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DAVID BACKHAUS, ANDREA MERINO LOPEZ
and LUSINE NALBANDIAN, individually on behalf
of themselves, and all others similarly situated, and the
general public

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

DAVID BACKHAUS, ANDREA MERINO
LOPEZ, LUSINE NALBANDIAN,
TALEENA PELAYO, NARCISO CHAN
SOSA and ANTONIO LEIRIA individuals,
on behalf of themselves, all others similarly
situated, and the general public,

Plaintiffs,

vs.

THE LANGHAM HUNTINGTON HOTEL
AND SPA, a business entity of unknown
form; LANGHAM HOTELS PACIFIC
CORPORATION, a Delaware corporation;
PACIFIC LANGHAM SERVICES
CORPORATION, a Delaware corporation;
GREAT EAGLE HOLDINGS, a California
corporation and DOES 1 to 10, inclusive,

Defendants.

Case No.: 19STCV24251
[Consolidated with Case Nos. 19STCV31136
and 20STCV36405]

Assigned for all purposes to the
Hon. David S. Cunningham, Dept. SSC-11

CLASS ACTION

**NOTICE OF MOTION AND MOTION
FOR FINAL APPROVAL OF CLASS AND
REPRESENTATIVE ACTION
SETTLEMENT**

[Declarations of Anthony J. Orshansky and
Donald Potter in Support; Declaration of Abel
E. Morales (Regarding Notification and
Settlement Administration); [Proposed] Order,
and [Proposed] Judgment; and Proof of Service
on LWDA submitted concurrently herewith]

Final Approval Hearing

Date: February 6, 2024
Time: 10:00 a.m.
Dept: SSC-11

Complaint Filed: July 12, 2019
Trial Date: None

NOTICE

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:

PLEASE TAKE NOTICE that on February 6, 2025 at 10:00 a.m., or as soon thereafter as the matter may be heard in Department 11 of the Superior Court of California, County of Los Angeles, located at 312 N. Spring Street, Los Angeles, California 90012, before the Honorable David S. Cunningham, plaintiffs DAVID BACKHAUS, ANDREA MERINO LOPEZ, LUSINE NALBANDIAN, TALEENA PELAYO, NARCISO CHAN SOSA and ANTONIO LEIRIA (“Plaintiffs” or “Class Representatives”), individually and on behalf of all others similarly situated, will and hereby do move this Court for entry of an order pursuant to Code Civ. Proc., § 382 and CA ST CIVIL RULES Rule 3.769:

1. Granting final approval of the parties’ Class and PAGA Settlement Agreement (“Settlement Agreement”);
2. Approving an award of \$649,935 in attorneys’ fees to Class Counsel, of which \$238,330.62 shall be paid to the Cullen Law Firm, APC, \$205,831.44 shall be paid to CounselOnce and \$205,831.44 shall be paid to the Law Offices of Donald Potter;;
3. Approving an award of \$26,126.15 in litigation costs reimbursement to Class Counsel;
4. Approving an award of \$16,750 in actual costs to CPT Group, Inc. for its settlement administration services;
5. Approving a service award in the amount of \$5,000 each to Plaintiffs; and
6. Entering final judgment in the form of the [Proposed] Judgment and entering the Order Granting Plaintiff’s Motion for Final Approval of the Class and Representative Action Settlement.

This motion is made on the following grounds: (1) the conditionally certified Class continues to meet the requirements for class certification for settlement purposes only under Code Civ. Proc., § 382; (2) Plaintiffs and Class Counsel continue to be adequate representatives of the Class; (3) the settlement is a fair, adequate, and reasonable compromise of disputed wage and hour claims; (4) the requested awards of attorneys’ fees and costs, enhancement payments, and settlement

1 administration costs are all fair, adequate, and reasonable; and (5) in light of the foregoing, the
2 [Proposed] Judgment and [Proposed] Order Granting Plaintiff's Motion for Final Approval of
3 Class and Representative Action Settlement, Attorneys' Fees and Costs, and Class
4 Representative's Service Award submitted concurrently herewith should be entered to give finality
5 to, and allow for disbursements from, the settlement.

6 This motion is based on this Notice of Motion; the attached Memorandum of Points and
7 Authorities; the supporting declarations of Paul T. Cullen, Anthony J. Orshansky, Donald Potter,
8 and Abel E. Morales of CPT Group, Inc., and the exhibits attached thereto; as well as all other
9 pleadings and papers on file in this action; and on any further oral or documentary evidence or
10 argument presented at the time of hearing.

11 Dated: January 12, 2024

Respectfully submitted,

12 THE CULLEN LAW FIRM, APC

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14 Paul T. Cullen
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5. <u>\$150,000 for PAGA penalties (25% of which (i.e. \$37,500) shall be paid to Aggrieved Employees and 75% of which (\$112,500) shall be paid to the Labor and Workforce Development Agency ("LWDA") (see §1.28 and 1.35 of the Settlement);</u>	2
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs DAVID BACKHAUS, ANDREA MERINO LOPEZ, LUSINE NALBANDIAN, TALEENA PELAYO, NARCISO CHAN SOSA and ANTONIO LEIRIA (“Plaintiffs” or “Class Representatives”), hereby move for final approval of a non reversionary class and representative action settlement in the amount of 1,950,000 on behalf of a Class defined as follows:

“**Class**” means all current and former hourly paid or non-exempt employees who have worked for the Langham in the State of California at any time during the Class Period.¹

The **Class Period** is defined as July 12, 2015 through April 16, 2023², and the “Langham” is the Defendant’s hotel and spa in Pasadena, California (a.k.a. “the Langham Huntington”). Pursuant to the terms of the Class Action and PAGA Settlement Agreement (“Agreement” or “Settlement”), a copy of which is attached to the concurrently filed declaration of Paul T. Cullen as Exhibit 6), anyone who does not opt out of the Settlement will be automatically paid a pro rata portion of the Net Settlement Fund in the amount of \$1,077,189 after the standard deductions for the payment to the Labor and Workforce Development Agency (“LWDA”), attorney’s fees, costs, class representative enhancements, and claims administrator’s fees. Out of 1370 class members, there have been no objections and no disputes, and only one person as elected to opt out of the settlement. That represents a 99.93% participation rate. This information is derived from the declaration of Abel E. Morales, the Director of Operations of CPT Group, Inc. (“CPT”). CPT is the Court-approved claims administrator in this action. This motion follows a motion for preliminary approval and a couple of rounds of subsequent briefing to conform to the requirements of this Court that the class representative enhancements be limited to \$5000 each and that attorney’s fees be reduced from 35% to 33.33% of the gross settlement amount. The fact that there is nearly 100% participation and there are absolutely no disputes strongly supports final approval of the Settlement.

///

¹ The “Class” and “Class Period” are defined, respectively, in paragraphs 1.5 and 1.12 of the Settlement Agreement.

² Settlement Agreement, ¶ 1,12 (“Class Period”).

1 **II. DISCUSSION**

2 To facilitate the Court’s review of the details of the factual background in this case, in the
3 concurrently filed declaration of the undersigned, Paul T. Cullen, who is lead counsel for this case,
4 Mr. Cullen sets forth all of the information considered by this Court at the time of preliminary
5 approval. Included as exhibits are (1) a copy of the motion for preliminary approval, (2) a copy of
6 3 minute orders directing further briefing and the submission of additional declarations to address
7 concerns raised by the Court during the approval process, (3) the order of preliminary approval,
8 (4) a copy of the Settlement Agreement itself, (5) a copy of the order of final approval by Judge
9 Nelson regarding a prior class action against the defendant herein and roughly the same class of
10 employees, i.e. the Vega matter, and (6) all of the declarations of the six class representatives.

11 **A. Settlement Class Definition**

12 The Class Definition is set forth above as well as the Class Periods.

13 **B. Terms of the Settlement Agreement**

14 The Gross Settlement Amount (“GSA”) is \$1,950,000 and it is non-reversionary.

15 Assuming the awards for fees, and enhancements, and costs reimbursements are granted as
16 requested, the Net Settlement Amount will be \$1,077,189. That is the GSA minus the following:

- 17 1. Up to \$649,935 or 33.33% of the GSA (*see* Preliminary Approval Order at 3:16);
- 18 2. Up to \$40,000 in litigation costs reimbursement (actual costs requested are
19 \$26,126.15);
- 20 3. Up to \$30,000 for six service wards in the amount of \$5000 each (*see* Preliminary
21 Approval Order at 3:16);
- 22 4. Up to \$30,000 for claims administration costs (requested administrator’s costs are
23 only \$16,750);
- 24 5. \$150,000 for PAGA penalties (25% of which (i.e. \$37,500) shall be paid to
25 Aggrieved Employees and 75% of which (\$112,500) shall be paid to the Labor and
26 Workforce Development Agency (“LWDA”) (*see* §1.28 and 1.35 of the Settlement);

27 Class Members were provided 60 days within which to respond to the Class Notice.
28 (Settlement at §1.44.) Settlement payments will be made on a pro rata basis based upon work

1 weeks worked during the Class Period (Settlement §1.23.). The GSA excludes Defendant's
2 FICA/FUTA payments and any other payroll taxes owing by the Defendant. (Settlement § 1.22.)
3 Settlement payment checks not cashed within the deadline will be deposited in the appropriate
4 State of California unclaimed property fund. (Preliminary Approval Order at 7:10-15.) The
5 releases of claims are set forth at §5 of the Settlement (pages 9 and 10), and the release is
6 generally restricted to those claims that are or could have been raised in the complaint regarding
7 the causes of action before the Court.

8 **C. ANALYSIS OF THE SETTLEMENT AGREEMENT**

9 **1. The Standards for a Final Fairness Determination**

10 As Judge Nelson succinctly summarized the standards applicable for this Court's
11 determination regarding the final fairness of the proposed Settlement in her order granting Motion
12 for final approval of the class action settlement in the Vega matter as follows:

13 "Before final approval the court must conduct an inquiry into the fairness
14 of the proposed settlement." CRC 3.769(g). " If the court approves the settlement
15 agreement after the final approval hearing, the court must make and enter
16 judgment. The judgment must include a provision for the retention or the court's
17 jurisdiction over the parties to enforce the terms of the judgment. The court may
18 not enter an order dismissing the action at the same time as, or after, entry of
19 judgment." CRC 3.769(h).

20 "In a class action lawsuit, the court undertakes the responsibility to assess
21 fairness in order to prevent fraud. Collusion or unfairness to the class, the
22 settlement or dismissal of a class action. The purpose of the requirement [of court
23 review] is the protection of those class members, including the named plaintiffs,
24 whose rights may not have been given due regard by the negotiating parties." *See*
25 *Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141
26 Cal. App.4th 46, 60 (internal quotation marks omitted); *see also Wershba v.*
27 *Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245 (Court needs to "scrutinize
28 the proposed settlement agreement to the extent necessary to reach a reasoned
judgment that the agreement is not the product of fraud or overreaching by, or
collusion between, the negotiating parties, and that the settlement, taken as a
whole, is fair, reasonable and adequate to all concerned") (internal quotation
marks omitted).

"The burden is on the proponent of the settlement to show that it is fair
and reasonable. However 'a presumption of fairness exists where: (1) the
settlement is reached through arm's length bargaining; (2) investigation and
discovery are sufficient to allow counsel and the court to act intelligently; (3)
counsel is experienced in similar litigation; and (4) the percentage of objectors is

1 small.’” See *Wershba* at 245 (citing *Dunk v. Ford Motor Co.* (1996) 48
2 Cal.App.4th 1794, 1802. Notwithstanding an initial presumption of fairness, "the
3 court should not give rubber-stamp approval." See *Kullar v. Foot Locker Retail,*
4 *Inc.* (2008) 168 Cal.App.4th 116, 130. "Rather, to protect the interests of absent
5 class members, the cou11 must independently and objectively analyze the
6 evidence and circumstances before it in order to determine whether the settlement
7 is in the best interests of those whose claims will be extinguished." Id. In that
8 determination, the court should consider factors such as "the strength of plaintiffs'
9 case, the risk, expense. complexity and likely duration of further litigation, the
10 risk of maintaining class action status through trial. the amount offered in
11 settlement, the extent of discovery completed and stage of the proceedings. the
12 experience and views of counsel, the presence of a governmental participant, and
13 the reaction of the class members to the proposed settlement." Id. at 128. "Th[is]
14 list of factors is not exclusive and the court is free to engage in a balancing and
15 weighing of factors depending on the circumstances of each case." *Wershba* at
16 245.

11 Nevertheless, "[a] settlement need not obtain 100 percent of the damages
12 sought in order to be fair and reasonable. Compromise is inherent and necessary
13 in the settlement process. Thus, even if 'the relief afforded by the proposed
14 settlement is substantially narrower than it would be if the suits were to be
15 successfully litigated,' this is no bar to a class settlement because 'the public
16 interest may indeed be served by a voluntary settlement in which each side gives
17 ground in the interest of avoiding litigation.'” Id. at 250.

15 May 24, 2017 Order Granting Motion for Final Approval of Class Action Settlement, *Vega v.*
16 *Langham Hotels Pacific Corp.*, LASC Case No. BC57232 at 4-5.

17 **2. Does a Presumption of Fairness Exist?**

18 The answer to this question is yes. The parties participated in a full day mediation with
19 mediator Jill Sperber which resulted in a settlement based upon the mediator’s proposal. The
20 parties engaged in significant informal discovery including the exchange of substantial
21 documentary evidence and employed an expert to assist in the analysis of the payroll data at issue.
22 All of the attorneys that represent the plaintiffs are experienced class action litigators and have
23 ample experience with wage and hour litigation in particular. There were no objectors to the
24 settlement. As such the Settlement is entitled to a presumption of fairness.

25 Class Notice and the Class Response to the Proposed Settlement: As noted above, only one
26 of the 1370 Class Members opted out of the settlement. As set forth in the concurrently filed
27 declaration of Abel E. Morales, the Director of Operations for the Court-approved settlement
28

1 administrator, CPT Group, Inc., Class notice was provided in conformity with this Court's orders.
2 It was mailed by first-class mail after a preliminary review of the accuracy of potentially stale
3 addresses through the National Change of Address database. As further set forth in Exhibit 7 to the
4 Cullen Decl., the most recent report from CPT group, dated January 5, 2024, indicates that 1370
5 notices were mailed. 80 were returned and CPT was able to successfully trace 79 of them. 71
6 notices were remailed and 6 were forwarded. One notice was returned a second time and 11 were
7 undeliverable. Two written responses were received by CPT – one was a valid opt out from one
8 Salvador Martinez, and the other was a duplicate and thus invalid opt out from Salvador Martinez.
9 In sum, 0.07% of the class, or 1 out of 1370 persons, opted out. The most important information
10 set forth in the report indicates that there were zero objections, zero disputes, zero deficient
11 responses and zero late opt outs. In other words, the Class presumably has approved of the
12 proposed Settlement by its obvious acquiescence.

13 Class members were not required to admit claims to receive compensation, thus all 1369
14 participating Class Members will be paid upon this Court's approval of the proposed Settlement.

15 Evaluation of the Settlement: The operative First Consolidated Class Action Amended
16 Complaint for Damages, Restitution, and Civil Penalties has 11 causes of action. They are as
17 follows:

- 18 1. Recovery of Unpaid Minimum and Overtime Wages;
- 19 2. Recovery of Reporting Time Pay;
- 20 3. Failure to Provide Meal Periods in Violation of Cal. Lab. Code § 226.7;
- 21 4. Failure to Provide Paid Rest Periods in Violation of Cal. Lab. Code §§ 226.2 & 226.7;
- 22 5. Failure to Timely Furnish Accurate, Itemized Wage Statements;
- 23 6. Failure to Pay All Wages Owed Timely and Upon Separation of Employment;
- 24 7. Declaratory Relief;
- 25 8. Unfair Business Practices;
- 26 9. Violation of Cal. Lab. Code § 558;
- 27 10. Violation of Cal. Lab. Code § 1174(d);
- 28 11. Violation of PAGA, Cal. Lab. Code § 2699 *et seq.*

1 Notwithstanding its general denial of Plaintiff's' claims and a host of affirmative defenses,
2 Defendant has nonetheless agreed to pay \$1,950,000 to resolve these claims, and this is after
3 Defendant had already addressed similar claims years earlier in a

4 Clark and Kullar Analysis: The concurrently filed Declaration of Paul T. Cullen outlines
5 in detail all aspects of the Settlement. (Cullen Decl. at ¶ 16-40.) It also sets forth a detailed
6 analysis of California law as set forth in *Clark v. American Residential Services LLC* (2009) 175
7 Cal.App.4th 785 (hereinafter, "*Clark*") and *Kullar, supra*, 168 Cal.App.4th 116 (hereinafter,
8 "*Kullar*"). The *Clark* and *Kullar* analysis can be found at the Cullen Decl. at ¶ 41-105.) The
9 analysis addresses each and every factor under these cases, and it sets forth a reasoned explanation
10 for all of the decisions that were made when considering whether the proposed Settlement was
11 worth presenting to the class. These facts and factors (e.g., the strength of Plaintiffs' case; risk,
12 expense, complexity and likely duration of further litigation, etc.) were all exhaustively analyzed
13 in the motion for preliminary approval, and these facts and factors have not changed. Now,
14 however, the presumption of fairness now has been given the acid test by the claims process. The
15 fact that there have been zero objections and only one opt out in a class of this size speaks strongly
16 for why this Settlement should be finally approved.

17 3. Requested Attorneys' Fees are Reasonable

18 A percentage method may be used to calculate a reasonable fee in a common fund case
19 such as this. (*Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 503.) A fee award is
20 justified where the legal action has produced its benefits by way of a voluntary settlement. (See,
21 e.g., *Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1290–91; *Westside Community for Independent*
22 *Living, Inc. v. Obledo* (1983) 33 Cal.3d 348, 352–53.) When a settlement results in a common
23 fund for the benefit of a class, class counsel may be awarded fees as a percentage of the common
24 fund. (See *Wershba, supra*, 91 Cal.App.4th at p. 254 [recognizing the "percentage of recovery"
25 method].) The California Supreme Court confirmed in *Laffitte, supra*, 1 Cal.5th 480 that "[t]he
26 percentage of fund method survives in California class action cases." (*Laffitte, supra*, 1 Cal.5th at
27 p. 506.)
28

1 The recognized advantages of the percentage method - including relative ease of
2 calculation, alignment of incentives between counsel and the class, a better approximation of
3 market conditions in a contingency case, and the encouragement it provides counsel to seek an
4 early settlement and avoid unnecessarily prolonging the litigation - convince us the percentage
5 method is a valuable tool that should not be denied our trial courts. (*Id.* at p. 503 [internal citation
6 omitted]; *see also, e.g., Serrano v. Priest* (1977) 20 Cal.3d 25, 34 [“when a number of persons are
7 entitled in common to a specific fund, and an action brought by a plaintiff or plaintiffs for the
8 benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs may be
9 awarded attorney’s fees out of the fund.”]; *Serrano v. Unruh* (1982) 32 Cal.3d 621, 627 [in
10 awarding a fee from the common fund obtained for the benefit of all parties, the trial court acts
11 within its equitable power to prevent the other parties’ unjust enrichment]; *Rawlings v. Prudential-*
12 *Bache Properties, Inc.* (6th Cir. 1993) 9 F.3d 513, 516 [the percentage of the fund method for
13 calculating attorneys’ fees more accurately reflects the results achieved for the putative class than
14 the lodestar method and “establishes reasonable expectations on the part of plaintiffs’ attorneys as
15 to their expected recovery; and it encourages early settlement, which avoids protracted
16 litigation.”]; *In re Rite Aid Corp. Securities Litigation* (3d Cir. 2005) 396 F.3d 294, 300, *as*
17 *amended* (Feb. 25, 2005) [“The percentage-of-recovery method is generally favored in common
18 fund cases because it allows courts to award fees from the fund ‘in a manner that rewards counsel
19 for success and penalizes it for failure.’”].)

20 The Order of Preliminary approval herein allows for the payment of up to 33.33% of the
21 Gross Settlement Amount for attorneys’ fees. This request is fair, reasonable, and adequate to
22 compensate Class Counsel for the excellent results achieved with average settlement payments of
23 \$776.14, a maximum settlement payment of \$2,979.52, no objectors, and a nearly 100%
24 settlement participation rate. (See Morales Decl. ¶¶ 11-12; Orshansky Decl. ¶ 103.) First, Class
25 Counsel negotiated a substantial recovery for Class Members resulting in a settlement
26 participation rate of virtually 100%. Second, not a single Class Member objected to the settlement
27 or to Class Counsel’s requested fees. That Class Counsel achieved these results in the face of
28 serious defense challenges (*i.e.*, evidentiary challenges of off-the-clock work, waiver of meal and

rest break arguments, etc.), and in the face of an ever-changing legal landscape confirms the strength of the results achieved.

The attorneys' fees requested is typical in similar wage and hour class action matters, which presumably is why the Court set the 33.33% amount in the order of preliminary approval. Additionally, the fee request is consistent with the contingency-fee agreement entered into by the Plaintiffs. The attorneys' fees award requested is also consistent with what other courts have awarded in other class and representative action cases. (*See, e.g., Ochoa v. Haralambos Beverage Co.*, Los Angeles County Super. Ct., Case No. BC319588 (33.3% fee award with no mention of lodestar crosscheck); *Jones v. Alliance Imaging, Inc.*, Alameda County Super. Ct., Case No. RG05210418 (33% fee award with no mention of lodestar crosscheck); *Wisniewski v. Pacific Maritime Assoc.*, Los Angeles County Super. Ct., Case No. BC293134 (30.7% fee award from \$12.9 million settlement with no mention of lodestar crosscheck); *Garcia v. Save Mart Supermarkets*, Stanislaus County Super. Ct., Case No. 312026 (33% fee award with no mention of lodestar crosscheck); and *Terrell v. Ocean's 11 Casino, Inc.*, San Diego County Super. Ct., Case No. GIC795732 (approving 33% fee award). Numerous courts have awarded attorneys' fees of up to, or in excess of 40% of the common fund. (*See Ammari Electronics, et al. v. Pacific Bell Directory*, Alameda County Sup. Ct., Case No. RG05198014 (awarded 43.8%); *In re California Indirect Purchaser X Ray Film Antitrust Litigation*, San Francisco Super. Ct. (citing *Abzug v. Kerkorian*, Los Angeles Super. Ct., Case No. CA-00981 (45%) and *Haitz v. Meyer*, Alameda County Sup. Ct., Case No. 5729683 (45%)); *Hall v. Cinema 7, Inc.*, San Francisco Super. Ct., Case No. CGC-01-409105 (53%); *Birch v. Office Depot*, United States District Court for the Southern District of California, Case No. 06cv1690 DMS (40% fee awarded on \$16,000,000 settlement); and *Rundberg v. Intrawest Napa Dev. Co.*, Napa County Super. Ct., Case No. 26-56886 (40%).)

Class Counsel's application for is well within the range of reasonableness. Courts have awarded fees as high as fifty percent (50%) of the settlement in complex actions. (*See In re Ampicillin Antitrust Litigation* (D.D.C. 1981) 526 F.Supp. 494 [awarding attorneys' fees in the amount of 45% of the \$7.3 million total settlement amount]; *Beech Cinema, Inc. v. Twentieth*

1 *Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F.Supp. 1195, *aff'd* (2d Cir. 1980) 622 F.2d 1106
2 [awarding approximately 53% of the settlement as attorneys' fees] Usually 50% of the fund is the
3 upper limit on a reasonable fee award from a common fund in order to assure that the fees do not
4 consume a disproportionate part of the recovery obtained for the class, although somewhat larger
5 percentages are not unprecedented."].)

6 It is worth noting that this Settlement offers three times more monetary relief to the
7 participating Class Members than the *Vega* settlement approved by Judge Nelson. That case
8 settled for \$650,000, and this one settled for \$1.95 Million. Class Counsel negotiated a substantial
9 recovery for the Class Members, resulting in a settlement participation rate of virtually 100%. (See
10 *Morales Decl.* ¶ 12; *Orshansky Decl.* ¶ 110.) Moreover, no Settlement Class Member objected to
11 the settlement or to Class Counsel's requested fees. Further, the average individual settlement
12 payment of approximately \$776.14 exceeds average settlement payments in similar wage and hour
13 class action settlements.³ Class Counsel achieved these results in the face of serious defense
14 challenges (*i.e.*, evidentiary challenges of off-the-clock work, the "bell system" for meal breaks,
15 waiver of meal and rest break arguments), and in the face of an ever-changing legal landscape.

16 As discussed at length in the accompanying Cullen Declaration, this case presented
17 significant risks of both non-certification as well as potential challenges on the merits of Plaintiff's
18 claims. (Cullen Decl., *passim*.) Accordingly, it is fair and reasonable to account for these risks in
19 compensating Class Counsel, who worked on a pure contingency basis. Moreover, Class
20 Counsel's previous experience litigating wage and hour class actions also supports the

22 ³ (See, *e.g.*, *Ressler v. Federated Department Stores, Inc.* (L.A. County Super. Ct. Jan. 2, 2009) Case
23 No. BC335018 [average recovery of \$90]; *Palencia v. 99 Cents Only Stores* (Sacramento County
24 Super. Ct.) Case No. 34-2010-00079619 [average recovery of \$80]; *Lim v. Victoria's Secret Stores,*
25 *Inc.* (Orange County Super. Ct. Jan. 20, 2006) Case No. 04CC00213 [average recovery of \$35];
26 *Gomez v. Amadeus Salon, Inc.* (L.A. County Super. Ct. July 23, 2010) Case No. BC392297 [average
27 recovery of \$20]; *Sorenson v. PetSmart, Inc.* (E.D. Cal. 2008) Case No. 2:06-CV-02674-JAM-DAD
28 [wage and hour class action settlement approved where average class member recovery was
approximately \$60]; *Williams v. Centerplate, Inc.* (S.D. Cal., Aug. 26, 2013, No. 11-CV-2159 H-
KSC) 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., June 11, 2012, No. 1:10-CV-00616-AWI) 2012 WL 2117001, at *17, *report and*
recommendation adopted (E.D. Cal., June 28, 2012, No. 1:10-CV-616-AWI-SKO) 2012 WL
13040405 [finding that average payment to class members of less than \$200 was a "good" result].)

1 reasonableness of the fee request. Class Counsel are well-versed in plaintiff-side wage and hour
2 class and representative action litigation. Class Counsel’s experience was integral to evaluating the
3 strengths and weaknesses of this case and the reasonableness of the settlement. Because it is
4 reasonable to compensate Class Counsel commensurate with their skill, reputation, and
5 experience, as well as the risks undertaken, the requested fee award is fair and reasonable, in
6 accord with the principles outlined by the California Supreme Court in *Laffitte*, and should
7 therefore be approved.

8 **4. Reasonableness of Fee Application Evidenced by Lodestar Cross-Check**

9 Significantly, *Laffitte* also held that trial courts have discretion to assess reasonableness of
10 fee awards with tools such as the lodestar cross-check, though they need not do so. (*Laffitte*,
11 *supra*, 1 Cal.5th at p. 506 [“We hold further that trial courts have discretion to conduct a lodestar
12 cross-check on a percentage fee...they also retain the discretion to forego a lodestar cross-check
13 and use other means to evaluate the reasonableness of a requested percentage fee.”].) This Court
14 can and should award attorneys’ fees and costs based on the percentage fee alone in light of the
15 excellent results achieved and for the reasons stated herein. Nevertheless, the lodestar “cross-
16 check” here also supports the requested contingency-fee percentage.

17 Notably, “regardless of whether the percentage method or the lodestar method is used, fee
18 awards in class actions average around one-third of the recovery.” *Chavez v. Netflix, Inc.* (2008)
19 162 Cal.App.4th 43, 66, n.11; *see also, e.g., Cicero v. DirecTV, Inc.* (C.D. Cal., July 27, 2010, No.
20 EDCV 07-1182) 2010 WL 2991486, at *7 (observing that “30-50% [is] commonly awarded in
21 cases in which the common fund is relatively small” and that in California, “courts usually award
22 attorneys’ fees in the 30-40% range in wage and hour class actions...”)

23 A lodestar cross-check analysis typically happens in three steps. First, a trial court must
24 determine a baseline guide or “lodestar” figure based on the time spent and the reasonable hourly
25 compensation for each attorney involved in the case. (*Serrano, supra*, 20 Cal.3d at p. 48.) The
26 court then sets the reasonable hourly fee with reference to prevailing rates in the geographical area
27 where the action is pending. (*Bihun v. AT&T Information Systems, Inc.* (1993) 13 Cal.App.4th
28 976, 997, *as modified on denial of reh’g* (Mar. 25, 1993) disapproved of by *Lakin v. Watkins*

1 *Associated Industries* (1993) 6 Cal.4th 644.) A “multiplier” is then selected with reference to
2 factors substantially similar to those applied to the common-fund analysis: (1) the novelty and
3 difficulty of issues involved, (2) the skill displayed in presenting them, (3) the extent to which the
4 nature of the litigation precluded other employment by the attorneys, and (4) the contingent nature
5 of the fee award, based on the uncertainty of prevailing on the merits and of establishing eligibility
6 for the award. (*Serrano, supra*, 20 Cal.3d 25.)

7 The *Serrano* factors militate strongly in favor of the requested fee award. Chief among
8 these are factual risks and evidentiary challenges of substantiating unrecorded time and
9 Defendant’s failure to authorize and permit breaks on a class-wide basis. Also, Class certification
10 was by no means a foregone conclusion. Defendant argued that Plaintiff would be unable to certify
11 a class outside of the settlement context, because Plaintiffs’ claims on the merits would require a
12 series of individualized mini-trials. Defendants alleged Plaintiffs would face significant hurdles to
13 certification given that Defendant contended it already addressed all of Plaintiffs concerns
14 following the *Vega* settlement.

15 To investigate, litigate, and ultimately negotiate and craft the settlement, Class Counsel
16 expended a significant amount of time as detailed in the declarations submitted concurrently
17 herewith by all Class Counsel. The work was meaningful, and the hourly rates are commensurate
18 with experience and the prevailing rates among defense and plaintiffs’ firms that regularly litigate
19 wage-and-hour class actions in Los Angeles. As set forth in the declarations of counsel, each
20 attorney representing Plaintiffs spent substantial time working on this case, for a total aggregated
21 lodestar of \$419,191. (*See* Cullen Decl. ¶ 120 and 129 (167.5 hours for \$159,125); Orshansky
22 Decl. ¶ 24 (177.2 hours for \$135,214), and Potter Decl. ¶ 6 (121.1 hours for \$124,852.50), and the
23 attached task and time charts) A multiplier of only 1.55 is necessary to yield the requested fees of
24 \$649,993.50. The requested multiplier in this case is within even the modest multipliers that are
25 awarded by California courts. (*Ibid.*; *see Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d
26 1043, 1050–1051 [affirming 3.65 multiplier].) Multipliers routinely range from 3 to 5, and it is not
27 uncommon that multipliers of between 5 and 10, or higher, are applied. (*See, e.g., Wilson v. Bank*
28 *of Am. Natl. Trust & Savs. Assn.* (Cal. Sup. Ct., Aug. 16, 1982) Case No. 643872 [multiplier of

10]; *Glendora Comm. Redev. Agency v. Demeter* (1984) 155 Cal.App.3d 456, 465 [affirming multiplier of 12, and expressly rejecting argument that fee was either exorbitant or unconscionable]. In light of the foregoing, the lodestar cross-check affirms that the fee award requested falls well within the range of reasonableness.

D. Requested Costs Reimbursements Warrant Final Approval

Class Counsel incurred and respectfully request reimbursement of \$26,126.15—which is \$13,873.85 less than this Court authorized at preliminary approval. Class Counsel’s request is fair, adequate, and reasonable, as all of these costs are documented and reasonably incurred as set forth in the declarations of all Class Counsel. Moreover, the costs for which Plaintiff seeks reimbursement are all the types of costs routinely approved by courts. (*See, e.g., Harris v. Marhoefer* (9th Cir. 1994) 24 F.3d 16, 19 [counsel should recover “those out-of-pocket expenses that would normally be charged to a fee paying client”]; *Ashker v. Sayre* (N.D. Cal., Mar. 7, 2011, No. 05-03759 CW) 2011 WL 825713, at *3 [“costs of reproducing pleadings, motions and exhibits are typically billed by attorneys to their fee-paying clients” and are reimbursable]; *Trustees of Const. Industry and Laborers Health and Welfare Trust v. Redland Ins. Co.* (9th Cir. 2006) 460 F.3d 1253, 1258–1259 [legal research costs are reimbursable]; *In re Immune Response Securities Litigation* (S.D. Cal. 2007) 497 F.Supp.2d 1166, 1177–78 [mediation expenses, legal research, copies, postage, filing fees, messenger and overnight delivery costs are reimbursable].) The requested reimbursement of costs of up to \$40,000 was fully disclosed to Class Members and there have been no objections. Because the expenses by Class Counsel were reasonably incurred, and no Class Member has objected to them, the Court should grant the request for reimbursement of \$26,126.15 for litigation costs.

E. Requested Settlement Administrator Expenses Should be Approved.

Plaintiff requests that the Court approve \$16,750 in administration costs to CPT Group, Inc., the Settlement Administrator, which is substantially less than the \$30,000 allocated for it in the order of Preliminary Approval. As detailed in the declaration Abel E. Morales submitted concurrently with this Motion, CPT performed duties in connection with this settlement that were instrumental in effectuating the settlement and the notice process. Among other things, CPT

1 calculated each Class Member's individual settlement payment, updated addresses contained in
2 the class data supplied by Defendant (*e.g.*, NCOA and skip-traces), formatted the Amended Class
3 Notices for mailing, mailed Amended Class Notices to all Class Members and PAGA Group
4 Members, kept the Parties informed of any communications received from the Class Members and
5 PAGA Group Members, and otherwise administered the settlement. (*See Morales Decl., passim.*)
6 For these reasons, CPT's requested costs are fair, reasonable, and adequate, and should be finally
7 approved.

8 **F. Requested Class Representative Service Awards Should Be Approved**

9 Class representatives must possess the same interest and suffer the same injury as the class
10 members. "To assure 'adequate' representation, the class representative's personal claim must not
11 be inconsistent with the claims of other members of the class." (*J. P. Morgan & Co., Inc. v.*
12 *Superior Court* (2003) 113 Cal.App.4th 195, 212.) Thus, the adequacy requirement is satisfied
13 when the class representative's interests are not antagonistic to those of the class. (*McGhee v.*
14 *Bank of America* (1976) 60 Cal.App.3d 442, 451.) Plaintiffs have no conflicts with the Settlement
15 Class and in fact their interests are aligned with those of the Settlement Class. Each Plaintiff has
16 submitted a declaration detailing his/her efforts on behalf of the class. Because their claims are the
17 same as those that would be asserted by unnamed class members were they before the Court,
18 Plaintiffs had every interest in zealously representing the unnamed class members and they did so
19 with excellent results for all.

20 Courts routinely approve enhancement payments to compensate named plaintiffs for the
21 services they provide and the risks they incur during class action litigation. (*See, e.g., Bell v.*
22 *Farmers Ins. Exchange* (2004) 115 Cal.App.4th 715, 726, *as modified on denial of reh'g* (Mar. 9,
23 2004) [upholding "service payments" to named plaintiffs for their efforts in bringing the case];
24 *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp.294 [approving \$50,000
25 service payment]. Here, Plaintiffs seek service awards in the modest amount of \$5,000 each. They
26 believe the request is reasonable, given the time and effort they invested in this case and the
27 positive response by Class Members. Payment of these service awards will have no meaningful
28 impact on any other Class Member's settlement amount. Moreover, despite clear notice, none have

1 objected. Plaintiffs diligently, adequately, and fairly represented the Class. The service awards
2 should be finally approved.

3 **III. CONCLUSION**

4 For the reasons stated herein, Plaintiff respectfully requests that this Court grant Plaintiff's Motion
5 and enter the [Proposed] Order Granting Plaintiff's Motion for Final Approval of Class and
6 Representative Action Settlement, Attorneys' Fees and Costs, and Class Representative's Service
7 Award and the [Proposed] Judgment submitted concurrently herewith.

8 Dated: January 12, 2024

Respectfully submitted,

9 THE CULLEN LAW FIRM, APC

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