

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 Mauricio Vazquez, on behalf
of himself and others similarly situated
8
9

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF ORANGE**
12

13 MAURICIO VAZQUEZ, on behalf of himself
and others similarly situated,

14
15 Plaintiff,

16 v.

17 VOLCOM, LLC, a Delaware limited liability
company; VOLCOM RETAIL, LLC, a Delaware
18 limited liability company; VOLCOM RETAIL
OUTLETS, LLC, a Delaware limited liability
19 company; and DOES 1 through 100,

20 Defendants.
21
22
23
24
25
26
27
28

Case No. 30-2020-01169022-CU-OE-CXC

Assigned for all purposes to:
Hon. Lon F. Hurwitz, Dept. CX103

CLASS ACTION

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

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

Final Approval Hearing

Date: September 1, 2023
Time: 1:30 p.m.
Dept.: CX103

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

2 **PLEASE TAKE NOTICE** that on September 1, 2023 at 1:30 p.m., or as soon thereafter as
3 the matter may be heard before the Honorable Lon F. Hurwitz in Department CX103 of the above-
4 entitled court located at 751 W. Santa Ana Blvd., Santa Ana, California 92701, Plaintiff Mauricio
5 Vazquez (“Plaintiff” or “Class Representative”), individually and on behalf of all others similarly
6 situated, will and hereby does move this Court for entry of an order pursuant to Code of Civil
7 Procedure section 382 and California Rules of Court, Rule 3.769:

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

10 2. Confirming the appointment of Plaintiff as the Class Representative for settlement
11 purposes;

12 3. Confirming the appointment of CounselOne, PC as Class Counsel for settlement
13 purposes;

14 4. Granting final approval of the settlement as fair, adequate, and reasonable based upon
15 the terms set forth in the parties’ Stipulation of Class and Representative Action Settlement and
16 Amendment to Stipulation of Class and Representative Action Settlement (collectively, “Settlement
17 Agreement”);

18 5. Approving an award of \$300,000 in attorneys’ fees to Class Counsel;

19 6. Approving an award of \$22,182.27 in litigation costs reimbursement to Class
20 Counsel;

21 7. Approving an award of \$18,000 to CPT Group, Inc. for its settlement administration
22 services;

23 8. Approving an award of \$10,000 to Plaintiff as an enhancement payment, in
24 recognition of his services as Class Representative; and

25 9. Entering final judgment in the form of the Proposed Judgment and entering the Order
26 Granting Plaintiff’s Motion for Final Approval of Class and Representative Action Settlement,
27 Attorneys’ Fees and Costs, and Class Representative’s Enhancement Payment, which are both
28 submitted concurrently with this Motion.

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

11 This Motion is based on this Notice; the attached Memorandum of Points and Authorities;
12 the concurrently filed declarations of Anthony J. Orshansky and Abel E. Morales (of CPT Group,
13 Inc., the Settlement Administrator); the Settlement Agreement; all other pleadings and papers on
14 file in this action; and on any further oral or documentary evidence or argument presented at the
15 time of hearing.

16
17 Dated: August 7, 2023

Respectfully submitted,

COUNSELONE, PC

18
19 By:

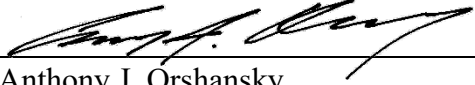

Anthony J. Orshansky
Jennifer L. Connor
Justin Kachadoorian
Attorneys for Plaintiff

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	BACKGROUND.....	2
III.	SUMMARY OF THE SETTLEMENT.....	2
IV.	NOTICE AND ADMINISTRATION.....	3
V.	ARGUMENT	4
A.	This Court Should Confirm Its Conditional Certification of the Settlement Class under Code of Civil Procedure § 382	4
B.	The Court Should Finally Approve the Settlement Because It Is a Fair, Adequate, and Reasonable Compromise of Disputed Claims.....	4
1.	The Strength of Plaintiff’s Case.....	5
2.	Risk, Expense, Complexity, and Duration of Further Litigation.....	6
3.	Risk of Maintaining Class Action Status.....	6
4.	Amount Offered in Settlement Given Realistic Value of Claims.....	6
5.	Investigation Was Sufficient to Allow Counsel to Act Intelligently	7
6.	The Experience and Views of Counsel.....	8
7.	The Presence of a Governmental Participant.....	8
8.	The Reaction of the Class Members to the Proposed Settlement	8
C.	The Requested Award of Attorneys’ Fees Is Reasonable as a Percentage of the Common-Fund Total Settlement Amount.....	9
E.	The Court Should Approve the Requested Reimbursement for Litigation Costs	14
F.	The Court Should Approve the Requested Settlement Administrator Expenses.....	14
G.	The Court Should Approve the Requested Enhancement Payment to the Class Representative	15
H.	Posting of Final Order and Judgment upon Final Approval	15
VI.	CONCLUSION	15

TABLE OF AUTHORITIES

Cases

<i>Bell v. Farmers Ins. Exchange</i> (2004) 115 Cal.App.4th 715	15
<i>Bihun v. AT&T Information Systems, Inc.</i> (1993) 13 Cal.App.4th 976	12
<i>Brinker Restaurant Corp. v. Superior Court</i> (2012) 53 Cal.4th 1004	5, 13
<i>Brum v. MarketSource, Inc.</i> (E.D.Cal. 2018) 2018 WL 3861558.....	8
<i>Buccellato v. AT & T Operations, Inc.</i> (N.D.Cal. Jun. 30, 2011, No. C10-00463- LHK) 2011 WL 3348055.....	14
<i>Chavez v. Netflix, Inc.</i> (2008) 162 Cal.App.4th 43	10
<i>Clark v. American Residential Services LLC</i> (2009) 175 Cal.App.4th 785	7
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794	5
<i>Glendora Comm. Redev. Agency v. Demeter</i> (1984) 155 Cal.App.3d 456	13
<i>Gutierrez v. Wells Fargo Bank, N.A.</i> (N.D.Cal. May 21, 2015, No. C 07-05923 WHA) 2015 WL 2438274.....	14
<i>Harris v. Marhoefer</i> (9th Cir. 1994) 24 F.3d 16.....	14
<i>Holleran v. Rita Medical Systems, Inc.</i> (Cal. Super. Oct. 04, 2007, No. RG06302394) 2007 WL 7759253.....	14
<i>Johnson v. Fujitsu Tech. & Bus. of Am., Inc.</i> (N.D.Cal. May 11, 2018, No. 16-CV- 03698-NC) 2018 WL 2183253.....	14
<i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal.App.4th 116	7, 8
<i>Laffitte v. Robert Half Int’l. Inc.</i> (2016) 1 Cal.5th 480	9, 12

1	<i>Malibu Outrigger Bd. of Governors v. Superior Court</i> (1980)	
2	103 Cal.App.3d 573	4, 5
3	<i>Mallick v. Superior Court</i> (1979)	
4	89 Cal.App.3d 434	5
5	<i>Maria P. v. Riles</i> (1987)	
6	43 Cal.3d 1281	9
7	<i>Richmond v. Dart Industries, Inc.</i> (1981)	
8	29 Cal.3d 462	4
9	<i>Schiller v. David's Bridal, Inc.</i> (E.D.Cal. June 11, 2012, Case No. 1:10-cv-00616-AWI-SKO)	
10	2012 WL 2117001	11
11	<i>Serrano v. Priest</i> (1977)	
12	20 Cal.3d 25	9, 12
13	<i>Stambaugh v. Superior Court</i> (1976)	
14	62 Cal.App.3d 231	4
15	<i>Talavera v. Sun Maid Growers of California</i> (E.D.Cal. 2017)	
16	2017 WL 495635	8
17	<i>Van Vranken v. Atlantic Richfield Co.</i> (N.D.Cal. 1995)	
18	901 F.Supp. 294	14
19	<i>Vizcaino v. Microsoft Corp.</i> (9th Cir. 2002)	
20	290 F.3d 1043	10, 13
21	<i>Wershba v. Apple Computer, Inc.</i> (2001)	
22	91 Cal.App.4th 224	7, 9, 14
23	<i>Westside Community for Independent Living, Inc. v. Obledo</i> (1983)	
24	33 Cal.3d 348	9
25	<i>Williams v. Centerplate, Inc.</i> (S.D.Cal. 2013)	
26	2013 WL 4525428	11
27	Statutes	
28	California's Private Attorneys General Act, Lab. Code §§ 2698, <i>et seq.</i>	2
	Civ. Code, § 1542	15
	Code Civ. Proc., § 382	1, 4

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Rules

California Rules of Court, Rule 3.771, subd. (b)15

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Mauricio Vazquez (“Plaintiff” or “Class Representative”) hereby submits this
4 Memorandum of Points and Authorities in support of his Motion for Final Approval of this class
5 and representative action settlement on behalf of all hourly, non-exempt warehouse and retail
6 employees employed by Defendants Volcom, LLC, Volcom Retail, LLC, and Volcom Retail
7 Outlets, LLC (collectively, “Defendants”) within the State of California from November 6, 2016 to
8 March 24, 2022 (the “Class” or “Class Members”).

9 The Stipulation of Class and Representative Action Settlement, and Amendment to
10 Stipulation of Class and Representative Action Settlement (collectively “Settlement” or Settlement
11 Agreement”; attached to the concurrently-filed Declaration of Anthony J. Orshansky (“Orshansky
12 Decl.”) as **Exhibit A**) between Plaintiff and Defendants (together, the “Parties”), if approved, will
13 resolve specific claims of Plaintiff, Settlement Class Members, and PAGA Group Members¹ in
14 exchange for Defendants’ agreement to pay ***Nine Hundred Thousand Dollars (\$900,000)***. In this
15 ***non-reversionary*** settlement, all Class Members will ***automatically receive*** payments without the
16 need to submit a claim form, resulting in an average individual settlement award payment of
17 approximately \$639.57. (See Declaration of Abel E. Morales Regarding Notification and Settlement
18 Administration (“Morales Decl.”), filed concurrently herewith, at ¶ 11; Orshansky Decl. ¶ 18.) This
19 is an extremely favorable resolution of the disputed wage and hour claims in this case. As of the
20 date of filing of this motion, not a single Class Member has filed an objection to the settlement after
21 receiving notice of the proposed settlement and the projected individual settlement payments, nor
22 have any Class Members requested exclusion from the settlement, resulting in a ***100% settlement***
23 ***participation rate***. (Morales Decl. ¶ 9-11.)

24 The Court should grant Plaintiff’s motion because: (1) the conditionally certified Class
25 continues to meet the requirements for class certification for settlement purposes under Code of

26 _____
27 ¹ The Settlement Agreement defines “PAGA Group Member(s)” as all Class Members employed by
28 Defendants within California at any time during the PAGA Period. (Settlement Agreement ¶ 23.)
“PAGA Period” means the period beginning on July 1, 2019 and ending on March 24, 2022. (See
Settlement Agreement ¶¶ 26, 54.)

Civil Procedure section 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 enhancement payment, and settlement administration costs are all fair, adequate, and reasonable.

II. BACKGROUND

This action seeks to recover unpaid wages, premiums for non-compliant meal and rest breaks, restitution, liquidated damages, penalties for improper wage statements, reimbursement of business expenses, waiting time penalties, civil penalties pursuant to California’s Private Attorneys General Act, Labor Code sections 2698, *et seq.* (“PAGA”), injunctive and other equitable relief, prejudgment interest, and attorneys’ fees and costs. (Orshansky Decl. ¶ 22.) Defendants denied Plaintiff’s allegations of wrongdoing, but in an effort to reach a compromise, the Parties participated in two mediation sessions before Jeffrey Krivis, Esquire, of First Mediation Corporation. (*Id.* at ¶¶ 27-28.) Prior to and between the mediation sessions, the Parties engaged in extensive discovery, informally exchanging information, documents and reviewing and analyzing extensive data made available by Defendants, all of which enabled the Parties to thoroughly evaluate Plaintiff’s claims, the claims of the Class Members, and the aggrieved employees’ PAGA claim, along with Defendants’ affirmative defenses, and the likely outcomes, risks, and expense of pursuing litigation. (*Id.* at ¶ 24.) Pursuant to the mediator’s proposal, the Parties came to an agreement on all material terms of the settlement. (*Id.* at ¶ 28.)

Following the filing of Plaintiff’s Motion for Preliminary Approval of the Settlement, in response to points raised by this Court in its February 17, 2023 Minute Order, the Parties entered into the Amendment to the Settlement Agreement and submitted supplemental papers to advise the Court of the same. (Orshansky Decl. ¶ 12.) This Court, finding that the supplemental papers sufficiently addressed the issues that it had raised, issued a tentative ruling granting Plaintiff’s Motion for Preliminary Approval and scheduling a final approval hearing. (*Ibid.* and Exhibit B [4/24/23 Notice of Ruling Granting Preliminary Approval].) Now, through this Motion, Plaintiff seeks final approval of the Settlement that the Court preliminarily approved, as described herein.

III. SUMMARY OF THE SETTLEMENT

1 The Settlement provides a release on behalf of Plaintiff, Settlement Class Members, and
2 PAGA Group Members in exchange for the creation by Defendants of a non-reversionary common
3 fund of Nine Hundred Thousand Dollars (\$900,000) (“Gross Settlement Amount”). The amount
4 available for distribution to Settlement Class Members is determined by deducting the following
5 from the Gross Settlement Amount:

- 6 • Up to \$300,000—which is 33 ⅓% of the Gross Settlement Amount—in attorneys’ fees,
7 and up to \$25,000 in litigation costs to Class Counsel (the “Attorneys’ Fees and Costs”);
- 8 • Up to \$10,000 to the Class Representative as an Enhancement Payment—as a service
9 award and in exchange for a general release of claims;
- 10 • Up to \$100,000 allocated as a PAGA Payment, of which 75% is allocated for payment
11 to the California Labor and Workforce Development Agency (“LWDA”) for civil
12 penalties pursuant to statute, and 25% is allocated to PAGA Group Members; and
- 13 • Up to \$18,000 to the Settlement Administrator for Administration Costs to notify Class
14 Members and administer the settlement.

15 The amount remaining after the foregoing deductions (called the “Net Settlement Amount”) shall
16 be paid out *pro rata* to Settlement Class Members based on the number of workweeks each worked
17 during the Class Period and, as to PAGA Group Members, based on the number of pay periods each
18 worked during the PAGA Period. Settlement Class Members shall receive payments without the
19 need to submit a claim form, and PAGA Group Members shall receive PAGA payments irrespective
20 of whether they opt out of the settlement. (Settlement Agreement ¶¶ 22, 48(d), 48(f), 52.)²

21 **IV. NOTICE AND ADMINISTRATION**

22 On May 19, 2023, CPT Group, Inc. (“CPT”), the Court-approved settlement administrator,
23 mailed the Notice of Pendency of Class and Representative Action Settlement and the Request for
24 Inclusion Form (“Notice”), as revised, to all Class Members and PAGA Group Members via first
25 class U.S. mail. (Morales Decl. ¶ 7 and Exhibit A [Notice].) CPT made reasonable efforts to obtain
26 current mailing addresses before the mailing, and performed skip traces on and re-mailed returned
27

28 ² This amount is inclusive of the 25% allocation of the PAGA Payment to PAGA Group Members.

1 Notices. (*Id.* at ¶¶ 6, 8.) Class Members had until July 3, 2023 to submit disputes, requests for
2 exclusion, or objections. (*Id.* at ¶ 7.) Not a single Class Member has submitted a dispute as to
3 workweeks listed on the Notice or objected to the settlement, and no Class Members opted out of
4 the settlement; accordingly, this results in a 100% settlement participation rate. (*Id.* at ¶¶ 9-11.) The
5 average individual settlement payment is \$639.57, when factoring in the 25% of the PAGA Payment
6 to be made to PAGA Group Members. (*Id.* at ¶ 11; Orshansky Decl. ¶ 18.)

7 **V. ARGUMENT**

8 **A. This Court Should Confirm Its Conditional Certification of the Settlement Class**
9 **under Code of Civil Procedure § 382**

10 Under Code of Civil Procedure section 382, a class may be certified if: (1) it is ascertainable
11 and its members are too numerous for joinder to be practical; (2) the representative and absent class
12 members share a community of interest, and questions of law and fact common to the class
13 predominate over questions unique to individual class members; (3) the representative's claims are
14 typical of the class's claims; and (4) the representative will fairly and adequately represent the
15 class's interests. (*See Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470.) Here, this Court
16 found that the proposed Class meets all the requirements for class certification for settlement
17 purposes when it granted preliminary approval of the Settlement Agreement on April 20, 2023. (*See*
18 *Orshansky Decl. ¶ 12 and Exhibit B [Notice of Ruling Granting Motion for Preliminary Approval].*)
19 Since then, no events have cast doubt on this determination, and in fact the reaction of the Class
20 Members has been overwhelmingly supportive of the settlement, with not a single Class Member
21 objecting to or opting out of the settlement, for a 100% settlement participation rate. (*See Morales*
22 *Decl. ¶¶ 9-11.*) This Court should therefore confirm its conditional certification of the Class.

23 **B. The Court Should Finally Approve the Settlement Because It Is a Fair,**
24 **Adequate, and Reasonable Compromise of Disputed Claims**

25 California courts have a strong policy in favor of settlement. (*See, e.g., Stambaugh v.*
26 *Superior Court* (1976) 62 Cal.App.3d 231, 236.) Unlike individual settlements, class action
27 settlements involve a court-approval process that exists to prevent fraud, collusion, and unfairness
28 to class members. (*Malibu Outrigger Bd. of Governors v. Superior Court* (1980) 103 Cal.App.3d

573, 578-79.) This approval process consists of preliminary settlement approval, notice being given to class members, and a final fairness and approval hearing being held, at which class members have the opportunity to be heard with respect to the settlement. (*Ibid.*) Now that notice has been provided to the Class Members, Plaintiff respectfully requests that the Court approve the settlement as fair, adequate, and reasonable.

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.*) The trial court should tailor the factors to each case and give due regard to "what is otherwise a private consensual agreement between the parties." (*Ibid.*)

1. The Strength of Plaintiff's Case

Although Plaintiff steadfastly maintains that his claims are meritorious, he acknowledges that there were substantial risks and uncertainty in proceeding with class certification and trial. (Orshansky Decl. ¶ 32.) Defendants presented numerous defenses to Plaintiff's claims, both on the merits and with respect to certification. (*Ibid.*) Among other arguments, Defendants contended that they maintained compliant policies; that determining the incidence and amount of off-the-clock work would be difficult and result in a series of mini-trials, especially because Class Members worked in a variety of departments with different requirements; that alleged off-the-clock work was *de minimis*; that Defendants "provided" meal and rest breaks as required under *Brinker Restaurant*

1 *Corp. v. Superior Court* (2012) 53 Cal.4th 1004 by making them available; that individualized issues
2 arise from determining whether Class Members voluntarily waived their breaks; and that any class
3 or representative litigation would be unmanageable. (Orshansky Decl. ¶¶ 33, 38-75.) Although
4 Plaintiff was prepared to litigate such claims through certification and, ultimately, trial, given the
5 substantial amount offered in settlement, it was far from certain that he would recover more.

6 **2. Risk, Expense, Complexity, and Duration of Further Litigation**

7 Although Plaintiff investigated the claims prior to settlement, the Parties agreed to focus on
8 exhausting early settlement efforts before launching into full-fledged and hotly contested litigation.
9 Therefore, absent settlement, the Parties would have needed to conduct substantial additional
10 discovery, such as the production of voluminous records and numerous depositions of experts and
11 percipient witnesses and prepare the case for class certification and trial. The Parties would have
12 had to depose a number of people such as managers, supervisors, human resource representatives,
13 and employees in order to establish liability. Discovery disputes would have been in the offing and
14 liability likely would have entailed a battle of experts. This settlement avoids the considerable time,
15 attorneys' fees and costs, and party resources associated with conducting additional discovery,
16 moving for class certification, summary judgment or adjudication, and trial, as well as the risks and
17 the accompanying burden of continued litigation on the Court. (Orshansky Decl. ¶ 34.)

18 **3. Risk of Maintaining Class Action Status**

19 Settlement was reached prior to class certification, and the result was a successful outcome
20 for the Class. Yet, class certification was by no means a foregone conclusion. For example, Class
21 Members worked in different job positions and had different managers, and as a result, Defendants
22 contended there was variation to the circumstances that could allegedly cause the employees to work
23 off the clock and/or be deprived of the opportunity to take compliant, duty-free meal and rest periods,
24 and this variation in circumstances raised highly individualized questions of fact. Defendants
25 disputed Plaintiff's characterization of working conditions, liability, and damages, and possessed
26 documentary and testimonial evidence rebutting Plaintiff's allegations. (Orshansky Decl. ¶¶ 35-37.)

27 **4. Amount Offered in Settlement Given Realistic Value of Claims**

28 The settlement provides a fair and reasonable monetary recovery for the Settlement Class in

1 the face of disputed claims. A settlement is not judged against what might have been recovered had
2 a plaintiff prevailed at trial, nor does the settlement have to provide 100 percent of the damages to
3 be fair and reasonable. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 246, 250.)

4 Plaintiff's estimate of the settlement recovery is a reasonable percentage of possible
5 recoverable damages at trial. Utilizing a class-wide damages study to assess the nature and
6 magnitude of the claims in question (*see Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th
7 116, 129-131), this case meets requirements establishing that the class settlement is within the
8 "ballpark" of reasonableness. Based on discovery and their investigation, Class Counsel determined
9 Defendant's degree of liability, prepared an exposure analysis, and forecasted the expected recovery
10 for each claim. (Orshansky Decl. ¶¶ 39-75.) The aggregate realistic recovery to Class Members for
11 the alleged claims is \$3,015,474.92³ in total damages and penalties. (*See id.* at ¶ 75.) The Gross
12 Settlement Amount of \$900,000 represents an approximate 29.85% of the potential maximum
13 realistic recovery on behalf of the Class, while avoiding the further expense and serious risk of
14 proceeding toward class certification and trial. (*Ibid.*) Taking into account the risk of non-
15 certification, failure to prevail on the merits, and the Court's power to reduce civil penalties under
16 PAGA, the settlement falls within the realm of being fair, reasonable, and adequate.

17 **5. Investigation Was Sufficient to Allow Counsel to Act Intelligently**

18 Courts review the discovery process and information received through it to assist them in
19 assessing whether the parties sufficiently developed the claims and their supporting factual basis
20 before reaching settlement. (*Kullar, supra*, 168 Cal.App.4th at pp. 129-131.) Information is
21 sufficient where it allows the parties and the court to form "an understanding of the amount that is
22 in controversy and the realistic range of outcomes of the litigation." (*Clark v. American Residential*
23 *Services LLC* (2009) 175 Cal.App.4th 785, 801.) This requirement exists so that the parties can

24 ³ Class Counsel's analysis of the realistic maximum possible recovery on Plaintiff's claims,
25 exclusive of PAGA penalties, was \$4,472,644.31 in total damages. This figure was discounted by
26 25% for the risk of proceeding with class certification, and by an additional 25% for the risk of
27 losing on the merits, to arrive at a figure of \$2,515,862.42, exclusive of PAGA penalties. Class
28 Counsel's calculation of the maximum realistic PAGA penalty exposure was \$1,332,300, but this
amount was also discounted by 25% for the risk of losing on the merits and/or not recovering a
PAGA penalty for each pay period, and by an additional 50% for the risk of the Court reducing
penalties, to arrive at an estimated exposure of \$499,612.50; *see* Orshansky Decl. ¶ 75.

1 provide the court with “a meaningful and substantiated explanation of the manner in which the
2 factual and legal issues have been evaluated.” (*Kullar, supra*, 168 Cal.App.4th at pp. 132-133.)

3 Class Counsel conducted a thorough investigation to enable them to assess the strength of
4 Plaintiff’s claims and calculate Defendants’ exposure. Defendants produced information and
5 documentation concerning the alleged violations, such as Defendants’ written policies concerning
6 those claims, including Defendants’ employee handbooks, policies and procedures regarding the
7 payment of wages, the provision of meal and rest breaks, and time keeping policies, such as
8 recording hours, issuance of wage statements, and providing all wages at separation, as well as
9 composite data regarding the number of Class Members and the mix of current versus former
10 employees, total number of workweeks and pay periods, and the average hourly rate in effect.
11 (Orshansky Decl. ¶ 24.) Defendants produced a 20% sample of time and pay records for Class
12 Members. (*Ibid.*) Courts have found that the use of similar percentage samples is appropriate. (*See,*
13 *e.g., Brum v. MarketSource, Inc.* (E.D.Cal. 2018) 2018 WL 3861558, at *5 [10% sample]; *Talavera*
14 *v. Sun Maid Growers of California* (E.D.Cal. 2017) 2017 WL 495635, at *4 [same].) Class Counsel
15 also interviewed Class Members, analyzed the documents and data produced, and spent significant
16 time consulting with an expert, to determine Defendants’ degree of liability and potential amounts
17 due in damages. (Orshansky Decl. ¶ 26.)

18 **6. The Experience and Views of Counsel**

19 Class Counsel have extensive experience litigating wage-and-hour class and representative
20 actions, and have been appointed as class counsel in numerous cases. (Orshansky Decl. ¶¶ 76-80.)
21 Based on this experience Class Counsel believe that the settlement is fair and reasonable and serves
22 the best interests of the Settlement Class Members and PAGA Group Members. (*Id.* ¶ 79.)

23 **7. The Presence of a Governmental Participant**

24 Plaintiff has provided notice of the settlement to the LWDA, the decision of which not to
25 intervene suggests approval of the settlement. (Orshansky Decl. ¶¶ 121-124.)

26 **8. The Reaction of the Class Members to the Proposed Settlement**

27 As described above, not a single Class Member has objected to the settlement or opted out.
28 (Morales Decl. ¶¶ 9-10.) Thus, this factor significantly supports settlement approval.

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

3 A percentage method may be used to calculate a reasonable fee in a common fund case such
4 as this. (*Laffitte v. Robert Half Int’l. Inc.* (2016) 1 Cal.5th 480, 503.) A fee award is justified where
5 the legal action has produced its benefits by way of a voluntary settlement. (*See, e.g., Maria P. v.*
6 *Riles* (1987) 43 Cal.3d 1281, 1290-91; *Westside Community for Independent Living, Inc. v. Obledo*
7 (1983) 33 Cal.3d 348, 352-53.) When a settlement results in a common fund for the benefit of a
8 class, class counsel may be awarded fees as a percentage of the common fund. (*See Wershba, supra,*
9 91 Cal.App.4th at p. 254.) The California Supreme Court confirmed in *Laffitte* that “[t]he percentage
10 of fund method survives in California class action cases.” (*Laffitte, supra*, 1 Cal.5th at p. 506.)

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

15 (*Id.* at p. 503 [internal citation omitted]; *see also, e.g., Serrano v. Priest* (1977) 20 Cal.3d 25, 34.)

16 The settlement calls for the payment of up to 33 ⅓% of the Gross Settlement Amount in
17 attorneys’ fees. (Settlement Agreement ¶ 48(a).) This request is fair, reasonable, and adequate to
18 compensate Class Counsel for the excellent results achieved with average settlement payments of
19 \$639.57, no objectors, and a 100% participation rate. (*See Morales Decl.* ¶¶ 9-11; *Orshansky Decl.*
20 ¶ 89.) First, Class Counsel negotiated a substantial recovery for Class Members resulting in a
21 participation rate of 100%. (*Morales Decl.* ¶ 11.) Second, not a single Class Member objected to the
22 settlement or to Class Counsel’s requested fees. (*See id.* at ¶ 9.) That Class Counsel achieved these
23 results in the face of serious defense challenges (*e.g.,* purported voluntary waiver of meal and rest
24 periods, defenses relating to certification and manageability) and in the face of an uncertain legal
25 landscape (*e.g.,* the then-pending California Supreme Court’s *Naranjo* decision, and manageability
26 opinions in *Wesson v. Staples* and *Estrada v. Royalty Carpet Mills*) confirms the strength of the
27 results achieved. (*Orshansky Decl.* ¶ 89.)

28 The attorneys’ fees award requested is also consistent with Class Counsel’s experience in

1 similar wage and hour class actions matters, with the contingency-fee agreement entered into by
2 Plaintiff, and with the fees awarded in other class and representative actions cases. (Orshansky Decl.
3 ¶¶ 91-93; *see Ammari Electronics v. Pacific Bell Directory*, Alameda County Super. Ct. Case No.
4 RG05198014 [43.8%]; *Zelada v. Majestic Terminal Services*, San Bernardino County Super. Ct.
5 Case No. CIVDS1916968 [38% fee awarded on \$1,800,000 settlement]; *In re California Indirect*
6 *Purchaser X Ray Film Antitrust Litigation*, San Francisco County Super. Ct. [citing *Abzug v.*
7 *Kerkorian*, Los Angeles County Super. Ct. Case No. CA-00981 [45%] and *Haitz v. Meyer*, Alameda
8 County Super. Ct. Case No. 5729683 [45%]; *Banda v. Verizon California, Inc.*, Los Angeles
9 County Super. Ct. Case No. BC434587 [35% fee on \$15,000,000 settlement]; *Hall v. Cinema 7,*
10 *Inc.*, San Francisco County Super. Ct. Case No. CGC-01-409105 [53%]; *Birch v. Office Depot*, U.S.
11 District Court, Southern District of California Case No. 06-cv-1690-DMS [40% fee on \$16,000,000
12 settlement]; *Rundberg v. Intrawest Napa Dev. Co.*, Napa County Super. Ct. Case No. 26-56886
13 [40%]; *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 fn.11 [40% of fund was appropriate].)

14 The fee award requested here is also justified because Class Counsel achieved a significant
15 monetary recovery for Class Members and PAGA Group Members in an uncertain and risky case
16 while bearing the substantial burdens of representation on a contingency basis, and the fees requested
17 are in line with the market rate. (*See Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043,
18 1048-1051 [finding that exceptional results in a contingency case, significant risk and absence of
19 supporting precedents, are proper considerations in awarding attorneys' fees]; Orshansky Decl. ¶
20 94.) Class Counsel negotiated a substantial recovery for the Settlement Class Members, resulting in
21 an outstanding settlement participation rate of 100%. (*See Morales Decl.* ¶ 11; Orshansky Decl. ¶
22 91.) Moreover, no Class Member objected to the settlement or to Class Counsel's requested fees.
23 (*See Morales Decl.* ¶ 9.) Further, the average individual settlement payment of \$639.57 far exceeds
24 average settlement payments in similar class action settlements.⁴ (Orshansky Decl. ¶ 94.)

25 _____
26 ⁴ *See, e.g., Ressler v. Federated Department Stores, Inc.* (L.A. County Super. Ct. Jan. 2, 2009) Case
27 No. BC335018 [average recovery of \$90]; *Palencia v. 99 Cents Only Stores* (Sacramento County
28 Super. Ct.) Case No. 34-2010-00079619 [average recovery of \$80]; *Lim v. Victoria's Secret Stores,*
Inc. (Orange County Super. Ct. Jan. 20, 2006) Case No. 04CC00213 [average recovery of \$35];
Gomez v. Amadeus Salon, Inc. (L.A. County Super. Ct. July 23, 2010) Case No. BC392297 [average
recovery of \$20]; *Sorenson v. PetSmart, Inc.* (E.D.Cal. 2008) Case No. 2:06-CV-02674-JAM-DAD

1 Class Counsel achieved these results in the face of serious defense challenges and in the face
2 of an uncertain legal landscape. (Orshansky Decl. ¶ 95.) As discussed, this case presented significant
3 risks of both non-certification as well as potential challenges on the merits of Plaintiff's claims.
4 (Orshansky Decl., *passim*.) Accordingly, it is fair and reasonable to account for these risks in
5 compensating Class Counsel. Class Counsel should be compensated for the risks involved in
6 undertaking this litigation and expending considerable effort, all while working on a pure
7 contingency basis. (*Id.* at ¶ 98.) Since undertaking representation of Plaintiff, Class Counsel
8 expended costs and devoted substantial time to this litigation. (*See id.* at ¶ 105 and Exhibit C.) Given
9 the considerable potential for adverse outcomes in this case, including, but not limited to, being
10 unable to proceed on a class-wide basis and/or risking unfavorable adjudication on the merits, the
11 contingent risk borne by Class Counsel was great. (*Id.* at ¶ 101.)

12 Class Counsel's previous experience litigating wage and hour class actions also supports the
13 reasonableness of the fee request. (Orshansky Decl. ¶ 96.) Class Counsel are well-versed in plaintiff-
14 side wage and hour class and representative action litigation, with substantial experience litigating
15 claims for unpaid wages, meal and rest period violations, and related penalties, and have been
16 certified as class counsel in numerous other cases. (*Id.* at ¶¶ 96, 76-77.) Class Counsel's experience
17 in similar matters was integral to evaluating the strengths and weaknesses of this case and the
18 reasonableness of the settlement. (*Id.* at ¶ 97.) Practice in the narrow field of wage and hour litigation
19 requires skill and knowledge concerning the rapidly evolving substantive state and federal law, as
20 well as the procedural law of class and representative action litigation. (*Ibid.*) Because it is
21 reasonable to compensate Class Counsel commensurate with their skill, reputation, and experience,
22 the requested fee award is fair and reasonable, in accord with the principles outlined by the
23 California Supreme Court in *Laffitte*, and should therefore be approved.

24 **D. The Lodestar Cross-Check Confirms That the Requested Award of Attorneys'**
25 **Fees Is Reasonable**

26 _____
27 [average recovery of approximately \$60]; *Williams v. Centerplate, Inc.* (S.D.Cal. 2013) 2013 WL
28 4525428, at *4 [average recovery of approximately \$108]; *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]; Orshansky Decl. ¶ 94.

1 Trial courts have discretion to assess reasonableness of fee awards with tools such as the
2 lodestar cross-check, though they are not required to do so. (*Laffitte, supra*, 1 Cal.5th at p. 506.) A
3 lodestar cross-check analysis typically happens in three steps. First, a trial court must determine a
4 baseline guide or “lodestar” figure based on the time spent and reasonable hourly compensation for
5 each attorney involved in the case. (*Serrano, supra*, 20 Cal.3d at p. 48.) The court then sets a
6 reasonable hourly fee to apply to the time expended, with reference to the prevailing rates in the
7 geographical area. (*Bihun v. AT&T Information Systems, Inc.* (1993) 13 Cal.App.4th 976, 997.)
8 Finally, a “multiplier” is selected with reference to factors substantially similar to those applied to
9 the common-fund analysis: (1) the novelty and difficulty of issues involved, (2) the skill displayed
10 in presenting them, (3) the extent to which the nature of the litigation precluded other employment
11 by attorneys, and (4) the contingent nature of the fee award, based on the uncertainty of prevailing
12 on the merits and of establishing eligibility for the award. (*Serrano, supra*, 20 Cal.3d at p. 49.)

13 The lodestar “cross-check” supports the fee request here. First, Class Counsel have spent a
14 significant amount of time on this case and expect to spend additional time overseeing this case
15 through completion. (Orshansky Decl. ¶¶ 105-106 and Exhibit C.) Next, Class Counsel’s hourly
16 rates are commensurate with the prevailing market rates for attorneys of comparable experience and
17 skill handling complex litigation, and their rates have been approved by state and federal courts in
18 California. (*Id.* at ¶ 107.) The reasonableness of Class Counsel’s hourly rates are further confirmed
19 in light of the hourly rates identified based on years of experience in the inflation-adjusted Laffey
20 Matrix, submitted concurrently herewith. (Orshansky Decl. ¶ 108 and Exhibit D [Laffey Matrix].)

21 Class Counsel’s lodestar amount is \$161,174.00. (Orshansky Decl. ¶¶ 106, 109.) Therefore,
22 Class Counsel respectfully request a multiplier of approximately 1.86. (*Id.* at ¶ 110.) This multiplier
23 is fair and reasonable based on the contingent nature of the case, the risks and difficulties presented,
24 and the result achieved. As discussed above, Defendants argued that Plaintiff would be unable to
25 certify a class outside of the settlement context because Plaintiff’s claims on the merits would
26 require a series of individualized mini-trials. There were factual risks and evidentiary challenges of
27 substantiating Defendants’ failure to authorize and permit breaks on a class-wide basis.
28 Additionally, Plaintiff would face significant hurdles to certification given that Defendants raised

1 individualized issues regarding whether meal and rest breaks were “provided” under *Brinker, supra*,
2 53 Cal.4th at p. 10, whether employees voluntarily waived their meal and rest breaks (including the
3 existence of written voluntary waivers by some employees of their meal periods), the occurrence of
4 off-the-clock work in light of what Defendants contended were legally compliant policies, and
5 disputes over the manageability of prosecuting Plaintiff’s class and representative claims in light of
6 recent California appellate opinions. If Plaintiff prevailed and certified a class action, there is no
7 guarantee that Defendants would not later move for and obtain decertification. If the Court either
8 denied class certification or later decertified it, the Class would recover nothing and Class Members
9 would be forced to retain their own counsel and proceed on the basis of individual claims only.

10 Since June 2020, Class Counsel have invested a significant amount of time in this case and
11 advanced all costs. (Orshansky Decl. ¶ 110.) As described above, Class Counsel performed this
12 work, diligently prosecuting this action for Plaintiff against several sophisticated corporate entities
13 comprising a nationally-recognizable brand represented by experienced employment attorneys, all
14 while facing an uncertain legal landscape with no guarantee of recovery. (*Ibid.*) Further, their work
15 on this case prevented them from taking on other matters, including hourly work. (*Ibid.*) Despite
16 these considerations, Class Counsel zealously represented Plaintiff and Class Members and
17 negotiated a settlement providing for significant recovery. (*Ibid.*) That Class Counsel achieved these
18 results without engaging in a protracted legal battle, in the face of serious defense challenges and an
19 uncertain legal landscape, confirms the strength of the results achieved. (*Ibid.*) Furthermore, not a
20 single Class Member has objected to the request for attorneys’ fees. (*See Morales Decl. ¶ 9.*)

21 Therefore, the requested multiplier of 1.86 is appropriate in this case. California courts
22 commonly adjust basic lodestar rates to reflect the fair market value of the attorney’s services. (*See*
23 *Vizcaino, supra*, 290 F.3d at pp. 1050-1051 [looking to multipliers awarded in comparable cases as
24 evidence of reasonableness; affirming 3.65 multiplier].) Multipliers routinely range from 3 to 5, and
25 it is not uncommon that multipliers of between 5 and 10, or higher, are applied. (*See, e.g., Wilson v.*
26 *Bank of Am. Natl. Trust & Savs. Assn.* (Cal. Sup. Ct., Aug. 16, 1982) Case No. 643872 [multiplier
27 of 10]; *Glendora Comm. Redev. Agency v. Demeter* (1984) 155 Cal.App.3d 456, 465 [affirming
28 multiplier of 12, and expressly rejecting argument that fee was either exorbitant or unconscionable];

1 *Wershba, supra*, 91 Cal.App.4th at p. 255 [noting that “[m]ultipliers can range from 2 to 4 or even
2 higher”]; *Van Vranken v. Atlantic Richfield Co.* (N.D.Cal. 1995) 901 F.Supp. 294, 298 [multipliers
3 of 3-4 are in the “range [of] common” multipliers for class actions]; *Holleran v. Rita Medical*
4 *Systems, Inc.* (Cal. Super. Oct. 04, 2007, No. RG06302394) 2007 WL 7759253 [multiplier of 4.57];
5 *Gutierrez v. Wells Fargo Bank, N.A.* (N.D.Cal. May 21, 2015, No. C 07-05923 WHA) 2015 WL
6 2438274, at *7 & 8 fn. 3 [multiplier of 4.53]; *Johnson v. Fujitsu Tech. & Bus. of Am., Inc.* (N.D.Cal.
7 May 11, 2018, No. 16-CV-03698-NC) 2018 WL 2183253, at *7 [multiplier of 4.375]; *Buccellato v.*
8 *AT & T Operations, Inc.* (N.D.Cal. Jun. 30, 2011, No. C10-00463-LHK) 2011 WL 3348055, at *2
9 [multiplier of 4.3]; *Chau, et al v. CVS RX Services, Inc.*, Los Angeles County Superior Court No.
10 BC349224, Order Granting Final Approval of Class Action Settlement, Reasonable Attorneys’ Fees
11 and Costs and Service Payments to the Class Representatives [a 3.8 multiplier was applied based
12 primarily on contingent risk and the “excellent results [] obtained [] with relative efficiency”].)

13 The requested multiplier is less than those higher multipliers that have been approved under
14 California law. Thus, the lodestar cross-check confirms that the fee award requested falls within the
15 range of reasonableness.

16 **E. The Court Should Approve the Requested Reimbursement for Litigation Costs**

17 The Settlement provides for reimbursement of up to \$25,000 to Class Counsel in litigation
18 costs. (Settlement Agreement ¶ 48(a).) Class Counsel respectfully request reimbursement of
19 \$22,182.27 in litigation costs. (Orshansky Decl. ¶ 114 and Exhibit E [Cost Breakdown].) The costs
20 for which Plaintiff seeks reimbursement are the types of costs routinely approved by courts. (*See,*
21 *e.g., Harris v. Marhoefer* (9th Cir. 1994) 24 F.3d 16, 19 [counsel should recover “those out-of-
22 pocket expenses that would normally be charged to a fee paying client”].)

23 **F. The Court Should Approve the Requested Settlement Administrator Expenses**

24 Plaintiff also requests that the Court approve \$18,000 in administration costs to CPT Group,
25 Inc. (“CPT”) as the Settlement Administrator. (Settlement Agreement ¶ 48(b) [agreeing to an
26 amount up to \$18,000]); Morales Decl. ¶ 12.) CPT performed and will continue to perform all duties
27 required under the Settlement Agreement. (Morales Decl. ¶¶ 2, 12.) The administration costs are
28 fair, reasonable, and adequate, and should be finally approved.

1 **G. The Court Should Approve the Requested Enhancement Payment to the Class**
2 **Representative**

3 Courts routinely approve enhancement payments to compensate named plaintiffs for the
4 services they provide and the risks they incur during class action litigation. (*See, e.g., Bell v.*
5 *Farmers Ins. Exchange* (2004) 115 Cal.App.4th 715, 726.) Plaintiff's request for an enhancement
6 payment is reasonable given his efforts in initiating the action, the time and effort involved, the
7 substantial benefits conferred on the Settlement Class Members and PAGA Group Members, and
8 the risks assumed by him, and the fact that Plaintiff agreed to a general release of all claims subject
9 to a waiver of Civil Code section 1542. (Orshansky Decl. ¶ 117.) Plaintiff actively participated in
10 the prosecution of this matter, in particular but not exclusively through his discussions with Class
11 Counsel, identifying potential witnesses, providing factual information to Class Counsel about
12 Defendants' business, policies, practices, and procedures, monitoring the progress of the case,
13 evaluating the terms of the settlement, and reviewing and signing the Settlement Agreement. (*See*
14 Orshansky Decl. ¶¶ 116-118 and Exhibit F [Declaration of Mauricio Vazquez (hereafter, "Vazquez
15 Decl.")] at ¶¶ 11-13.) Plaintiff invested significant time and effort into seeing this litigation through
16 resolution. (Orshansky Decl. ¶ 117; Vazquez Decl. ¶ 11-13.)

17 Plaintiff has diligently, adequately, and fairly represented Class Members, is a member of
18 the Class, has no conflicts as outlined above, and has not placed his interests above those of any
19 member of the Class. (Orshansky Decl. ¶ 118; Vazquez Decl., *passim*.) Furthermore, the requested
20 Enhancement Payment was fully disclosed to Class Members in the Notice and no objections have
21 been made. (*See Morales Decl. ¶ 9.*) Thus, Plaintiff's request for an enhancement payment is
22 appropriate and justified as part of the settlement and should be finally approved.

23 **H. Posting of Final Order and Judgment upon Final Approval**

24 The Court's Final Approval Order and Judgment will be posted on the Settlement
25 Administrator's website pursuant to California Rules of Court, Rule 3.771, subdivision (b).

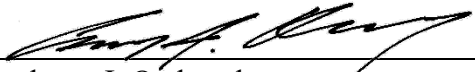
26 **VI. CONCLUSION**

27 Plaintiff respectfully requests that this Court grant his Motion for Final Approval.
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: August 7, 2023

Respectfully submitted,
COUNSELONE, PC

By: 
Anthony J. Orshansky
Jennifer L. Connor
Justin Kachadoorian
Attorneys for Plaintiff