aggrieved employees