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of themselves all others similarly situated

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

MARK BUFORD, RICHARD LIVELY,
ALBERT JOHNSON, RAUL MARTINEZ,
ROBERT PARSONS, JAVIER C. MAGANA,
AND TERRANCE LOVETT individually and
on behalf of all others similarly situated,

Plaintiffs,

v.

ESTENSON LOGISTICS, LLC, a Delaware
Limited Liability Company; HUB GROUP
TRUCKING, INC., a Delaware Corporation;
HUB GROUP, INC., doing business in
California as CALIFORNIA HUB GROUP;
HUB GROUP DEDICATED, LLC, a Delaware
Limited Liability Company; and DOES 1
through 50, inclusive,

Defendants.

CASE NO.: CIVSB2133332

[Assigned for all purposes to the Hon. Joseph
T. Ortiz, Dept. S-17]

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

Date: August 20, 2024
Time: 1:30 p.m.
Dept.: S-17

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and JAVIER CUEVAS MAGANA, on behalf
of themselves all others similarly situated

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

2 **PLEASE TAKE NOTICE** that on August 20, 2024 at 1:30p.m., or as soon thereafter as
3 the matter may be heard, before the Honorable Joseph T. Ortiz, judge presiding, in Department
4 S-17 of the above referenced Court, located at 247 W. Third Street, San Bernardino, California
5 92415, Plaintiffs Mark Buford, Richard Lively, Albert Johnson, Raul Martinez, Robert Parsons,
6 Javier C. Magana, and Terrance Lovett (collectively, “Plaintiffs”) will seek an Order: (1)
7 granting final approval to the Joint Stipulation for Class Action Settlement and Amendment to
8 Joint Stipulation for Class Action Settlement (“Settlement Agreement”) in this action; (2)
9 approving distribution of the settlement funds to Participating Class Members, Participating
10 FLSA Collective Members, and PAGA Group Members pursuant to the terms of the Settlement
11 Agreement; (3) approving Plaintiffs’ request for an award of the Class Representative
12 Enhancement Payment of \$10,000.00 to each Plaintiff, pursuant to the terms of the Settlement
13 Agreement; (4) approving Plaintiffs’ request for payment of the settlement administration
14 expenses to CPT Group, Inc. in the amount of \$55,000.00, pursuant to the terms of the
15 Settlement Agreement; (5) approving Plaintiffs’ request for payment to the California Labor and
16 Workforce Development Agency for \$168,750.00, pursuant to the terms of the Settlement
17 Agreement; and (6) entering final judgment as to all members of the Class in this action.¹

18 This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which
19 provides for court approval of the settlement of a purported class action and allows the Court to
20 grant final certification of a class for settlement purposes. In light of the overwhelmingly positive
21 response, as shown by the lack of objections and only two requests for exclusion from the
22 settlement, there is no question that the settlement is fair, reasonable, and adequate and thus
23 should be granted final approval.

24 This Motion will be based on the attached Memorandum of Points and Authorities and
25 the supporting Declarations of Michael Nourmand, Jonathan M. Lebe, Larry W. Lee, Max W.
26 Gavron, William L. Marder, Mark Buford, Richard Lively, Albert Johnson, Raul Martinez,

27
28 ¹ Plaintiffs Magana, Lovett, Parsons, Martinez, and Johnson move for attorneys’ fees and costs via separately
noticed motion, which is concurrently filed herewith.

1 Robert Parsons, Javier Cuevas Magana, Terrance Lovett, and Jeremy Romero of CPT Group,
2 Inc., upon the oral arguments of counsel (should there be any), and on the complete records and
3 file herein.

4
5 DATED: July 29, 2024

DIVERSITY LAW GROUP, P.C.
THE NOURMAND LAW FIRM, APC
LEBE LAW, APLC
JAMES HAWKINS APLC
POLARIS LAW GROUP

8
9 By: 
10 Larry W. Lee
11 Max W. Gavron

12 Attorneys for Plaintiffs Mark Buford, Richard
13 Lively, Albert Johnson, Raul Martinez, Robert
14 Parsons, Javier C. Magana, and Terrance Lovett

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I. INTRODUCTION

Plaintiffs Mark Buford, Richard Lively, Albert Johnson, Raul Martinez, Robert Parsons, Javier C. Magana, and Terrance Lovett (collectively, “Plaintiffs”) seek the Court’s final approval of the Joint Stipulation for Class Action Settlement and Amendment to Joint Stipulation for Class Action Settlement (“Settlement Agreement”). This is a wage and hour class and representative Private Attorneys General Act (“PAGA”) action seeking damages and statutory and civil penalties for violations of the California Labor Code. As detailed in the operative Consolidated Amended Class Action Complaint, Plaintiffs allege that Defendants Estenson Logistics, LLC, Hub Group Trucking, Inc., Hub Group Inc., and Hub Group Dedicated, LLC, (collectively, “Defendants”) failed to pay minimum and overtime wages pursuant to the FLSA, pay minimum and overtime wages pursuant to California law, provide proper meal and rest breaks, reimburse work-related expenses, pay all wages owed upon separation of employment, and provide accurate wage statements to employees. Plaintiffs further allege claims for violation of Business and Professions Code section 17200, *et seq.* and seek penalties pursuant to Labor Code section 2698, *et seq.* **Error! Bookmark not defined.**

The Settlement Agreement, which was preliminarily approved by the Court, provides for a total settlement amount of \$9,400,000.00 (“Gross Settlement Amount”). The Court previously analyzed the terms of the settlement in its order granting preliminary approval. As directed by the Court, the Settlement Administrator distributed the Notice of Class Action Settlement (“Class Notice”) to 3,942 Class Members and Notice of FLSA Action Settlement (“FLSA Notice”) to 9,267 FLSA Collective Members. Declaration of Jeremy Romero on Behalf of Settlement Administrator (“Admin. Decl.”) ¶¶ 6-7. To date, there have been zero (0) objections to the settlement filed and two (2) requests for exclusion have been received. Admin. Decl. ¶¶ 10.² As such, there is a 99.94% participation rate. This favorable response by the Class supports the Court’s Preliminary Approval Order finding that the settlement was fair, adequate, and reasonable and the granting of the instant Motion.

In addition to the results of the notice process, for the same reasons as set forth earlier in

² The individuals that requested exclusion are Keith N. Tennis and Joey Lester.

1 Plaintiffs' Motion for Preliminary Approval of Class Action Settlement, the following represent
2 the basic points supporting approval of the settlement:

- 3 ▪ The settlement provides a total settlement sum of \$9,400,000.00;
- 4 ▪ The settlement is fair given that Participating Class Members will receive (*after*
5 *deductions for fees, costs, etc.*) a substantial amount of money (on average, each
6 Participating Class Member will receive approximately \$1,034.11, with the
7 highest payment being approximately \$4,842.64. *See* Admin. Decl. ¶ 17;
- 8 ▪ Class Members did not need to submit claim forms to participate in the
9 settlement, but are being paid automatically;
- 10 ▪ The allocation reflects that payment of claims will be paid to all Class Members
11 in proportion to the number of workweeks each Class Member worked during the
12 Class Period;
- 13 ▪ Participating FLSA Collective Members shall be deemed to have opted-in to the
14 FLSA collective settlement by depositing or cashing their checks;
- 15 ▪ Plaintiffs conducted significant investigation in this case, including formal and
16 informal discovery, and exchanges of information by Plaintiffs and Defendants of
17 class data necessary for Plaintiffs to fully evaluate this case;
- 18 ▪ A highly regarded administrator, CPT Group, Inc., was retained for fees estimated
19 to be \$55,000.00; and
- 20 ▪ California's LWDA will also be the beneficiary of this settlement as it will
21 receive \$168,750.00, should this settlement be granted final approval.

22 Accordingly, the Court should grant Final Approval consistent with the Preliminary
23 Approval Order.

24 **II. CLASS MEMBERS WERE PROVIDED PROPER NOTICE OF THE**
25 **SETTLEMENT**

26 The notice procedures required by the Preliminary Approval Order, have been followed
27 and satisfy all due process rights of Class Members. The Preliminary Approval Order
28 contemplated that the Class Notice and FLSA Notice, as approved in the Preliminary Approval

Order, be sent to all Class Members and FLSA Collective Members, respectively, by first class mail, as specified in the settlement. Further, the Preliminary Approval Order contemplated that CPT Group, Inc. would serve as the Settlement Administrator.

As clearly stated in the Admin Declaration, notice was provided to Class Members, as required by the Preliminary Approval Order. Between February 28, 2024 and April 12, 2024, the Settlement Administrator received the Class/Collective List from Defendants' counsel that included 3,942 Class Members and 9,267 FLSA Collective Members. Admin. Decl. ¶ 5. On May 21, 2024, the Settlement Administrator conducted a National Change of address search to confirm the addresses were accurate. *Id.* ¶ 6. On May 24, 2024, each of the persons identified on the mailing list were sent the Class Notice and/or FLSA Notice, as applicable, via first class mail. *Id.* ¶ 7, Ex. A. From the date of mailing, two hundred twenty-three (223) Notice Packets were returned due to incorrect addresses. *Id.* ¶ 7. 18 were returned with a forwarding address. *Id.* ¶ 8. CPT Group, Inc. attempted to locate a current mailing address using Accurant, one of the most comprehensive address databases available for skip tracing. *Id.* ¶ 8. As of the date of this filing, thirty-seven (37) Notice Packets remain undeliverable because new addresses could not be located by skip tracing. *Id.* ¶ 9. This is less than 1% of the total number of Class Members.

The provision of sending the notice to Class Members as described above meets the requirements for the "best notice practicable" in this case as necessary to protect the due process rights of class members. *See, Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811-12 (1985) (provision of "best notice practicable" with description of the litigation and explanation of opt-out rights satisfies due process); *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 174-75 (1974) (individual notice must be sent to class members who can be identified through reasonable means); *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) (best practicable notice is that which is "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections").

Here, the Class Members were provided with a mailing regarding the settlement that explained the settlement and allowed Class Members to seek information, ask questions, and

object, if so desired. Admin. Decl. ¶ 4, 7, Ex. A.

With respect to the FLSA Collective Members, courts routinely approve settlements that fulfill the FLSA's consent to join procedures by participants depositing or cashing their checks as is proposed here. *See Amaro v. Anaheim Arena Mgmt., LLC*, 69 Cal. App. 5th 521, 540-541 (2021) (approving check-cashing procedure for FLSA settlement accompanying state law claims); *Rangel v. PLS Check Cashers of California, Inc.*, 899 F.3d 1106, 1110-12 (9th Cir. 2018).

As such, proper notice has been given to the Class Members. Thus, the Court may proceed to determine the fairness and adequacy of the settlement and enter its Order granting final approval, secure in the knowledge that all absent Class Members have been given the opportunity to participate fully in the claims, exclusion, and the approval process.

III. THE COURT SHOULD GRANT FINAL APPROVAL OF THE SETTLEMENT

A. The Terms of the Settlement, Negotiation of Settlement, and Reception of the Settlement by Class Members All Strongly Support the Conclusion that the Settlement is Fair, Adequate, and Reasonable

As explained by the Court of Appeal in *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 130, 133 (2008), a class action settlement should be approved when the plaintiff has conducted sufficient discovery and the settlement is reasonable in light of the strengths of the plaintiff's claims. As discussed herein, Class Counsel have conducted extensive discovery and investigation and, in light of the strength and weaknesses of Plaintiffs' claims, Plaintiffs' attorneys submit that this settlement is fair pursuant to *Kullar*.

Without reiterating the Parties' showing that the Settlement Agreement and the negotiation process that led up to it was fair and adequate, as set forth in detail in the Motion for Preliminary Approval of Class Action Settlement, Plaintiffs highlight the following facts. The Settlement Agreement was the product of negotiation between highly able and experienced attorneys on both sides, possessed of the relevant data and extensive legal research which they had carefully analyzed. Declaration of Max W. Gavron ("Gavron Decl.") ¶ 2. In addition, the resolution of this case was reached only after the production of a sampling of time and payroll data, Defendants' employee handbook, Defendants' relevant policies and procedures, and other

1 data and information, and further drawn-out negotiations. *Id.* ¶ 3. Based on the class data,
2 Plaintiffs were able to calculate a range of potential damages and penalties. *Id.* ¶ 3.

3 The results after mailing of the Class Notice and FLSA Notice further support
4 confirmation of the Court’s preliminary approval of the settlement with final approval of the
5 settlement. The Court may appropriately infer that the class action settlement is fair, adequate,
6 and reasonable when, among other reasons, few, or no class members object to it. *See Class*
7 *Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1291 (9th Cir. 1992); *Churchill Vill. LLC v. Gen.*
8 *Elec.*, 361 F.3d 566, 577 (9th Cir. 2004) (approving settlement with 45 objections and 500 opt-
9 outs from a 90,000-person class, representing 0.05% and 0.56% of the class, respectively); *Chun-*
10 *Hoon v. McKee Foods Corp.*, 716 F. Supp. 2d 848, 852 (N.D. Cal. 2010) (where 16 of 329 class
11 members opted out, court found that positive class reaction “strongly supports settlement”).
12 Here, *there is not a single Class Member who has objected to the current settlement and only two*
13 *submitted a request to opt-out.* Admin. Decl. ¶ 10. This is a clear indication that Class Members
14 themselves view the settlement as fair, adequate, and reasonable.

15 **B. Under Well-Established Legal Principles, the Court Should Grant Final**
16 **Approval of the Settlement**

17 **1. Standard of Review**

18 On a motion for final approval of a class action settlement under California Code of Civil
19 Procedure section 382 and California Rule of Court 3.769, a court’s inquiry is whether the
20 settlement is “fair, adequate and reasonable.” *Officers for Justice v. Civil Serv. Comm’n*, 688
21 F.2d 615, 625 (9th Cir. 1982), *cert. denied subnom.*, *Byrd v. Civil Serv. Comm’n*, 459 U.S. 1217
22 (1983). A settlement is fair, adequate, and reasonable, and therefore merits final approval, when
23 “the interests of the class are better served by the settlement than by further litigation.” *See*
24 *Manual for Complex Litigation, Fourth* § 21.6 at 309 (Fed. Jud. Ctr., 4th ed. 2004) (“MCL”).
25 The law favors settlement, particularly in class actions and other complex cases, where
26 substantial resources can be conserved by avoiding the time, cost, and rigors of formal litigation.
27 *See Alba Conte & Herbert B. Newberg, 4 Newberg on Class Actions* § 11.41 (2008); *Class*
28 *Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992); *Van Bronkhorst v. Safeco*

1 Corp., 529 F.2d 943, 950 (9th Cir. 1976).

2 Although the Court possesses “broad discretion” in determining that a proposed class
3 action settlement is fair, the Court’s role must be limited to the extent necessary to reach a
4 reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion
5 between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable, and
6 adequate to all concerned. *See Officers for Justice*, 688 F.2d at 625. Accordingly, the Court
7 should give due regard to what is otherwise a “private consensual agreement” between the
8 parties. *Id.*; *see also Church v. Consolidated Freightways, Inc.*, 1993 WL 149840 (N.D. Cal.
9 1993); *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 720 F. Supp. 1379 (D. Ariz. 1989), *aff’d*
10 *sub nom.*; *City of Seattle*, 955 F.2d 1268; MCL § 21.6 at 309 (“The judicial role in reviewing a
11 proposed settlement is critical, but limited to approving the proposed settlement, disapproving it,
12 or imposing conditions on it. The judge cannot rewrite the agreement”).

13 A court’s approval of a class action settlement will only be reversed for a clear abuse of
14 discretion. *See Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996); *Officers for*
15 *Justice*, 688 F.2d at 626 (“reverse only upon a strong showing that the district court’s decision
16 was a clear abuse of discretion”); *City of Seattle*, 955 F.2d at 1276; *Ackerman v. Kassar*, 1993
17 WL 326453 (9th Cir. 1993); *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1238 (9th Cir.
18 1998).

19 As the court cautioned in *7-Eleven Owners for Fair Franchising v. Southland Corp.*:

20 It cannot be overemphasized that neither the trial court in approving
21 the settlement nor this Court in reviewing that approval have the
22 right or duty to reach any ultimate conclusions on the issues of fact
23 and law which underlie the merits of the dispute. It is well settled
24 that in the judicial consideration of proposed settlements, ‘the [trial]
25 judge does not try out or attempt to decide the merits of the
controversy,’ [citation] and the appellate court ‘need not and should
not reach any dispositive conclusions on the admittedly unsettled
legal issue.

26 85 Cal. App. 4th 1135, 1146 (2000).

27 2. The Settlement is Presumed to Be Fair

28 The Court should begin its analysis with the presumption that the settlement is fair and

1 should be approved:

2 [A] presumption of fairness exists where: (1) the settlement is
3 reached through arm's-length bargaining; (2) investigation and
4 discovery are sufficient to allow counsel and the court to act
5 intelligently; (3) counsel is experienced in similar litigation; and (4)
6 the percentage of objectors is small.

7 *Dunk*, 48 Cal. App. 4th at 1802; *accord*, *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18
(N.D. Cal. 1980); *In re Wash. Pub Power Supply*, 720 F. Supp. at 1387.

8 The settlement in the case at bar warrants approval and carries a presumption of fairness.
9 As previously noted in the Motion for Preliminary Approval, this current settlement was
10 negotiated at arm's length and resulted after mediation. Gavron Decl. ¶ 4.

11 Second, Class Counsel engaged in extensive factual investigation before settling,
12 including reviewing class data. Gavron Decl. ¶¶ 2, 3. Further, Class Counsel is highly
13 experienced in this type of litigation. As shown in the supporting declarations, Class Counsel has
14 significant experience in class actions and employment wage and hour matters. Gavron Decl. ¶¶
15 6-11; Declaration of Michael Nourmand ("Nourmand Decl.") ¶¶ 2-4; Declaration of Jonathan M.
16 Lebe ("Lebe Decl.") ¶¶ 3-17; Declaration of Larry W. Lee ("Lee Decl.") ¶¶ 3-5; Declaration of
17 William L. Marder ("Marder Decl.") ¶¶ 3-10.

18 **3. Two-Way Costs and Other Risks Inherent in Continued Litigation** 19 **Favor Final Approval**

20 To assess the fairness, adequacy, and reasonableness of a class action settlement, the
21 Court also should weigh the immediacy and certainty of substantial settlement proceeds against
22 the risks inherent in continued litigation. *See also In re General Motors Corp.*, 55 F.3d 768, 806
23 (3d Cir. 1995) ("present value of the damages plaintiffs would likely recover if successful,
24 appropriately discounted for the risk of not prevailing, should be compared with the amount of
25 the proposed settlement") (internal citations omitted); *Girsh v. Jepson*, 521 F.2d 153, 157 (3d
26 Cir. 1975); *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 616-17 (N.D. Cal. 1979).

27 If Plaintiffs pursued this case without settlement and failed to prevail, Plaintiffs would
28 have been potentially responsible for Defendants' costs. As such, should individual current or

1 former employees of Defendants bring individual claims on the same causes of action, they
2 would each face the uncertainty of prevailing and the possibility of paying costs to Defendants.
3 Accordingly, such claims likely would not be brought by many of these current and former
4 employees – thus, this lawsuit achieves a true benefit for the Class that they might not otherwise
5 get or seek as individuals. Here, given that a fair and reasonable settlement has been reached,
6 neither Plaintiffs nor any of the Class Members will be required to pay for Defendants’ litigation
7 costs.

8 The risks of this case were weighed by Class Counsel and should be considered a
9 significant factor by the Court in its determination of final approval. Class Counsel obtained a
10 very substantial settlement for the Class that resulted in a fair recovery which at the same time
11 provides for finality and no risk of costs by Class Members or Class Representatives.

12 The Settlement Agreement also affords the Class prompt, fair relief while avoiding
13 significant legal and factual battles that otherwise may have prevented the Class from obtaining
14 any recovery at all. While Class Counsel believe the Class Members’ claims are meritorious and
15 can be successfully litigated, they are experienced and fully understand the inherent risks and
16 uncertainty involved with such matters as the resolution of class certification, the outcome of a
17 potential trial, and the outcome of any appeals that would inevitably follow should the Class
18 prevail at trial. Class Counsel has also assessed the same risks in connection with the current
19 settlement. Because the settlement provides immediate and substantial relief, without the
20 attendant risks and delay of continued litigation – not to mention the threat of litigation fees and
21 costs – Class Counsel believe that the settlement warrants the Court’s final approval.

22 **4. The Complexity, Expense, and Likely Duration of Continued**
23 **Litigation Against Defendants Favor Final Approval**

24 Another factor considered by courts in approving a settlement is the complexity, expense,
25 and likely duration of the litigation. *See Officers for Justice*, 688 F.2d at 625; *Girsh*, 521 F.2d at
26 157. In applying this factor, the Court must weigh the benefits of the settlement against the
27 expense and delay involved in achieving an equivalent or more favorable result at trial. *Young v.*
28 *Katz*, 447 F.2d 431, 433-34 (5th Cir. 1971).

1 As noted in the Motion for Preliminary Approval, continued litigation could have led to
2 appeals on a number of issues. On the other hand, the settlement that was reached provides to all
3 Class Members – regardless of their means – fair relief in a prompt and efficient manner. Were
4 the Court to deny final approval, the Class Members would be left without a remedy as a
5 practical matter and courts across the State would have to address the issues presented here in a
6 piecemeal, costly, and time-consuming manner. The settlement in this case is therefore
7 consistent with the “overriding public interest in settling and quieting litigation” that is
8 “particularly true in class action suits.” *See Van Bronkhorst*, 529 F.2d at 950 (footnote omitted);
9 *see also 4 Newberg* § 11.41.

10 **5. The Opinion of Experienced Counsel Favors Final Approval**

11 Class Counsel supports the settlement as fair, reasonable, and adequate, and in the best
12 interest of the Class Members as a whole. Gavron Decl. ¶ 4; Nourmand Decl. ¶ 5; Lee Decl. ¶ 2;
13 Marder Decl. ¶ 2. Similarly, counsel for Defendants is in favor of this settlement. The
14 endorsement of qualified and well-informed counsel of a settlement as fair, reasonable, and
15 adequate is entitled to significant weight by the Court in its final approval determination. *See*
16 *Officers for Justice*, 688 F.2d at 625; *Ellis*, 87 F.R.D. at 18; *Boyd*, 485 F. Supp. at 617; *Linney*,
17 151 F.3d at 1242.

18 **IV. THE REQUESTED CLASS REPRESENTATIVE ENHANCEMENT PAYMENTS** 19 **SHOULD BE APPROVED**

20 Plaintiffs have requested, and Defendants do not oppose, an enhancement payment of
21 Ten Thousand Dollars (\$10,000.00) to each Class Representative, pursuant to the terms of the
22 Settlement Agreement. Plaintiffs request that this Court approve such enhancement payments in
23 light of the efforts Plaintiffs put into this case, the absence of any objection to the enhancement
24 payments, and the excellent result achieved.

25 The Class Representatives spent time with Class Counsel on a number of occasions to
26 discuss the case, provide substantive information regarding Defendants’ pay, meal and rest
27 break, reimbursement, and wage statement practices and policies, and review the terms of the
28 proposed settlement. Declaration of Mark Buford (“Buford Decl.”) ¶ 9; Declaration of Richard

1 Lively (“Lively Decl.”) ¶ 10; Declaration of Albert Johnson (“Johnson Decl.”) ¶ 7-14;
2 Declaration of Raul Martinez (“Martinez Decl.”) ¶ 9; Declaration of Robert Parsons (“Parsons
3 Decl.”) ¶ 10; Declaration of Javier Cuevas Magana (“Magana Decl.”) ¶ 10; Declaration of
4 Terrance Lovett (“Lovett Decl.”) ¶ 10. Plaintiffs Magana, Lovette, Parsons, Martinez, and
5 Johnson responded to written discovery served by Defendants and produced extensive
6 documentation with their responses. Johnson Decl. ¶ 9; Martinez Decl. ¶ 9; Parsons Decl. ¶ 10;
7 Magana Decl. ¶ 10; Lovett Decl. ¶ 10. Plaintiffs also spent significant time and energy
8 reviewing documents for filing in this action, and reviewing and approving the settlement
9 agreement. *Id.* Plaintiffs estimate they spent significant time and energy in the prosecution of
10 this action from start to finish. Johnson Decl. ¶ 14; Martinez Decl. ¶ 16; Parsons Decl. ¶ 10;
11 Magana Decl. ¶ 10; Lovett Decl. ¶ 10; Buford Decl. ¶ 9; Lively Decl. ¶ 10.

12 In addition to the invaluable services they provided, Plaintiffs also took significant risks,
13 both professionally and monetarily, in acting as Class Representatives. Buford Decl. ¶ 10; Lively
14 Decl. ¶ 11; Johnson Decl. ¶ 15; Martinez Decl. ¶ 15; Parsons Decl. ¶ 13; Magana Decl. ¶ 13;
15 Lovett Decl. ¶ 13. Because the claims alleged by Plaintiffs involved the payment of costs to the
16 prevailing party, Plaintiffs could have possibly faced paying the costs of Defendants had they not
17 prevailed in this action. Buford Decl. ¶10; Lively Decl. ¶ 10; Johnson Decl. ¶ 15; Martinez Decl.
18 ¶ 15; Parsons Decl. ¶ 13; Magana Decl. ¶ 13; Lovett Decl. ¶ 13. Moreover, given that future
19 employers are much less likely to hire individuals who have filed suit against their prior
20 employer, particularly cases of this nature, the Class Representatives could face negative
21 employment prospects in the future.

22 The Class Representatives took such risks upon themselves and the whole Class benefited
23 from this. Class Members did not have to file individual lawsuits and bear the risks of payment
24 of fees and costs if they did not prevail, nor did they have to face the potential for retaliation and
25 not getting future employment had they filed a lawsuit which is a public record. These are
26 significant benefits, even apart from the time the Class Representatives have spent working on
27 this case, that weigh in favor of granting the requested enhancement.

28 Finally, as part of the class settlement, Plaintiffs also agreed to give a general release of

1 their individual claims, something that the Class Members did not have to do. *See* Settlement
2 Agreement ¶ 37; Buford Decl. ¶ 10; Lively Decl. ¶ 11; Johnson Decl. ¶ 16; Martinez Decl. ¶ 17;
3 Parsons Decl. ¶ 9; Magana Decl. ¶ 9; Lovett Decl. ¶ 9. Thus, Plaintiffs have sacrificed their own
4 individual rights for those of the Class Members. This is a significant factor to take into account
5 that further warrants the award of the requested service amount.

6 Courts have routinely granted approval of settlements containing such enhancements. *See*
7 *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299-300 (N.D. Cal. 1995) (incentive
8 award of \$50,000); *In re Dun & Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D. 366, 374
9 (S.D. Ohio 1990) (two incentive awards of \$55,000, and three incentive awards of \$35,000);
10 *Brotherton v. Cleveland*, 141 F. Supp. 2d 907, 913-14 (S.D. Ohio 2001) (granting a \$50,000
11 incentive award); *Enter. Energy Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240,
12 251-52 (S.D. Ohio 1991) (\$50,000 awarded to each class representative); *Glass v. UBS Fin.*
13 *Servs.*, No. C-06-4068, 2007 U.S. Dist. LEXIS 8476, at *51-52 (N.D. Cal. Jan. 27, 2007)
14 (awarding \$25,000 incentive award in FLSA overtime wages class action); *Cook v. Niedert*, 142
15 F.3d 1004, 1016 (7th Cir. 1998) (affirming \$25,000 incentive award to class representative in
16 ERISA case).

17 Here, this litigation has resulted in a significantly valuable benefit to the Class, and the
18 Class Representatives took on substantial risk and sacrifice in helping to get this financial benefit
19 to the Class. As such, the enhancement should be awarded to the named Plaintiffs for their
20 commitment, dedication, and risks taken for this litigation. Accordingly, the Court should find
21 the service awards as fair and reasonable.

22 **V. THE SETTLEMENT ADMINISTRATOR'S FEES AND COSTS SHOULD BE**
23 **APPROVED**

24 Pursuant to the terms of the Settlement Agreement, the fees and costs of the Settlement
25 Administrator, CPT Group, Inc., are to be paid out of the class settlement funds. As shown in the
26 Admin Declaration, the settlement administration fees expended in this matter amount to a total
27 of \$55,000.00, which is the amount that was agreed upon by the Parties. Admin. Decl. ¶ 16. For
28 such reasons, it is requested that the Settlement Administrator's fees be approved.

1 **VI. THE PROPOSED PROCEDURE FOR UNCASHED SETTLEMENT CHECKS**
2 **SHOULD BE APPROVED**

3 As referenced in the Motion for Preliminary Approval, to the extent any payments to
4 Participating Class Members and/or PAGA Group Members remain uncashed after 180 days, the
5 Parties have agreed that such funds shall be remitted to the California State Controller's Office –
6 Unclaimed Property Fund in the names of the applicable Participating Class Members and/or
7 PAGA Group Members. Settlement Agreement ¶ 53. No residual funds allocated for settling
8 state law claims will revert to Defendant. *Id.* Any payments to the FLSA Collective Members
9 that remain uncashed after 180 days will revert to Defendants. *Id.* This system ensures that the
10 class members are compensated for the claims they actually release.

11 **VII. NOTICE TO LWDA**

12 Concurrent with the filing of this Motion, Plaintiffs provided notice to the LWDA.
13 Gavron Decl. ¶ 18.

14 **VIII. INFORMATION REQUESTED BY THE COURT IN PRELIMINARY**
15 **APPROVAL ORDER**

16 The Court requested that Plaintiffs provide the exact number of class members, work
17 weeks, aggrieved employees, and pay periods in its Preliminary Approval Order. As set forth in
18 the Romero Declaration, There are three thousand nine hundred forty (3,940) Participating Class
19 Members worked a collective three hundred eleven thousand three hundred four (311,304)
20 workweeks during the Class Period. There are nine thousand two hundred ninety-one (9,291)
21 Participating FLSA Collective Members who worked a collective five hundred eight thousand
22 six hundred seventy-two (508,672) workweeks during the FLSA Collective Period. There are
23 three thousand three hundred forty-eight (3,348) PAGA Group Members who worked a
24 collective two hundred thirty-four thousand two hundred forty-seven (234,247) workweeks
25 during the PAGA period. Admin Decl. ¶¶ 13-15.

26 The Court also requested that the Parties provide information regarding any cases that
27 might be impacted by final approval of this proposed settlement. Defendants have identified two
28 cases that might be impacted, as follows:

1 • *Hague v. Hub Group Trucking, Inc.*, Case No. CIVSB2328153 was filed
2 on November 2, 2023. The causes of action in the operative class action amended
3 complaint are alleged violations of: (1) California Labor Code § 226; (2) California
4 Labor Code § 1194; (3) Fair Labor Standards Act, 29 U.S.C. § 206; (4) California
5 Business & Professions Code §§ 17200, *et seq.*; and (5) California Labor Code § 2698, *et*
6 *seq.*

7 • *Lopez v. Hub Group Trucking, Inc. et al.*, Case No. CIVSB2317293 was
8 filed on July 27, 2023. There is one cause of action in the operative PAGA complaint for
9 penalties under California Labor Code § 2698, *et seq.* In his PAGA-only complaint,
10 Lopez alleges underlying Labor Code violations for failure to: (1) provide employment
11 records; (2) pay overtime/double time; (3) provide meal/rest breaks; (4) pay minimum
12 wage (off-the-clock and split shift premiums); (5) provide accurate/itemized wage
13 statements; (6) pay reporting time wages; (7) timely pay all wages; (8) reimburse
14 business expenses; and (9) provide notice of paid sick time and accrual.

15 **IX. CONCLUSION**

16 For all the foregoing reasons, and on the basis of the authorities cited herein, Plaintiffs
17 respectfully submit that the standards for final approval have been met and the terms of the
18 Settlement Agreement are fair, adequate, and reasonable.

19 Accordingly, Plaintiffs respectfully request that the Court enter an Order in the form
20 proposed and submitted:

- 21 1. Granting final approval to the proposed Settlement Agreement in this action;
- 22 2. Approving distribution of the settlement funds to Participating Class Members,
23 FLSA Collective Members, and PAGA Group Members, pursuant to the terms of the Settlement
24 Agreement;
- 25 3. Approving Plaintiffs' request for an award of the Class Representative
26 Enhancement Payment of \$10,000.00 to each Plaintiff, with payments pursuant to the terms of
27 the Settlement Agreement;
- 28 4. Approving Plaintiffs' request for payment of the settlement administration

1 expenses to CPT Group, Inc. in the amount of \$55,000.00, with payment pursuant to the terms of
2 the Settlement Agreement;

3 5. Approving Plaintiffs' request for payment to the LWDA of \$168,750.00 with
4 payment pursuant to the terms of the Settlement Agreement; and

5 6. Entering final judgment as to all members of the Class in this action.

6
7 DATED: July 29, 2024

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10
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