

1 ANTHONY J. ORSHANSKY (SBN 199364)
anthony@counselonegroup.com
2 JENNIFER L. CONNOR (SBN 241480)
jennifer@counselonegroup.com
3 JUSTIN KACHADOORIAN (SBN 260356)
justin@counselonegroup.com
4 **COUNSELONE, PC**
9301 Wilshire Boulevard, Suite 650
5 Beverly Hills, California 90210
Telephone: (310) 277-9945
6 Facsimile: (424) 277-3727

7 Attorneys for Plaintiff Berenice de la Torre, on behalf of
herself and others similarly situated
8

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF LOS ANGELES**
11

12 BERENICE DE LA TORRE, on behalf of
herself and others similarly situated,

13
14 Plaintiff,

15 v.

16 AMERICAN INTERNATIONAL
INDUSTRIES, a business entity of unknown
17 form; and DOES 1 through 100, inclusive,

18 Defendants.
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Case No.: 20STCV29551

Assigned for all purposes to:
Hon. David S. Cunningham
Dept. 11

CLASS ACTION

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR FINAL APPROVAL
OF CLASS AND REPRESENTATIVE
ACTION SETTLEMENT, ATTORNEYS'
FEES AND COSTS, AND CLASS
REPRESENTATIVE'S SERVICE
AWARD; MEMORANDUM OF POINTS
AND AUTHORITIES**

[Declaration of Anthony J. Orshansky in
Support, Declaration of Abel E. Morales
Regarding Notification and Settlement
Administration, [Proposed] Order, and
[Proposed] Judgment submitted concurrently
herewith]

Final Approval Hearing

Date: July 12, 2022
Time: 10:00 a.m.
Courtroom: 11

Complaint Filed: August 4, 2020
First Amended Complaint Filed: November
24, 2020
Trial Date: None set

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

2 **PLEASE TAKE NOTICE** that on July 12, 2022 at 10:00 a.m., or as soon thereafter as the
3 matter may be heard in Department 11 of the Superior Court of California, County of Los Angeles,
4 located at 312 N. Spring Street, Los Angeles, California 90012, before the Honorable David S.
5 Cunningham, plaintiff Berenice De La Torre (“Plaintiff” or “Class Representative”), individually
6 and on behalf of all others similarly situated, will and hereby does move this Court for entry of an
7 order pursuant to California Code of Civil Procedure § 382 and California Rules of Court 3.769:

- 8 1. Confirming certification of the conditionally certified Class for settlement purposes
9 under California Code of Civil Procedure § 382;
- 10 2. Confirming the appointment of Plaintiff Berenice De La Torre as the Class
11 Representative for settlement purposes;
- 12 3. Confirming the appointment of CounselOne, P.C. as Class Counsel for settlement
13 purposes;
- 14 4. Granting final approval of the parties’ Amended Stipulation of Class and
15 Representative Action Settlement (“Amended Settlement Agreement”);
- 16 5. Approving an award of \$800,000 in attorneys’ fees to Class Counsel;
- 17 6. Approving an award of \$14,551.78 in litigation costs reimbursement to Class
18 Counsel;
- 19 7. Approving an award of \$17,500 in actual costs to CPT Group, Inc. for its settlement
20 administration services;
- 21 8. Approving a service award in the amount of \$7,500 to Plaintiff; and
- 22 9. Entering final judgment in the form of the [Proposed] Judgment and entering the
23 Order Granting Plaintiff’s Motion for Final Approval of Class and Representative
24 Action Settlement, Attorneys’ Fees and Costs, and Class Representative’s Service
25 Award, which are both submitted concurrently with this Motion.

26 This motion is made on the following grounds: (1) the conditionally certified Class continues
27 to meet the requirements for class certification for settlement purposes only under Code of Civil
28 Procedure § 382; (2) Plaintiff and Class Counsel continue to be adequate representatives of the

1 Class; (3) the settlement is a fair, adequate, and reasonable compromise of disputed wage and hour
2 claims; (4) the requested awards of attorneys' fees and costs, enhancement payment, and settlement
3 administration costs are all fair, adequate, and reasonable; and (5) in light of the foregoing, the
4 [Proposed] Judgment and [Proposed] Order Granting Plaintiff's Motion for Final Approval of Class
5 and Representative Action Settlement, Attorneys' Fees and Costs, and Class Representative's
6 Service Award submitted concurrently herewith should be entered to give finality to, and allow for
7 disbursements from, the settlement.

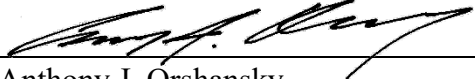
8 This motion is based on this Notice of Motion; the attached Memorandum of Points and
9 Authorities; the supporting declarations of Anthony J. Orshansky and Abel E. Morales of CPT
10 Group, Inc., and the exhibits attached thereto; the Amended Settlement Agreement; all other
11 pleadings and papers on file in this action; and on any further oral or documentary evidence or
12 argument presented at the time of hearing. Finally, given the multiplicity of issues addressed in this
13 motion, Plaintiff believes that there is good cause to exceed the 20-page limit set forth in California
14 Rules of Court, Rule 3.764(c)(2), and respectfully request that the Court consider Plaintiff's
15 Memorandum of Points and Authorities, which is 33 pages in length.

16
17 Dated: June 17, 2022

Respectfully submitted,

18 COUNSELONE, PC

19
20 By:



Anthony J. Orshansky

Jennifer L. Connor

Justin Kachadoorian

Attorneys for Plaintiff

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Berenice de la Torre (“Plaintiff” or “Class Representative”) hereby submits this
4 Memorandum of Points and Authorities in support of her Motion for Final Approval of this class
5 and representative action settlement on behalf of all current and former hourly-paid or non-exempt
6 employees who worked for defendant American International Industries (“Defendant”) in the State
7 of California at any time from February 1, 2017 to October 15, 2021 (the “Class” or “Class
8 Members”).¹

9 The Amended Stipulation of Class and Representative Action Settlement (“Amended
10 Settlement Agreement”) between Plaintiff and Defendant (together, the “Parties”), if approved, will
11 resolve specific claims of Plaintiff, Settlement Class Members,² and PAGA Group Members³ in
12 exchange for Defendant’s agreement to pay *Two Million Four Hundred Thousand Dollars*
13 *(\$2,400,000) into a non-reversionary common settlement fund*. In this non-reversionary
14 settlement, all Settlement Class Members will *automatically receive* payments without the need to
15 submit a claim form, resulting in an average individual settlement award payment of approximately
16 \$2,203.83. (See Declaration of Abel E. Morales Regarding Notification and Settlement
17 Administration (“Morales Decl.”), filed concurrently herewith, ¶ 12.) This is a very favorable
18 resolution of the disputed wage and hour claims in this case. As of the date of filing of this motion,
19 *not a single Class Member has filed an objection* to the settlement after receiving notice of the
20 proposed settlement and the projected individual settlement payments, and *not a single Class*
21 *Member requested exclusion* from the settlement, resulting in a *100% settlement participation rate*.
22 (Morales Decl. ¶¶ 9-12.)

23
24
25 ¹ “Class Period” is defined as the period from February 1, 2017 and ending on October 15, 2021.
(Amended Settlement Agreement ¶ 7.)

26 ² “Settlement Class” or “Settlement Class Members” means all Class Members who have not
submitted a timely and valid request for exclusion from the settlement. (Amended Settlement
27 Agreement ¶ 34.)

28 ³ “PAGA Group Members” are defined as all Class Members who worked for Defendant at any time
during the PAGA Period (which is July 24, 2019 through October 15, 2021). (Amended Settlement
Agreement ¶¶ 22, 25.)

As explained below, the Court should grant Plaintiff's motion because: (1) the conditionally certified Class continues to meet the requirements for class certification for settlement purposes under Code of Civil Procedure § 382; (2) the settlement is a fair, adequate, and reasonable compromise of the disputed claims in this case; and (3) the amounts requested for Class Counsel's attorneys' fees and costs, Plaintiff's service award payment, and settlement administration costs are all fair, adequate, and reasonable. In light of the foregoing, this Court should enter the [Proposed] Judgment and the [Proposed] Order Granting Plaintiff's Motion for Final Approval of Class and Representative Action Settlement, Attorneys' Fees and Costs, and Class Representatives' Service Awards, submitted concurrently herewith.

II. FACTUAL AND PROCEDURAL BACKGROUND

On July 24, 2020, Class Counsel submitted an eight-page pre-filing letter pursuant to California Labor Code § 2699 to the California Labor and Workforce Development Agency ("LWDA") outlining the factual and legal bases for Plaintiff's allegations of wrongdoing on behalf of herself and aggrieved employees, along with mailing a certified copy to Defendant. (Declaration of Anthony J. Orshansky in Support of Plaintiff's Motion for Final Approval of Class and Representative Action Settlement ("Orshansky Decl."), filed concurrently herewith, ¶ 25.)

On August 4, 2020, Plaintiff filed a Class and Representative Action Complaint for Damages (the "Complaint") asserting the following claims: (1) Violation of California Labor Code §§ 1194, 1194.2, 1197, 1197.1, and 1199 (Failure to Pay Minimum Wages); (2) Violation of California Labor Code §§ 510, 1198, and 1199 (Failure to Pay All Overtime Wages); (3) Violation of California Labor Code §§ 226.7 and 512(a) (Meal Period Liability); (4) Violation of California Labor Code § 226.7 (Rest Break Liability); (5) Violation of California Labor Code §§ 2800 and 2802 (Failure to Reimburse Business Expenses); (6) Violation of California Labor Code § 226(a) (Failure to Provide Accurate Itemized Wage Statements); (7) Violation of California Labor Code §§ 201-204 (Failure to Pay All Wages Owed Timely and Upon Separation of Employment); (8) Violation of California Labor Code § 1174(d) (Failure to Maintain Accurate Itemized Wage Statements); (9) Violation of California Business and Professions Code §§ 17200, et seq. (Unfair Business Practices); and (10) Penalties Pursuant to Labor Code § 2699 (Private Attorneys General Act). (Orshansky Decl. ¶ 26.)

On November 24, 2020, Plaintiff filed her First Amended Complaint that perfected her PAGA claim to allege exhaustion of her administrative agency obligations after awaiting the requisite sixty-five (65) days' notice period. (Orshansky Decl. ¶ 27.) Plaintiff's lawsuit thus sought to recover unpaid wages, premiums for improper meal and rest breaks, reimbursement of business expenses, restitution, liquidated damages, penalties for improper wage statements, waiting time penalties, civil penalties pursuant to the PAGA, injunctive and other equitable relief, prejudgment interest, and attorneys' fees and costs. (*Id.* at ¶ 28.) Defendant filed its Answer, pleading general denial of wrongdoing and asserting sixteen affirmative defenses. (*Id.* at ¶ 29.)

Defendant denies Plaintiff's allegations of wrongdoing. (Orshansky Decl., Exhibit 1, Amended Stipulation of Class and Representative Action Settlement (hereafter, "Amended Settlement Agreement") ¶¶ 44, 46.) Defendant does not believe that any liability to Plaintiff or other Class Members exists, or that Plaintiff or Class Members are entitled to any recovery. (*Ibid.*) In settling, Defendant does not admit liability with respect to the alleged claims made by Plaintiff and makes no admission regarding any facts or law related to the action. (*Id.* at ¶¶ 44, 46.)

A. Discovery and Investigation.

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

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

///

1 Class Counsel conducted substantial discovery, including propounding three sets of Special
2 Interrogatories, one set of Requests for Production of Documents, one set of Form Interrogatories,
3 and noticing the depositions of the person most knowledgeable designees for Defendant, which
4 yielded information and substantial documentation concerning the claims alleged, including
5 Defendant's employee handbooks, policies and procedures regarding the payment of wages, the
6 provision of meal and rest breaks, time keeping policies, such as recording hours, issuance of wage
7 statements, and providing all wages at separation, as well as composite data regarding the number
8 of Class Members and the mix of current versus former employees, total number of pay periods,
9 total number of workweeks, and the average hourly rate in effect. (*See* Amended Settlement
10 Agreement ¶ 41; *see also* Orshansky Decl. ¶ 32.) Defendant also produced time and pay records for
11 Class Members. (Orshansky Decl. ¶ 32.) Counsel met and conferred at length regarding the
12 information and documents produced. (*Ibid.*) Class Counsel analyzed the documents and data
13 produced in conjunction with Class Member interviews and consultation with an expert to determine
14 Defendant's degree of liability and potential amounts due in damages. (*Id.* at ¶ 33.)

15 **B. Mediation and Settlement.**

16 Thereafter, the Parties participated in a full-day mediation with Jeffrey Krivis, Esq. of First
17 Mediation Corporation, where they debated and discussed their respective positions. (Orshansky
18 Decl. ¶ 34.) Mr. Krivis is experienced in mediating complex general litigation, labor and
19 employment claims, class actions, and PAGA cases, among others. (*Ibid.*) During the mediation, the
20 Parties exchanged further information and discussed all aspects of the case, including the risks and
21 delays of litigation and the risk to both Parties for proceeding with a motion for class certification,
22 liability under the claims asserted, and the implications of a PAGA representative action. (*Id.* at ¶
23 35.) These were contentious issues because of the factual and legal complexity of the case. (*Ibid.*)

24 The case did not settle at mediation. However, the Parties continued to negotiate with the
25 assistance of Mr. Krivis, and after several months, accepted the mediator's proposal. (*Id.* at ¶ 36;
26 Amended Settlement Agreement ¶ 42.) The settlement negotiations were hard fought and conducted
27 in good faith and at arm's length between attorneys with substantial experience litigating class
28 actions, representative actions, and wage and hour cases, the settlement was the product of a non-

1 collusive settlement process in which the Parties were forced to make significant compromises in
2 the interest of reaching a full and complete settlement of the action. (Orshansky Decl. ¶ 37.)

3 From Class Counsel's review of the facts, strengths, and weaknesses of the case, the risks
4 and delays posed by further litigation, and Class Counsel's own prior litigation experience, Class
5 Counsel believe that the recovery being made available to Settlement Class Members/PAGA Group
6 Members is fair, reasonable, and adequate taking into consideration the amounts received in other
7 wage and hour class and representative actions, the risks inherent in litigation of this genre, and the
8 reasonable tailoring of each Settlement Class Member's/PAGA Group Member's claim to the
9 settlement award he or she will receive. (Orshansky Decl. ¶ 38.) Class Counsel believe that the
10 settlement serves the best interests of Settlement Class Members/PAGA Group Members. (*Ibid.*)
11 The Parties have concluded that it is in their best interests to compromise, settle, and accept the terms
12 of the Amended Settlement Agreement. (Amended Settlement Agreement ¶¶ 43-44.)

13 The Parties engaged in extensive negotiations to finalize the long-form Settlement
14 Agreement, along with the Notice of Pendency of Class and Representative Action Settlement, and
15 Plaintiff filed her Motion for Preliminary Approval of Class and Representative Action Settlement.
16 (Orshansky Decl. ¶ 36.) After the Motion for Preliminary Approval was filed, the initial hearing
17 conducted, and supplemental papers (including the Supplemental Declaration of Anthony J.
18 Orshansky, Amended Settlement Agreement, and Amended Class Notice) were filed in response to
19 the Court's questions and concerns, on March 29, 2022 the Court issued its Second Amended Order
20 Granting Preliminary Approval of Class and Representative Action Settlement, attached at **Exhibit**
21 **"2"** to the Orshansky Decl. filed concurrently herewith, preliminarily approving the Amended
22 Settlement Agreement, attached at **Exhibit "1"** to the Orshansky Decl. filed concurrently herewith.

23 On April 7, 2022, after performing a National Change of Address ("NCOA") search to
24 update and verify addresses for Class Members, the Settlement Administrator, CPT Group, Inc.
25 ("CPT"), mailed via U.S. first class mail the amended Notice of Pendency of Class and
26 Representative Action Settlement ("Amended Class Notice") to all Class Members/PAGA Group
27 Members. (*See* Morales Decl. ¶¶ 6, 7 and Exhibit A (Amended Class Notice).) The Amended Class
28 Notice was printed in both English and Spanish. (Morales Decl. ¶ 4.) Class Members had until June

6, 2022 to submit disputes, requests for exclusion, or objections. (*Id.* at ¶ 7.) As of the date of this filing, CPT received *no objections* and *no requests for exclusion* rendering an overall *settlement participation rate of 100%*. (*Id.* at ¶¶ 9-12.) Given the participation rate and estimated deductions from the Gross Settlement Amount, the average gross individual settlement payment is approximately \$2,203.83. (*Id.* at ¶ 12.) Plaintiff now respectfully submits the settlement for this Court’s final approval.

III. SUMMARY OF THE SETTLEMENT AND NOTICE PROCESS

A. The Class Definition

For settlement purposes only, the Class to be confirmed for certification is as follows: all current and former hourly-paid or non-exempt employees who worked for Defendant American International Industries, and/or its predecessors or merged entities, within the State of California from February 1, 2017 through October 15, 2021.⁴ (Amended Settlement Agreement ¶¶ 4, 7.)

B. Monetary Terms

Defendant has agreed to pay a *non-reversionary settlement amount* (“Gross Settlement Amount”) of *Two Million Four Hundred Thousand Dollars (\$2,400,000)*. (*See* Amended Settlement Agreement ¶¶ 16, 49; Orshansky Decl. ¶ 5.) The Gross Settlement Amount shall be inclusive of all individual settlement payments to Settlement Class Members, the enhancement payment to the Class Representative, the costs to the Settlement Administrator, the attorneys’ fees and litigation costs to Class Counsel, and the PAGA Payment, including payment to PAGA Group Members and to the LWDA for civil penalties pursuant to statute. (Orshansky Decl. ¶ 6.) The Net Settlement Amount is the amount remaining from the Gross Settlement Amount after deducting Court-approved amounts for attorneys’ fees (*i.e.*, \$800,000), actual litigation costs reimbursement (*i.e.*, \$14,551.78 [which is less than the agreed upon \$25,000]), Class Representative’s Service Award (*i.e.*, \$7,500), PAGA Payment (*i.e.*, \$200,000 – of which 75% is allocated for payment to the LWDA for civil penalties pursuant to statute and 25% is to be distributed on a *pro rata* pay periods basis to all PAGA Group Members), and actual settlement administration expenses (*i.e.*,

⁴ *See* footnote 1, *supra*.

1 \$17,500 [which is less than the agreed upon \$20,000]). (*See* Amended Settlement Agreement ¶
2 49(a)-(d); Orshansky Decl. ¶ 7.) Based on these figures, the Net Settlement Amount is
3 approximately \$1,360,448.22.⁵ (Orshansky Decl. ¶ 7.) The average individual settlement payment
4 is estimated at \$2,203.83. (Morales Decl. ¶ 12.)

5 The entire Net Settlement Amount will be paid out to Settlement Class Members. Settlement
6 Class Members will automatically receive payments without the need to submit claim forms, and
7 PAGA Group Members will receive individual PAGA payments irrespective of whether they opt
8 out. (Amended Settlement Agreement ¶ 47.)

9 The Net Settlement Amount will be the amount that is available for distribution to Settlement
10 Class Members on a *pro rata* basis based on workweeks during the Class Period. (Amended
11 Settlement Agreement ¶¶ 36, 49(e).) Each Individual Settlement Share shall be calculated as
12 follows: The Net Settlement Amount shall be divided by the total of all Workweeks of Settlement
13 Class Members during the Class Period in order to yield the “Workweek Value.” (*Ibid.*) The
14 Individual Settlement Share to each Settlement Class Member shall be calculated by multiplying his
15 or her individual Workweeks by the Workweek Value. (*Ibid.*)

16 In addition, each PAGA Group Member will receive a proportional share of the 25% of the
17 PAGA Payment based on his or her pay periods during the PAGA Period. (Amended Settlement
18 Agreement ¶¶ 19, 46(d).) Specifically, 25% of the PAGA Payment (or \$50,000) shall be divided by
19 the total of all Pay Periods worked by PAGA Group Members during the PAGA Period in order to
20 establish the value of each Pay Period. (*Ibid.*) The individual PAGA payment to be made to each
21 PAGA Group Member shall be calculated by multiplying the value of a Pay Period by the number
22 of Pay Periods worked by the PAGA Group Member during the PAGA Period, and irrespective of
23 whether he or she is a Settlement Class Member. (*Ibid.*) As further laid out in the Supplemental
24 Declaration of Anthony J. Orshansky in support of Plaintiff’s Motion for Preliminary Approval, and
25

26 ⁵ The Parties originally estimated the Net Settlement Amount at \$1,347,500. However, the actual
27 Net Settlement Amount is \$1,360,448.22 because Class Counsel’s actual litigation costs are
28 \$14,551.78 (*see* Orshansky Decl. ¶ 130), which is less than the allocated costs amount of \$25,000,
and the Settlement Administrator’s actual expenses are \$17,500, which is less than the allocated
expenses of \$20,000 (*see* Morales Decl. ¶ 14).

1 in response to the Court’s checklist of concerns, settlement award amounts for Settlement Class
2 Members and PAGA Group Members are separately calculated as outlined above. (*See* Amended
3 Class Notice at ¶¶ III.B-D.)

4 After reduction for the employee’s share of taxes on the wage portion, the net payment to
5 each Settlement Class Member/PAGA Group Member will be the sum of his or Individual
6 Settlement Share plus, if applicable, the individual PAGA payment (collectively, “Individual
7 Settlement Payment”). (Amended Settlement Agreement ¶ 49(e); Orshansky Decl. ¶ 10.) As a result
8 of the distribution formulas, the consideration paid to each Settlement Class Member/PAGA Group
9 Member is tailored to the impact of Defendant’s alleged violations as well as to the claims he or she
10 is releasing. (Orshansky Decl. ¶ 10.)

11 Payments to the Settlement Class Members will be classified as twenty-five percent (25%)
12 wages to be reported on an IRS Form W-2, and seventy-five percent (75%) penalties and interest to
13 be reported on an IRS 1099 Form. (Amended Settlement Agreement ¶ 51(a).)

14 C. Summary of Notice Process

15 On April 4, 2022, counsel for Defendant provided CPT Group, Inc. (“CPT”), the Court-
16 approved Settlement Administrator, with a list of Class Members containing the full names, last
17 known mailing addresses, Social Security numbers, number of pay periods and workweeks during
18 the Class Period and PAGA Period, and employment dates. (*See* Morales Decl. ¶ 5.) After
19 performing a NCOA search to update and verify addresses, CPT mailed via U.S. first class mail the
20 Amended Class Notice to all Class Members/PAGA Group Members. (*Id.* at ¶¶ 6-7.) As a result of
21 either a skip trace, request from counsel or the Class Member, a total of 18 Class Notices have been
22 re-mailed. (*Id.* at ¶ 8.) Class Members had until June 6, 2022 to submit disputes, requests for
23 exclusion, or objections. (*Id.* at ¶ 7.) As of the date of this filing, not a single Class Member has
24 objected to the settlement, nor has any Class Member opted out of the settlement; accordingly, this
25 results in a **100% settlement participation rate**. (*Id.* at ¶¶ 9-12.) The average individual settlement
26 payment is \$2,203.83. (*Id.* at ¶ 12.)

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1 **D. Timing of Payments & *Cy Pres* Recipient**

2 The settlement calls for the Gross Settlement Amount along with the Defendant’s share of
3 the payroll and employment taxes to be funded within ten (10) calendar days of the Effective Date.
4 (Amended Settlement Agreement ¶ 59(a).) The Settlement Administrator shall distribute settlement
5 payments within ten (10) calendar days after Defendant funds the settlement. (*Ibid.*)

6 In the event any settlement checks are not cashed, deposited, or negotiated within one
7 hundred and eighty (180) calendar days from the date of issuance, then the check(s) will be cancelled
8 and the funds associated with the cancelled check(s) will be transmitted to *cy pres* recipient Bet
9 Tzedek in accordance with Code of Civil Procedure § 384. (Amended Settlement Agreement ¶
10 59(c); Amended Class Notice (Exhibit A to Morales Decl.) ¶ III.B.)

11 As noted in the Supplemental Declaration of Anthony J. Orshansky in Support of the Motion
12 for Preliminary Approval (previously filed on February 23, 2022), at the hearing on January 26,
13 2022, the Court agreed with counsel that a statement or representation in the Amended Settlement
14 Agreement is sufficient in lieu of separate declarations from counsel and parties. Accordingly, the
15 settlement agreement has been amended to reflect that all Parties and their counsel represent that
16 they do not have any interest or involvement in the governance or work of the *cy pres* recipient. (*See*
17 Amended Settlement Agreement ¶ 59(c) [“All Parties and their counsel represent that they do not
18 have any interest or involvement in the governance or work of the *cy pres* recipient.”]) Additionally,
19 Class Counsel and Defendant’s counsel separately represent under penalty of perjury that they do
20 not have any interest or involvement in the governance or work of the *cy pres* recipient. (*See*
21 Supplemental Declaration of Anthony J. Orshansky in Support of the Motion for Preliminary
22 Approval ¶ 11(a), previously filed on February 23, 2022; Declaration of Jesse M. Caryl ¶ 5,
23 previously filed on February 23, 2022.)

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

25 The Court’s Final Approval Order and Judgment will be posted on the Settlement
26 Administrator’s website pursuant to California Rules of Court, Rule 3.771(b). (Orshansky Decl. ¶
27 143; *see* Amended Settlement Agreement ¶ 60(c); Amended Class Notice (Exhibit A to Morales
28 Decl.) ¶ VI.)

1 **IV. ARGUMENT**

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

5 Under Code of Civil Procedure § 382, a class may be certified if: (1) it is ascertainable and
6 its members are too numerous for joinder to be practical; (2) the representative and absent class
7 members share a community of interest, and questions of law and fact common to the class
8 predominate over questions unique to individual class members; (3) the representative's claims are
9 typical of the class' claims; and (4) the representative will fairly and adequately represent the class'
10 interests. (*See Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470.) Here, this Court found
11 that the proposed Class meets all the requirements for class certification for settlement purposes
12 when it granted preliminary approval of the Amended Settlement Agreement on March 29, 2022.
13 (*See Orshansky Decl.* ¶ 17 and Exh. 2 (Second Amended Order Granting Preliminary Approval).)
14 Since then, no events have cast doubt on the propriety of this determination, and in fact, the reaction
15 of the Class Members has been overwhelmingly supportive of the settlement, with no Class Member
16 objecting to the settlement and no Class Member opting out of the settlement, for a 100% settlement
17 participation rate. (*See Morales Decl.* ¶¶ 9-12.) This Court should therefore confirm its conditional
18 certification of the Class.

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

21 California courts have a strong policy in favor of settlement. (*See, e.g., Stambaugh v.*
22 *Superior Court* (1976) 62 Cal.App.3d 231, 236.) Unlike individual settlements, class action
23 settlements involve a court approval process that exists to prevent fraud, collusion, and unfairness
24 to class members. (*Malibu Outrigger Bd. of Governors v. Superior Court* (1980) 103 Cal.App.3d
25 573, 578-79.) This approval process consists of preliminary settlement approval, notice given to
26 class members, and a final fairness and approval hearing at which class members have the
27 opportunity to be heard with respect to the settlement. (*Ibid.*) Now that notice has been provided to
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Class Members, Plaintiff respectfully requests that the Court finally approve the settlement as fair, adequate, and reasonable.

1. The Settlement Was Reached at Arm’s Length, through Experienced Counsel and a Respected Mediator, and Was Based on Sufficient Information to Intelligently Negotiate a Fair Settlement in Light of the Claims Asserted and Risks of Continued Litigation

A settlement is presumptively fair where it is reached through arm’s-length bargaining, it is based on sufficient discovery and investigation to allow counsel and the court to act intelligently, counsel is experienced in similar litigation, and the percentage of objectors to the settlement is small. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802.) In deciding whether to approve a proposed settlement, a trial court has broad powers to determine if the proposed settlement is fair under the circumstances of the case. (*Mallick v. Superior Court* (1979) 89 Cal.App.3d 434, 438.) In exercising these powers, the overriding concern is to ensure that a proposed settlement is “fair, adequate, and reasonable.” (*Dunk, supra*, 48 Cal.App.4th at p. 1801 [internal quotations omitted].) Relevant factors for the Court to consider include, but are not limited to:

[T]he strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.

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

“In the context of a settlement agreement, the test is not the maximum amount plaintiffs might have obtained at trial on the complaint, but rather whether the settlement is reasonable under all of the circumstances.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 250.) Because settlements inherently involve compromise, even settlements providing for substantially narrower relief than what may be obtained if the suit were successfully litigated can be reasonable because “the public interest may indeed be served by a voluntary settlement in which each side gives

1 ground in the interest of avoiding litigation.” (*Ibid.* [quoting *Air Lines Stewards, etc., Local 550 v.*
2 *American Airlines, Inc.* (7th Cir. 1972) 455 F.2d 101, 109].)

3 Here, the settlement resulted from extensive arm’s-length settlement negotiations between
4 qualified and experienced counsel with the assistance of a well-respected mediator. (*See* Orshansky
5 Decl. ¶ 37.) While Plaintiff maintains that her claims are meritorious, Plaintiff acknowledges the
6 substantial risks and uncertainty in proceeding with class certification and eventually trial, which
7 justify a downward departure from the maximum exposure that Plaintiff calculated that each claim
8 carried. (*Id.* at ¶¶ 40-41.) For the reasons discussed herein, Class Counsel posit that the settlement is
9 fair, adequate, and reasonable for all Settlement Class Members.

10 As detailed in Plaintiff’s Motion for Preliminary Approval (“Plaintiff’s MPA”) and the
11 supplemental filings in support thereof previously submitted, Defendant argued that Plaintiff would
12 be unable to certify a class outside of the settlement context for a variety of reasons. For example,
13 Class Members worked in different job positions and had different managers, and that, as a result,
14 Defendant contended there was variation to the circumstances that could allegedly cause the
15 employees to work off-the-clock and/or be deprived of the opportunity to take legally compliant,
16 duty-free meal and rest periods, and this variation in circumstances raised highly individualized
17 questions of fact. (Orshansky Decl. ¶ 43.) Further, Plaintiff would face significant hurdles to
18 certification given that Class Members signed arbitration agreements with class action waivers as a
19 condition of their employment. (*Id.* at ¶ 44; *see Epic Sys. Corp. v. Lewis* (2018) 138 S.Ct. 1612 [class
20 action waivers in arbitration agreements are enforceable].) If Defendant’s arbitration agreement
21 defense is successful, it would severely limit the potential relief available to those Class Members
22 who signed arbitration agreements with class action waivers. (Orshansky Decl. ¶¶ 44, 120.) In
23 addition, Defendant contended Plaintiff would face significant hurdles to certification given that
24 Defendant raised individualized affirmative defenses such as waiver of meal periods and that on-
25 premises rest breaks are not equivalent to on-call liability in the *Augustus* case progeny. (*Id.* at ¶¶
26 61, 120.) If Plaintiff prevailed and certified a class action, there is no guarantee that Defendant would
27 not later move for and obtain decertification. (*Id.* at ¶¶ 44, 120.) If the Court either denied class
28 certification or later decertified it, the Settlement Class would recover nothing and Settlement Class

1 Members would be forced to retain their own counsel and proceed on the basis of individual claims
2 only. (*Id.* at ¶¶ 44, 120.)

3 Looking at the merits of Plaintiff's claims, Defendant contended that there is substantial
4 uncertainty due to the factual and legal complexity of the case (*i.e.*, factual variance and evidentiary
5 difficulty of proving off-the-clock claims and legal complexity as to defenses such as utilization of
6 a bell system for meal periods, waiver of meal and rest breaks, the legality of on-premises rest breaks
7 absent other indicia of control, and/or unpaid meal and rest break premiums as predicate for wage
8 statement and waiting time penalties). Applying the *Clark* and *Kullar* analysis, Class Counsel's
9 valuation is that the Gross Settlement Amount recovery reflects an ***estimated 27% of the potential***
10 ***damages recoverable at trial.*** Specifically, the Parties posited as follows:

11 **Minimum and Overtime Wage Claims.** Plaintiff, along with other hourly non-exempt
12 employees, performed pre- and post- shift off-the-clock work to minimize the incidence of overtime.
13 (Orshansky Decl. ¶ 48.) Based on Defendant's records, Plaintiff estimated that Defendant is liable
14 for an aggregate of approximately twenty (20) minutes of unpaid straight and overtime pay per
15 workweek. (*Id.* at ¶ 50.) Further, Plaintiff determined that inequitable rounding occurred with a net
16 loss of 23,316.8 hours being unpaid to employees. (*Id.* at ¶ 51.) However, Defendant contended that
17 Plaintiff's claim for off-the-clock work is not amenable to class treatment, because employees
18 worked in a variety of departments with different requirements, and it would require an
19 unmanageable series of mini-trials to determine how much time was spent without pay. (*Id.* at ¶ 51.)
20 Further, in terms of merit defenses, Defendant vigorously disagreed with Plaintiff's theories
21 regarding how much off-the-clock work occurred in reality and the credibility of those claimed
22 hours given Defendant's express written policies to the contrary. (*Id.* at ¶ 52.) Defendant also
23 responded that such off-the-clock time is unauthorized and *de minimis*. (*Id.* at ¶ 54.) Plaintiff
24 countered that such defense lacks viability in light of *Troester v. Starbucks Corp.* (2018) 5 Cal.5th
25 829 given that the California Supreme Court refused to allow the *de minimis* defense. (Orshansky
26 Decl. ¶ 54.) What is not, clear, however, is to what extent the *de minimis* defense would apply where
27 uncaptured hours were associated with occasionally – rather than regularly – recurring activities.
28 (*Ibid.*) Plaintiff recognizes that off-the-clock claims are inherently difficult to prove in the absence

1 of recordkeeping. (*Id.* at ¶ 53.) In light of these arguments, Plaintiff applied appropriate discounts
2 for the risk of non-certification and being unsuccessful on the merits. (*Id.* at ¶ 55.)

3 **Meal and Rest Period Violations.** Plaintiff asserted that there are compliance issues *vis-à-*
4 *vis* meal breaks—some are late, missed, short, or interrupted. (Orshansky Decl. ¶ 56.) Moreover,
5 notwithstanding Defendant’s otherwise compliant policy, Plaintiff and Class Members were not
6 always allowed to leave the premises during meal periods. Further, Defendant failed to provide
7 Plaintiff and Class Members with second 30-minute meal periods for shifts lasting longer than 10
8 hours. (*Ibid.*) On February 25, 2021, in *Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58, the
9 California Supreme Court reversed the Fourth Appellate District and set forth two clear rules: (1)
10 employers are not permitted to round time records when determining if employees are entitled to
11 meal premium pay, and (2) it is the employer’s burden to show that compliant meal periods were
12 provided to employees if the time records show otherwise. In an attempt to skirt California law,
13 Defendant employed an automatic meal period deduction policy. (Orshansky Decl. ¶ 57.)
14 Significantly, there is no indication that Defendant made any meal period premium payments for
15 “missed,” “short,” or “late” meal periods to employees. (Orshansky Decl. ¶ 59; *c.f.* Wage Order 4-
16 2001, § 11(b).)

17 Defendant, however, contended that it had practices, policies, and procedures to provide
18 meal and rest breaks every workday to its employees that fully complied with the law. (Orshansky
19 Decl. ¶ 60.) Defendant vehemently argued that it complied with the requirements articulated by the
20 California Supreme Court in *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004.
21 (Orshansky Decl. ¶ 60.) Specifically, Defendant maintained that it “provides” employees with a
22 reasonable opportunity to take timely meal periods of at least 30 minutes, relieves employees of all
23 duties during meal periods, and relinquishes control over employees’ activities, including the ability
24 to leave the premises during meal periods, including through its use of a “bell system” to notify
25 employees to take their meal breaks, and ensuring that employees certify that they have been
26 provided all meal periods and rest breaks that they were due on their time sheets or time cards each
27 pay period, except for any instances duly recorded by the employee on the Missed Meal and Rest
28 Period Sign In Sheet. (*Ibid.*) Further, after the prior similar class and representative action against

1 the same Defendant in *Garcia v. American International Industries*, Los Angeles County Superior
2 Court Case No. BC560886, discussed in detail at ¶¶ 84-90 in the accompanying Orshansky Decl.,
3 Defendant contended it has since further tightened its policies and procedures to ensure compliance
4 with California law, including lengthening the meal periods for all employees from 30 minutes to
5 35 minutes, and thus, they argued, the failure of an employee to take a full meal period cannot be a
6 fault of company policy, as it provides more than the minimum time prescribed by law for meal
7 periods. (*Ibid.*)

8 Like most employers facing meal period litigation, Defendant argued that employees were
9 apprised of their right to take meal periods and provided compliant meal periods, but some may
10 have voluntarily waived them. (Orshansky Decl. ¶ 61.) Defendant contended that the issue of
11 voluntary waiver would necessarily devolve into a series of individualized mini-trials, precluding
12 class certification. (*Ibid.*; see *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 25
13 [holding that the defendant must be provided an opportunity to litigate affirmative defenses, even
14 when they turn on individual questions].) Based upon the analysis of Class Members' time and
15 payroll records and, in conjunction with interviews of Plaintiff and Class Members, Plaintiff
16 determined that 40 percent of eligible shifts were the subject of unique violations for missed, short,
17 or late meal periods. (Orshansky Decl. ¶ 62.)

18 Plaintiff also alleged that Class Members did not receive authorized rest breaks as required
19 whereby employers "relinquish control over how employees spend their time and relieve employees
20 of all duties." (*Augustus v. ABM Security Service, Inc.* (2016) 2 Cal.5th 257, 260; Orshansky Decl.
21 ¶ 63.) Due to Defendant's work demands and inadequate staffing, Plaintiff and Class Members did
22 not receive timely rest breaks, nor did Defendant relinquish control over how employees spent their
23 10-minute rest breaks. (*Ibid.*) Plaintiff did not receive rest break premium payments for non-
24 compliant rest breaks, nor is there evidence that Defendant made rest break premium payments to
25 Class Members. (*Id.* at ¶ 65.)

26 Defendant again disputed liability and damages. (Orshansky Decl. ¶ 65.) Defendant
27 maintained that it authorized and permitted duty-free rest breaks of not less than ten minutes for
28 every major fraction of four hours worked. (*Ibid.*) Defendant explained that Class Members had

1 ample opportunity to take, and did take, regular rest breaks. (*Ibid.*) Defendant argued that any Class
2 Member who failed to take a rest break, or took a short or late rest break, did so voluntarily and that
3 all applicable rest breaks were still authorized and provided. (*Ibid.*) Defendant also attempted to
4 distinguish *Augustus, supra*, which involved security guards who were required to monitor a pager,
5 phone, or other device as having an added constraint that is not present in the matter *sub judice*.
6 (*Ibid.*)

7 Unlike meal periods, rest breaks need not be recorded and thus establishing Defendant's
8 exertion of pressure, control, and resulting violations is likely to be more difficult. (Orshansky Decl.
9 ¶ 66.) Class Counsel applied a 20 percent violation rate based on the narratives of Plaintiff and other
10 Class Members. (*Ibid.*) Class Counsel applied appropriate discounts to account for the difficulties
11 of certifying and proving unrecorded rest break violations. (*Ibid.*)

12 **Unreimbursed Expenses.** Plaintiff and Class Members alleged that they were required to
13 use their personal cell phones to communicate with supervisors and coworkers for reasons related
14 to work, yet Defendant failed to reimburse for these necessary business expenses. (Orshansky Decl.
15 at ¶ 67.) Consequently, Defendant violated Labor Code § 2802 for failing to reimburse all necessary
16 business expenses incurred. In contrast, Defendant contended that it has a policy and practice of
17 reimbursing employees for necessary business-related expenses. (*Id.* at ¶ 68.) Defendant also
18 contended that, with respect to the alleged expenses for which Plaintiff and other Class Members
19 never requested reimbursement from Defendant, Defendant did not know and had no reason to know
20 that the alleged business-related expenses were incurred. (*Ibid.*) Moreover, to the extent it occurred,
21 Defendant asserted that this claim is not suitable for class treatment as it would require
22 individualized determinations as to whether each employee used a personal cell phone for work-
23 related purposes and, if so, how much of that use was a reasonable percentage of his or her individual
24 monthly phone bill. (*Ibid.*) Defendant also argued that the California Labor Code only requires
25 reimbursement of "necessary" expenses—as opposed to any expense that is incurred in the course
26 of performing work—and argued that distinguishing a necessary expense from an unnecessary one
27 would require individualized inquiry. (*Ibid.*; see Labor Code § 2802; *Gattuso v. Harte-Hanks*
28 *Shoppers, Inc.* (2007) 42 Cal.4th 554.) Furthermore, whether an expense was necessary would

1 depend in part on the reasonableness of the employee's choice and would thus have to be established
2 by way of extensive individual factual inquiry and/or statistical evidence. (*Cochran v. Schwan's*
3 *Home Services, Inc.* (2014) 228 Cal.App.4th 1137.) For the foregoing reasons and taking into
4 account the wide variety of telephone plans, providers and costs creates evidentiary complexities on
5 an individual basis, let alone class-wide, Plaintiff assigned *de minimis* value to this claim.
6 (Orshansky Decl. ¶ 70.)

7 **Wage Statement Violations.** Plaintiff alleged a cause of action under Labor Code § 226(a)
8 for Defendant's failure to provide accurate itemized wage statements. (Orshansky Decl. ¶ 71.) This
9 cause of action is derivative of the foregoing causes of action because if Defendant did not provide
10 wages for all hours worked, meal and rest breaks, and so forth, then the wage statements were
11 inevitably inaccurate. (*Ibid.*) Failure to comply with the statute entitles employees to recover the
12 greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
13 occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding
14 an aggregate penalty of four thousand dollars (\$4,000). (*Ibid.*; see Labor Code § 226(e).) Defendant
15 contended, however, that Labor Code § 226(e) penalties are not automatic. (*Id.* at ¶ 72.) Rather, the
16 employee must show that Defendant's noncompliance was "knowing and intentional." (*Ibid.*)
17 Defendant suggested that any noncompliance was not knowing and intentional. (*Ibid.*) Moreover,
18 Defendant argued that meal and rest period violations cannot support derivative wage statement
19 penalties. (*Ibid.*; see *Naranjo v. Spectrum Security Service, Inc.* (2019) 40 Cal.App.5th 444, 474
20 [holding that violations of Labor Code's meal break provisions do not entitle employees to pursue
21 the derivative wage statement penalties]; *c.f.*, but *review granted*, *Naranjo v. Spectrum Security*
22 *Services, Inc.* (Cal., Jan. 02, 2020, No. S258966) 455 P.3d 704, 257 Cal.Rptr.3d 188.) It was not
23 until after this case settled, on May 23, 2022, that the California Supreme Court ruled that premium
24 pay for missed meal and rest breaks constitutes "wages" that must be reported on wage statements
25 and paid within the statutory deadlines for when an employee leaves the job, thereby overturning
26 the decision of the Court of Appeal.

27 Because the damages for this cause of action are penalties, the statute of limitations is only
28 one year prior to the filing of the original complaint. (Orshansky Decl. ¶ 73; see Code Civ. Proc. §

340.) The Parties discussed these issues, and in light of these considerations, Class Counsel factored in a reduction of liability and damages to estimate the wage statement violation exposure. (*Ibid.*)

Waiting Time and UCL Claims. Plaintiff further asserted causes of action against Defendant for failure to timely pay all wages due employees at separation and for engaging in unfair, unlawful, and fraudulent business practices. (Orshansky Decl. ¶ 74; *see* Labor Code § 203 and Cal. Business and Professions Code §§ 17200, *et seq.*) As with other claims, Defendant vigorously disagreed that it engaged in any conduct giving rise to liability or entitlement to recovery of penalties or equitable relief. (Orshansky Decl. ¶ 74.) For example, Defendant argued that waiting time penalties are not appropriate because it attempted to pay employees all final wages owed in good faith upon their separation, thereby precluding a finding of willfulness necessary to obtain waiting time penalties. (*Id.* at ¶ 75.) Moreover, Defendant maintained that no waiting time penalties are recoverable from alleged meal or rest period violations. (*Ibid.*) Defendant raised the Second Appellate District’s decision in *Naranjo*, *supra*, 40 Cal.App.5th 444, to argue that meal and rest break violations trigger neither wage statement nor waiting time penalties. (*Ibid.*) At that time, the *Naranjo* decision was still pending before the California Supreme Court, and though a decision has since issued (on May 23, 2022) the uncertainty and risk of an adverse decision added additional weight to the Defendant’s defense. (*Ibid.*) Finally, Defendant argued that adequate remedies at law exist to render the action unsuitable for equitable remedies, and again contended that the allegations underlying the unfair competition claim lacked merit. (*Ibid.*) To account for the uncertainty of proving the underlying claims and risk of an adverse decision in *Naranjo*, Class Counsel made a realistic allowance with the agreed upon settlement dollar figure. (*Id.* at ¶ 76.)

PAGA Penalties. The success of Plaintiff’s PAGA claim is wholly dependent upon the success of her underlying claims occurring within the one-year statute of limitations applicable to the PAGA. (Orshansky Decl. ¶ 77.) Defendant maintained and continues to maintain that it had legally compliant employment policies and practices throughout the statutory period. (*Id.* at ¶ 78.) Defendant denied and continues to deny that it ever violated any provision of the California Labor Code and argued that, even assuming such violations occurred, Defendant will not be treated as

1 having engaged in subsequent violations giving rise to heightened penalties. (*Ibid.*) In other words,
2 Defendant argued that heightened civil penalties for subsequent violations would not be assessed
3 unless it could be shown that Defendant had notice that it was violating the law, *e.g.*, it had been
4 cited by a labor agency or adjudged by a court to have done so. (*Ibid.*; *see, e.g., Amaral v. Cintas*
5 *Corp.* (2008) 163 Cal.4th 1157, 1209.) Thus, Defendant contended that, at best, even if a violation
6 giving rise to a penalty was shown for each pay period, only the lower civil penalty associated with
7 initial violations would apply. (Orshansky Decl. ¶ 78.)

8 Moreover, Defendant asserted that, before a PAGA claim could be tried, under existing law,
9 the court of law would have to be satisfied that the adjudication of the PAGA claim, based on a
10 theory of uniform wage and hour practices relating to a large group of aggrieved employees, is
11 sufficiently “manageable” so as not to interfere with Defendant’s right to due process. (Orshansky
12 Decl. ¶ 79.) Defendant reiterated how hourly employees’ job duties and work hours varied.
13 Defendant contended that there was variation as to the circumstances that could allegedly cause
14 employees to work off the clock or to be deprived of the opportunity to take legally compliant, duty-
15 free meal and rest periods. (*Id.* at ¶ 80.) Defendant further opined that these issues presented
16 challenges not only to liability but also challenges to Plaintiff’s ability to show that a PAGA claim
17 could be efficiently and manageably adjudicated without abridging Defendant’s due process rights.
18 (*Ibid.*)

19 Defendant maintained that the Court has discretion to reduce any award of PAGA penalties
20 where it views them as duplicative. (Orshansky Decl. ¶ 81; *see* Labor Code § 2699e(2) [the Court
21 may “award a lesser amount than the maximum civil penalty amount [authorized by PAGA] if, based
22 on the facts and circumstances of the particular case, to do otherwise would result in an award that
23 is unjust, arbitrary and oppressive, or confiscatory.”].)

24 Class Counsel applied discounts for the risks in establishing manageability and possible
25 bifurcation of discovery and/or trial, the risks regarding success on the merits and establishing
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27
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liability, and the risks with proving the extent of penalties that are warranted and possible discretionary reduction of penalties by the Court.⁶ (Orshansky Decl. ¶ 82.)

Summary. The foregoing considerations not only bore heavily on the negotiations leading to the settlement, but also confirm that the settlement is a fair, adequate, and reasonable compromise in view of the risks of further litigation. Plaintiff and Class Counsel carefully vetted the claims at issue and conducted a detailed analysis of Defendant's produced data to arrive at the calculated damages. In the end, it was determined that the \$2,400,000 Gross Settlement Amount represents an approximate 27% of the possible damages recoverable at trial. (Orshansky Decl. ¶ 83.) Plaintiff presented a detailed *Clark* and *Kullar* analysis in connection with her motion for preliminary approval, which has not significantly changed in the interim. Thus, for reasons of economy and space, Plaintiff refers the Court to their prior preliminary approval filing and to the concurrently filed Orshansky Decl. ¶¶ 46-83, for detailed claim valuation estimates. While the above-described risks are far from exhaustive, they demonstrate that the settlement is fair, adequate, and reasonable in light of them.

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

Individual settlement payments will be calculated based on (1) the number of workweeks worked by each Settlement Class Member during the Class Period, and (2) the number of pay periods worked each PAGA Group Member during the PAGA Period. This method of distribution compensates Settlement Class Members and PAGA Group Members based on the estimated extent of their injuries, as individuals employed for a longer period would have been subject to more of the alleged wage and hour violations than those who employed for a shorter period. Thus, the formulas

⁶ On June 15, 2022, the U.S. Supreme Court issued a decision in *Viking River Cruises, Inc. v. Moriana*, No. 20-1573, holding that the FAA preempts California's prohibition on the employer's ability to contract with employees to bring only their individual claims in arbitration and not a representative Private Attorneys General Act (PAGA) claim. This potentially limits an employer's exposure to PAGA representative claims through use of arbitration agreements.

1 for compensating Settlement Class Members and PAGA Group Members are fair, adequate, and
2 reasonable, as they are tethered to the damages and penalties that could be recovered by them. (*See*
3 Discussion III.B, *supra*.)

4 **3. The 100% Participation Rate and Absence of Any Objections Confirms**
5 **That the Settlement Is Fair, Adequate, and Reasonable.**

6 The Class Members’ response to the settlement is relevant in evaluating whether it merits
7 final approval. (*Dunk, supra*, 48 Cal.App.4th at 1801.) Further, the absence of objections and
8 requests for exclusion support a fairness presumption. (*See 7-Eleven Owners for Fair Franchising*
9 *v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1152-53 [finding 9 objections and 80 opt-outs
10 showed a “particularly impressive” response from class members].) Here, ***not a single Class***
11 ***Member objected*** to the settlement and ***not a single Class Member opted out*** of the settlement,
12 resulting in a ***100% settlement participation rate***. (Morales Decl. ¶¶ 9-12.) This extremely positive
13 reaction from the Class further confirms that the settlement is fair, adequate, and reasonable.

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

16 A percentage method may be used to calculate a reasonable fee in a common fund case such
17 as this. (*Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th 480, 503.) A fee award is justified where
18 the legal action has produced its benefits by way of a voluntary settlement. (*See, e.g., Maria P. v.*
19 *Riles* (1987) 43 Cal.3d 1281, 1290-91; *Westside Community for Independent Living, Inc. v. Obledo*
20 (1983) 33 Cal.3d 348, 352-53.) When a settlement results in a common fund for the benefit of a
21 class, class counsel may be awarded fees as a percentage of the common fund. (*See Wershba, supra*,
22 91 Cal.App.4th at p. 254 [recognizing the “percentage of recovery” method].) The California
23 Supreme Court confirmed in *Laffitte v. Robert Half Int’l, Inc.* that “[t]he percentage of fund method
24 survives in California class action cases.” (*Lafitte, supra*, 1 Cal.5th at p. 506.) Specifically, the
25 *Laffitte* Court held:

26 The recognized advantages of the percentage method - including relative ease of
27 calculation, alignment of incentives between counsel and the class, a better
28 approximation of market conditions in a contingency case, and the encouragement it
provides counsel to seek an early settlement and avoid unnecessarily prolonging the

1 litigation - convince us the percentage method is a valuable tool that should not be
2 denied our trial courts.

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

17 The settlement calls for the payment of up to 33.33% of the Gross Settlement Amount for
18 attorneys’ fees. (Amended Settlement Agreement ¶ 49(a).) This request is fair, reasonable, and
19 adequate to compensate Class Counsel for the excellent results achieved with average settlement
20 payments of \$2,203.83, no objectors, and a 100% settlement participation rate. (*See Morales Decl.*
21 ¶¶ 10-12; *Orshansky Decl.* ¶ 103.) First, Class Counsel negotiated a substantial recovery for Class
22 Members resulting in a settlement participation rate of 100%. (*Morales Decl.* ¶ 12; *Orshansky Decl.*
23 ¶ 104.) Second, not a single Class Member objected to the settlement or to Class Counsel’s requested
24 fees. (*See Morales Decl.* ¶ 10.) That Class Counsel achieved these results in the face of serious
25 defense challenges (*i.e.*, evidentiary challenges of off-the-clock work, the “bell system” for meal
26 breaks, waiver of meal and rest break arguments), and in the face of an uncertain legal landscape
27 (*i.e.*, potential distinguishability of *Augustus* as to on-premises rest breaks, existence of arbitration
28

1 agreements, and the then-pending California Supreme Court's *Naranjo* decision) confirms the
2 strength of the results achieved. (Orshansky Decl. ¶¶ 104, 111.)

3 The attorneys' fees requested is also consistent with Class Counsel's experience in similar
4 wage and hour class action matters. (Orshansky Decl. ¶ 106.) Additionally, the fee request is
5 consistent with the contingency-fee agreement entered into by Plaintiff. (*Id.* at ¶ 109.) Further, the
6 attorneys' fees award requested is also consistent with what courts have awarded in other class and
7 representative action cases. (*See, e.g., Ochoa v. Haralambos Beverage Co.*, Los Angeles County
8 Super. Ct., Case No. BC319588 (33.3% fee award with no mention of lodestar crosscheck); *Jones*
9 *v. Alliance Imaging, Inc.*, Alameda County Super. Ct., Case No. RG05210418 (33% fee award with
10 no mention of lodestar crosscheck); *Wisniewski v. Pacific Maritime Assoc.*, Los Angeles County
11 Super. Ct., Case No. BC293134 (30.7% fee award from \$12.9 million settlement with no mention
12 of lodestar crosscheck); *Garcia v. Save Mart Supermarkets*, Stanislaus County Super. Ct., Case No.
13 312026 (33% fee award with no mention of lodestar crosscheck); *Terrell v. Ocean's 11 Casino, Inc.*,
14 San Diego County Super. Ct., Case No. GIC795732 (approving 33% fee award); *Big Lots Overtime*
15 *Cases*, San Bernardino County Super. Ct., JCC Proceeding No. 4283 (approving a 33% fee
16 recovery); *Tokar v. GEICO*, San Diego Super. Ct., Case No. GIC 810166) (approving award of 33-
17 1/3%); *Davis v. The Money Store, Inc.*, San Diego County Super. Ct., Case No. 99AS01716 (33-
18 1/3% of the settlement).) In fact numerous courts have awarded attorneys' fees of up to, or in excess
19 of 40% of the common fund. (*See Ammari Electronics, et al. v. Pacific Bell Directory*, Alameda
20 County Sup. Ct., Case No. RG05198014 (awarded 43.8%); *Zelada v. Majestic Terminal Services*,
21 San Bernardino Super. Ct., Case No. CIVDS1916968 (38% fee awarded on \$1,800,000 settlement);
22 *In re California Indirect Purchaser X Ray Film Antitrust Litigation*, San Francisco Super. Ct. (citing
23 *Abzug v. Kerkorian*, Los Angeles Super. Ct., Case No. CA-00981 (45%) and *Haitz v. Meyer*,
24 Alameda County Sup. Ct., Case No. 5729683 (45%)); *Banda v. Verizon California, Inc.*, Los
25 Angeles Super. Ct., Case No. BC434587 (35% fee on \$15,000,000 settlement); *Hall v. Cinema 7,*
26 *Inc.*, San Francisco Super. Ct., Case No. CGC-01-409105 (53%); *Birch v. Office Depot*, United
27 States District Court for the Southern District of California, Case No. 06cv1690 DMS (40% fee
28

1 awarded on \$16,000,000 settlement); and *Rundberg v. Intrawest Napa Dev. Co.*, Napa County
2 Super. Ct., Case No. 26-56886 (40%).)

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

19 The fee award requested here is also justified because Class Counsel achieved a significant
20 monetary recovery for the Settlement Class in an uncertain, complex, and risky case while bearing
21 the substantial burdens of representation on a contingency basis, and the fees requested are in line
22 with the market rate. (*See Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1048-1051
23 [finding that exceptional results in a contingency case, significant risk and the absence of supporting
24 precedents, are proper considerations in awarding attorneys' fees]; Orshansky Decl. ¶ 110.) Class
25 Counsel negotiated a substantial recovery for the Class Members, resulting in a settlement
26 participation rate of 100%. (*See Morales Decl.* ¶ 12; Orshansky Decl. ¶ 110.) Moreover, no
27 Settlement Class Member objected to the settlement or to Class Counsel's requested fees. (*See*
28 *Morales Decl.* ¶ 10.) Further, the average individual settlement payment of approximately \$2,203.83

1 exceeds average settlement payments in similar wage and hour class action settlements.⁷ Class
2 Counsel achieved these results in the face of serious defense challenges (*i.e.*, evidentiary challenges
3 of off-the-clock work, the “bell system” for meal breaks, waiver of meal and rest break arguments),
4 and in the face of an uncertain legal landscape (*i.e.*, potential distinguishability of *Augustus* as to
5 on-premises rest breaks, existence of arbitration agreements, and the then-pending California
6 Supreme Court’s *Naranjo* decision). (Orshansky Decl. ¶ 111.)

7 As discussed above, this case presented significant risks of both non-certification as well as
8 potential challenges on the merits of Plaintiff’s claims. (Orshansky Decl., *passim*.) Accordingly, it
9 is fair and reasonable to account for these risks in compensating Class Counsel. Class Counsel
10 should also be compensated for the risks involved in undertaking this litigation and expending
11 considerable effort, all while working on a pure contingency basis. (*Id.* at ¶¶ 103-104, 109-110, 114-
12 117.) Since undertaking representation of Plaintiff, Class Counsel expended costs and devoted
13 substantial time to this litigation. (*Id.* at ¶¶ 114, 121.) Given the considerable potential for adverse
14 outcomes in this case, including, but not limited to, being unable to proceed on a class-wide basis
15 and/or risking unfavorable adjudication on the merits, the contingent risk borne by Class Counsel
16 was great. (*Id.* at ¶ 117.)

17 Class Counsel’s previous experience litigating wage and hour class actions also supports the
18 reasonableness of the fee request. Class Counsel are well-versed in plaintiff-side wage and hour
19 class and representative action litigation, with substantial experience litigating claims for unpaid
20 wages, meal and rest period violations, and related penalties, and have been certified as class counsel
21 in numerous other cases. (Orshansky Decl. ¶¶ 91-94, 112.) Class Counsel’s experience in similar

22 ⁷ (*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. 2013) 2013 WL 4525428, at *4
([granting final approval of class action settlement where average recovery for each class member
was approximately \$108]; and *Schiller v. David’s Bridal, Inc.* (E.D. Cal. June 11, 2012) Case No.
1:10-cv-00616-AWI-SKO, 2012 WL 2117001 at *17 [finding that average payment to class
members of less than \$200 was a “good” result].)

1 matters was integral to evaluating the strengths and weaknesses of this case and the reasonableness
2 of the settlement. (*Id.* at ¶ 113.) Practice in the narrow field of wage and hour litigation requires skill
3 and knowledge concerning the rapidly evolving substantive state and federal law, as well as the
4 procedural law of class and representative action litigation. (*Ibid.*)

5 Because it is reasonable to compensate Class Counsel commensurate with their skill,
6 reputation, and experience, the requested fee award is fair and reasonable, in accord with the
7 principles outlined by the California Supreme Court in *Laffitte*, and should therefore be approved.

8 **D. The Requested Award of Attorneys’ Fees Is Reasonable as Evidenced by the**
9 **Lodestar Cross-Check Method**

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

18 Notably, “regardless of whether the percentage method or the lodestar method is used, fee
19 awards in class actions average around one-third of the recovery.” *Chavez v. Netflix, Inc.* (2008) 162
20 Cal.App.4th 43, 66, n.11; *see also, e.g., Cicero v. DirectTV, Inc.* (C.D. Cal. July 27, 2010) No.
21 EDCV 07-1182, 2010 WL 2991486 at * 7 (observing that “30-50% [is] commonly awarded in cases
22 in which the common fund is relatively small” and that in California, “courts usually award
23 attorneys’ fees in the 30-40% range in wage and hour class actions...”); *Williams v. Costco*
24 *Wholesale Corp.* (S.D. Cal. July 7, 2010) No. 02-cv-2003 IEG (AJB), 2010 WL 2721452 at * 6
25 (collecting cases where courts awarded between 33.33% and 40% in attorneys’ fees in wage and
26 hour class actions). This is also consistent with Class Counsel’s experience in similar wage and hour
27 class action matters. (*See Orshansky Decl.* ¶ 106.)

28 ///

1 A lodestar cross-check analysis typically happens in three steps. First, a trial court must
2 determine a baseline guide or “lodestar” figure based on the time spent and reasonable hourly
3 compensation for each attorney involved in the case. (*Serrano v. Priest* (1975) 20 Cal.3d 25, 48.)
4 The court then sets a reasonable hourly fee to apply to the time expended, with reference to the
5 prevailing rates in the geographical area in which the action is pending. (*Bihun v. AT&T Information*
6 *Systems, Inc.* (1993) 13 Cal.App.4th 976, 997.) Finally, a “multiplier” is selected with reference to
7 factors substantially similar to those applied to the common-fund analysis: (1) the novelty and
8 difficulty of issues involved, (2) the skill displayed in presenting them, (3) the extent to which the
9 nature of the litigation precluded other employment by the attorneys, and (4) the contingent nature
10 of the fee award, based on the uncertainty of prevailing on the merits and of establishing eligibility
11 for the award. (*Serrano, supra*, 20 Cal.App.3d at p. 49.)

12 The *Serrano* factors militate strongly in favor of the requested fee award. (Orshansky Decl.
13 ¶ 120.) Chief among these are factual risks and evidentiary challenges of substantiating unrecorded
14 time and Defendant’s failure to authorize and permit breaks on a class-wide basis. (*Ibid.*) Also, Class
15 certification was by no means a foregone conclusion. Defendant argued that Plaintiff would be
16 unable to certify a class outside of the settlement context because Plaintiff’s claims on the merits
17 would require a series of individualized mini-trials. (*Ibid.*) Defendant utilized a “bell system” for
18 meal periods, whereby a bell would ring to notify all employees to take their meal period, and
19 another bell would ring at the end of the meal period to notify all employees to return to work. (*Ibid.*)
20 Defendant alleged it provided 35-minute meal periods rather than the 30 minutes required by law.
21 (*Ibid.*) Moreover, Plaintiff would face significant hurdles to certification given that Defendant raised
22 individualized affirmative defenses such as waiver of meal periods and that on-premises rest breaks
23 are not equivalent to on-call liability in the *Augustus* case progeny. (*Ibid.*) Further, Defendant
24 contended Plaintiff would face significant hurdles to certification given that Class Members signed
25 arbitration agreements with class action waivers as a condition of their employment, which if
26 enforceable would convert a putative class action (with the potential for class-wide damages) into
27 an individual dispute and action. (*Ibid.*) If Plaintiff prevailed and certified a class action, there is no
28 guarantee that Defendant would not later move for and obtain decertification. (*Ibid.*) If the Court

1 either denied class certification or later decertified it, the Settlement Class would recover nothing
2 and Settlement Class Members would be forced to retain their own counsel and proceed on the basis
3 of individual claims only. (*Ibid.*)

4 The attorneys' fees award is intended to reimburse Class Counsel for all uncompensated
5 work that they have already done and for all the work they will continue to do. To investigate,
6 litigate, and ultimately negotiate and craft the settlement, Class Counsel expended a significant
7 amount of time on the following: (1) regular discussions with Plaintiff; (2) thorough pre-litigation
8 investigation of facts with a focus on class certification elements; (3) investigation of Defendant's
9 organizational and corporate structure, and executive reporting structure as it relates to the
10 employment and management of employees; (4) comparative analysis and cross-checking of all
11 available job postings by Defendant in order to determine any variation and identify job duties and
12 responsibilities that would be susceptible to being performed off the clock or during meal or rest
13 breaks; (5) research and investigation re: staffing models and staffing levels; (6) drafting the PAGA
14 notice to the LWDA and pleadings; (7) extensive legal research and analysis into substantive law;
15 (8) developing and executing settlement and litigation strategies; (9) conducting discovery; (10)
16 ongoing meet and confer efforts with defense counsel; (11) interviewing Class Members; (12)
17 reviewing policies and procedures regarding Defendant's payment of wages, provision and tracking
18 of meal and rest breaks, and timekeeping protocol, including recording hours, issuance of wage
19 statements, and providing all wages at separation; (13) research and investigation re: various
20 software programs Defendant uses to conduct everyday business, including timekeeping software,
21 with a focus on what documents (both paper and electronic) are created in the normal course of
22 business relating to overtime worked, off-the-clock time worked pre-/post-shift, and time worked
23 during meal periods; (14) examining Class Members' time records and wage statements in
24 conjunction with Class Member interviews to determine Defendant's degree of liability; (15)
25 consulting with a damages expert; (16) building a comprehensive damages model; (17) preparing a
26 mediation brief; (18) preparing for and attending mediation; (19) negotiating and preparing the long-
27 form Settlement Agreement and related documents; (20) preparing the motion for preliminary
28 approval and supporting documents; (21) preparing the supplemental briefing in support of the

1 preliminary approval motion as requested by the Court; (22) negotiating and preparing the Amended
2 Settlement Agreement and Amended Class Notice; (23) overseeing the class notice process; (24)
3 responding to questions from Class Members; and (25) preparing the motion for final approval and
4 supporting documents. (Orshansky Decl. ¶ 121.)

5 The work CounselOne did was meaningful, and their hourly rates are commensurate with
6 experience and the prevailing rates among defense and plaintiffs' firms that regularly litigate wage-
7 and-hour class actions (Orshansky Decl. ¶ 122.) Class Counsel's rates are commensurate with the
8 prevailing market rates in California for attorneys of comparable experience and skill handling
9 complex litigation. (*Id.* at ¶ 125.) Class Counsel's rates are based on prevailing fees in this
10 geographical area and have been approved in California and Ninth Circuit courts. (*Ibid.*) The
11 reasonableness of Class Counsel's hourly rates is further confirmed in light of the hourly rates
12 identified based on years of experience in the *Laffey* Matrix, submitted concurrently herewith. (*See*
13 Orshansky Decl. ¶ 126 and Exhibit 8 (*Laffey* Matrix).)

14 As set forth in detail in the accompanying Declaration of Anthony J. Orshansky, Class
15 Counsel spent a substantial amount of time during the course of its representation of Plaintiff and
16 the prosecution of this action, for a total aggregated lodestar figure of \$278,275.00. (Orshansky
17 Decl. ¶¶ 121-124 and Exhibit 7 (Attorney Task and Time Chart).) With this amount, a multiplier of
18 only 2.87 is necessary to yield the requested fees. (*Id.* at ¶ 127.) The requested multiplier in this case
19 is within even the modest multipliers that are awarded by California courts. (*Ibid.*; *see Vizcaino v.*
20 *Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1050-1051 [looking to multipliers awarded in
21 comparable cases as evidence of reasonableness; **affirming 3.65 multiplier**].) **Multipliers**
22 **routinely range from 3 to 5**, and it is not uncommon that **multipliers of between 5 and 10**, or
23 higher, are applied. (*See, e.g., Wilson v. Bank of Am. Natl. Trust & Savs. Assn.* (Cal. Sup. Ct., Aug.
24 16, 1982) Case No. 643872 [**multiplier of 10**]; *Glendora Comm. Redev. Agency v. Demeter* (1984)
25 155 Cal.App.3d 456, 465 [affirming **multiplier of 12**, and expressly rejecting argument that fee was
26 either exorbitant or unconscionable]; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224,
27 255 [noting that “[m]ultipliers can range from 2 to 4 or even higher”]; *Van Vranken v. Atlantic*
28 *Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 298 [**multipliers of 3-4** are in the “range [of]

common” multipliers for class actions]; *Holleran v. Rita Medical Systems, Inc.* (Cal. Super. Oct. 04, 2007) No. RG06302394, 2007 WL 7759253 [**multiplier of 4.57**]; *Gutierrez v. Wells Fargo Bank, N.A.* (N.D. Cal. May 21, 2015) No. C 07-05923 WHA, 2015 WL 2438274, at *7 & 8 fn.3 [**multiplier of 4.53**]; *Johnson v. Fujitsu Tech. & Bus. of Am., Inc.* (N.D. Cal. May 11, 2018) No. 16-CV-03698-NC, 2018 WL 2183253, at *7 [**multiplier of 4.375**]; *Buccellato v. AT & T Operations, Inc.* (N.D. Cal. Jun. 30, 2011) No. C10-00463-LHK, 2011 WL 3348055, at *2 [**multiplier of 4.3**]; *Chau, et al v. CVS RX Services, Inc.*, Los Angeles County Superior Court No. BC349224, Order Granting Final Approval of Class Action Settlement, Reasonable Attorneys’ Fees and Costs and Service Payments to the Class Representatives [a **3.8 multiplier** was applied based primarily on contingent risk and the “excellent results [] obtained [] with relative efficiency”).]

Hence, the lodestar cross-check affirms that the fee award requested does in fact fall within the range of reasonableness. (Orshansky Decl. ¶¶ 128.)

E. The Requested Costs Reimbursement Warrants Final Approval as Fair, Adequate, and Reasonable

Class Counsel incurred and respectfully request reimbursement of \$14,551.78—which is less than the Amended Settlement Agreement’s allocation of up to \$25,000—in litigation costs. (Orshansky Decl. ¶ 130, along with itemized cost chart.) Class Counsel’s request is fair, adequate, and reasonable, as all of these costs are documented and reasonably incurred. 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. 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 & 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 \$25,000 was fully disclosed to Class Members and there

1 have been no objections. (*See* Morales Decl. ¶ 10.) Because the expenses by Class Counsel were
2 reasonably incurred, and no Class Member has objected to them, the Court should grant the request
3 for reimbursement of \$14,551.78 for litigation costs.

4 **F. The Court Should Finally Approve the Requested Settlement Administrator**
5 **Expenses.**

6 Plaintiff also requests that the Court approve \$17,500 in administration costs to the
7 Settlement Administrator. (*See* Amended Settlement Agreement ¶¶ 49(b) [agreeing to an amount up
8 to \$20,000]); Morales Decl. ¶ 14.) As detailed in the declaration Abel E. Morales submitted
9 concurrently with this Motion, CPT performed duties in connection with this settlement that were
10 instrumental in effectuating the settlement and the notice process. Among other things, CPT
11 calculated each Class Member’s individual settlement payment, updated addresses contained in the
12 class data supplied by Defendant (*e.g.*, NCOA and skip-traces), formatted the Amended Class
13 Notices for mailing, mailed Amended Class Notices to all Class Members and PAGA Group
14 Members, kept the Parties informed of any communications received from the Class Members and
15 PAGA Group Members, and otherwise administered the settlement. (*See* Morales Decl., *passim*.)
16 For these reasons, CPT’s requested costs are fair, reasonable, and adequate, and should be finally
17 approved.

18 **G. The Court Should Finally Approve Plaintiff’s Requested Class Representative’s**
19 **Service Award Because the Amount Is Fair, Adequate, and Reasonable in Light**
20 **of Plaintiff’s Efforts and Risks Assumed on Behalf of the Class.**

21 A class representative must possess the same interest and suffer the same injury as the class
22 members. “To assure ‘adequate’ representation, the class representative’s personal claim must not
23 be inconsistent with the claims of other members of the class.” (*J.P. Morgan & Co., Inc. v. Sup. Ct.*
24 (*Heliotrope General, Inc.*) (2003) 113 Cal.App.4th 195, 212.) Thus, the adequacy requirement is
25 satisfied when the class representative’s interests are not antagonistic to those of the class. (*McGhee*
26 *v. Crocker-Citizens Nat. Bank* (1976) 60 Cal.App.3d 442, 451.) Plaintiff has no conflicts with the
27 Settlement Class and in fact her interests are aligned with those of the Settlement Class. (*See*
28 Orshansky Decl. ¶ 133 and Exhibit 9 thereto, Declaration of Berenice De La Torre (“De La Torre

Decl.”), ¶¶ 9, 10, 14.) Because Plaintiff’s claims are the same as those that would be asserted by unnamed class members were they before the Court, Plaintiff has every interest in zealously representing the unnamed class members. (*See id., passim.*) Plaintiff has not shirked from her responsibility; on the contrary, Plaintiff, along with her counsel, prosecuted this case with allegiance and dedication. (*Id.* at ¶¶ 10-12; Orshansky Decl. ¶ 133.)

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

Here, Plaintiff seeks a service award in the amount of \$7,500, and believes that this request is reasonable given her time and effort in this case, the positive response by Class Members, that the average gross individual settlement payment is \$2,203.83, the risks she undertook on behalf of Class Members, the potential of being assessed Defendant’s costs of suit, prosecuting the action during economically uncertain times engendered by a public health crisis, and her general release of all claims against Defendant subject to a waiver of Civil Code § 1542. (Amended Settlement Agreement ¶ 48; Orshansky Decl. ¶¶ 134-135.) Plaintiff actively participated in the prosecution of this matter in particular but not exclusively through her discussions with Class Counsel, identifying potential witnesses, providing factual information to Class Counsel about Defendant’s policies, practices, and procedures, providing documents, monitoring the progress of the case, participating in settlement discussions, evaluating the terms of the settlement, and reviewing and signing the Settlement Agreement and Amended Settlement Agreement. (*See* Orshansky Decl. ¶ 134 and Exhibit 9 thereto, De La Torre Decl., ¶¶ 11-13.) Plaintiff invested significant time and effort into seeing this litigation through resolution. (*See* Orshansky Decl. ¶ 134 and Exhibit 9 thereto, De La Torre Decl., ¶¶ 11-12.)

Plaintiff has diligently, adequately, and fairly represented Class Members, is a member of the Settlement Class, has no conflict as outlined above, and has not placed her interests above those of any member of the Class. (Orshansky Decl. ¶ 135 and Exhibit 9 thereto, De La Torre Decl.,

1 *passim*.) Furthermore, the requested service award to the Class Representative was fully disclosed
2 to Class Members in the Amended Class Notice and no objections have been made. (*See* Morales
3 Decl. ¶ 10.)

4 Thus, Plaintiff's request for a service award is appropriate and justified as part of the
5 settlement and should be finally approved.

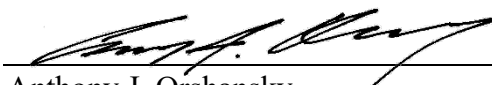
6 **V. CONCLUSION**

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

11
12 Dated: June 17, 2022

Respectfully submitted,

13 COUNSELONE, P.C.

14 By: 

15 Anthony J. Orshansky
16 Jennifer L. Connor
17 Justin Kachadoorian
18 Attorneys for Plaintiff
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