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8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF LOS ANGELES**
11

12 MICHAEL MANZO, on behalf of himself, and
13 on behalf of other members of the general
public similarly situated,

14 Plaintiff,

15 v.

16 SOUTHSIDE PIZZA, INC., a California
17 corporation; PRIMA PIZZA, INC., a California
18 corporation; DOMINO'S PIZZA, LLC, a
Michigan limited liability company;
19 DOMINO'S PIZZA FRANCHISING, LLC, a
Delaware limited liability company; and DOES
20 1 through 100, inclusive,

21 Defendants.

Case No. 20STCV48870

Assigned for all purposes to:
Hon. Stuart Rice, Dept. 1

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

[Declarations of Anthony J. Orshansky,
Michael Manzo, and Abel E. Morales,
Proposed Final Approval Order, Proposed
Judgment, and Proof of Service submitted
concurrently herewith]

Final Approval Hearing

Date: May 20, 2024

Time: 10:30 a.m.

Dept.: 1

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

2 **PLEASE TAKE NOTICE** that on May 20, 2024 at 10:30 a.m., or as soon thereafter as the
3 matter may be heard before the Honorable Stuart Rice in Department 1 of the above-captioned court
4 located at 312 North Spring Street, Los Angeles, California 90012, Plaintiff Michael Manzo
5 (“Plaintiff” or “Class Representative”), individually and on behalf of all others similarly situated,
6 will and hereby does move this Court pursuant to Code of Civil Procedure section 382 and California
7 Rules of Court, Rule 3.769 for entry of an order:

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 parties’ Amended Stipulation of Class and
15 Representative Action Settlement (“Settlement Agreement”);

16 5. Approving an award of \$400,000 in attorneys’ fees to Class Counsel;

17 6. Approving an award of \$14,705.09 in actual litigation costs reimbursement to Class
18 Counsel;

19 7. Approving an award of \$25,000 in costs to CPT Group, Inc. for its settlement
20 administration services;

21 8. Approving a service award in the amount of \$8,000 to Plaintiff;

22 9. Approving an award of \$120,000 for PAGA penalties, \$90,000 of which will be paid
23 to the California Labor and Workforce Development Agency; and

24 10. Entering the Proposed Judgment and the Proposed Order Granting Plaintiff’s Motion
25 for Final Approval of Class and Representative Action Settlement, Attorneys’ Fees and Costs, and
26 Class Representative Service Award which are both submitted concurrently herewith.

27 This motion is made on the following grounds: (1) the conditionally certified Class continues
28 to meet the requirements for class certification for settlement purposes only under Code of Civil

1 Procedure section 382; (2) Plaintiff and Class Counsel continue to be adequate representatives of
2 the Class; (3) the settlement is a fair, adequate, and reasonable compromise of disputed wage and
3 hour claims; (4) the requested awards of attorneys' fees and costs, service payment, and settlement
4 administration costs are all fair, adequate, and reasonable; and (5) in light of the foregoing, the
5 Proposed Judgment and Proposed Order Granting Plaintiff's Motion for Final Approval of Class
6 and Representative Action Settlement, Attorneys' Fees and Costs, and Class Representative Service
7 Award submitted concurrently herewith should be entered to give finality to, and allow for
8 disbursements from, the settlement.

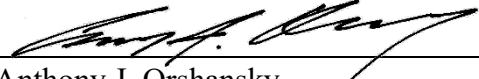
9 This motion is based on this Notice, the attached Memorandum of Points and Authorities,
10 the supporting declarations of Anthony J. Orshansky, Michael Manzo, and Abel E. Morales, and the
11 exhibits attached thereto, the Settlement Agreement, all other pleadings and papers on file in this
12 action, and on any oral argument presented at the time of hearing. Finally, given the multiplicity of
13 issues addressed in this motion, Plaintiff believes that there is good cause to exceed the 20-page
14 limit set forth in California Rules of Court, Rule 3.764(c)(2), and respectfully requests that the Court
15 consider the attached Memorandum of Points and Authorities, which is 29 pages in length.

16
17 Dated: April 26, 2024

Respectfully submitted,

18 COUNSELONE, PC

19
20 By:



Anthony J. Orshansky

Justin Kachadoorian

Attorneys for Plaintiff, Settlement Class

Members, and PAGA Group Members

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Michael Manzo (“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 individuals who are or previously were
6 employed by one of or more of the Defendants Southside Pizza, Inc. and Prima Pizza, Inc.
7 (“Defendants”) in the State of California who were classified as hourly, non-exempt employees
8 during the period from December 23, 2016 to December 31, 2022 (the “Class” or “Class Members;”
9 “Settlement Class” or “Settlement Class Members” are Class Members who do not opt out of the
10 settlement).

11 The Amended Stipulation of Class and Representative Action Settlement (“Settlement
12 Agreement”) between Plaintiff and Defendants (together, the “Parties”), if approved, will resolve
13 specific claims of Plaintiff, Settlement Class Members, and PAGA Group Members¹ in exchange
14 for Defendants’ agreement to pay One Million Two Hundred Thousand Dollars (\$1,200,000) into a
15 non-reversionary common settlement fund. This is a very favorable resolution of disputed wage and
16 hour claims. As of the date of filing of this Motion, not a single Class Member has filed an objection
17 to the settlement after receiving notice of the proposed settlement and the projected individual
18 settlement payments, and only one (1) Class Member has requested exclusion from the settlement,
19 resulting in a 99.94% settlement participation rate. (See Declaration of Abel E. Morales Regarding
20 Notification and Settlement Administration (“Morales Decl.”), filed concurrently herewith, at ¶¶
21 10-12.)

22 As explained below, the Court should grant Plaintiff’s motion because: (1) the conditionally
23 certified Settlement Class continues to meet the requirements for class certification for settlement
24 purposes under Code of Civil Procedure section 382; (2) the settlement is a fair, adequate, and
25 reasonable compromise of the disputed claims in this case; and (3) the amounts requested for Class

26 _____
27 ¹ “PAGA Group Members” are defined as all Aggrieved Employees, whether or not they submit a
28 request for exclusion from the Settlement Class, who worked for Defendants during the PAGA
Period. (Settlement Agreement ¶ 20.) “PAGA Period” is defined as the period beginning on October
19, 2019 and ending on December 31, 2022. (Settlement Agreement ¶ 22.)

Counsel's attorneys' fees and costs, Plaintiff's service payment, and settlement administration costs are all fair, adequate, and reasonable. In light of the foregoing, this Court should enter the Proposed Final Order and Judgment Granting Plaintiffs' Motion for Final Approval of Class and Representative Action Settlement, Attorneys' Fees and Costs, and Class Representative Service Payment, submitted concurrently herewith.

II. FACTUAL AND PROCEDURAL BACKGROUND

On August 24, 2020, Plaintiff provided pre-filing written notice to the California Labor and Workforce Development Agency ("LWDA") and by certified mail to Defendants of the below-identified allegations on behalf of himself and similarly situated aggrieved employees in accord with California's Private Attorneys General Act of 2004, Labor Code sections 2698 *et seq.* ("PAGA"). (Declaration of Anthony J. Orshansky ("Orshansky Decl."), filed concurrently herewith, at ¶ 20.) The LWDA did not provide notice of its intent to investigate the alleged violations within 65 calendar days of submission, thereby entitling Plaintiff to commence a representative action under the PAGA. (*Id.* at ¶ 21)

Plaintiff then filed his Class and Representative Action Complaint, asserting the following claims: (1) failure to pay minimum wages pursuant to Labor Code sections 221, 350, 351, 1194, 1194.2, 1197, 1197.1, and California Industrial Welfare Commission ("IWC") Wage Order No. 5-2001; (2) failure to pay overtime pursuant to Labor Code sections 510 and 1198, and IWC Wage Order No. 5-2001; (3) failure to provide meal period premiums in violation of Labor Code sections 226.7, 512, and IWC Wage Order No. 5-2001; (4) failure to provide rest period premiums in violation of Labor Code section 226.7 and IWC Wage Order No. 5-2001; (5) failure to maintain and provide accurate itemized wage statements in violation of Labor Code sections 226, 226.3, and 1174; (6) failure to pay wages timely during employment and upon termination in violation of Labor Code sections 201-204, and 210; (7) failure to reimburse business expenses in violation of Labor Code sections 2800 and 2802; (8) violations of Business and Professions Code sections 17200 *et seq.*, and (9) penalties pursuant to PAGA. (Orshansky Decl. ¶ 22.)

Plaintiff's lawsuit thus sought to recover unpaid wages, premiums for non-compliant meal and rest breaks, reimbursement of business expenses, penalties for improper wage statements,

1 restitution, liquidated damages, waiting time penalties, civil penalties under PAGA, injunctive and
2 other equitable relief, prejudgment interest, and attorneys' fees and costs. (Orshansky Decl. ¶ 23.)

3 Defendants deny Plaintiff's allegations of wrongdoing. (Settlement Agreement ¶¶ 42, 45;
4 Orshansky Decl. ¶ 24.) Defendants do not believe that any liability to Plaintiff, Class Members, or
5 PAGA Group Members exists, or that Plaintiff, Class Members, or PAGA Group Members are
6 entitled to any recovery. (Orshansky Decl. ¶ 24.) In settling, Defendants do not admit liability with
7 respect to the alleged claims made by Plaintiff and make no admission regarding any facts or law
8 related to the action. (Settlement Agreement ¶¶ 42, 45; Orshansky Decl. ¶ 24.)

9 **A. Discovery and Investigation**

10 Prior to initiating the lawsuit, Class Counsel independently and thoroughly investigated the
11 claims and considered the facts and circumstances underlying the pertinent issues and applicable
12 law. (Orshansky Decl. ¶ 19.) This required thorough discussions and interviews with Plaintiff and
13 other Class Members as well as research into the various legal issues involved in the case. (*Ibid.*)
14 After conducting their initial investigation, Class Counsel determined that the claims were well
15 suited for class action adjudication owing to what appeared to be a common course of conduct
16 affecting a similarly situated group of employees. (*Ibid.*)

17 Notwithstanding that the Parties explored resolution prior to briefing on class certification,
18 Class Counsel propounded formal written discovery consisting of multiple sets of requests for
19 production of documents to each of the Defendants (172 requests in the aggregate), and special
20 interrogatories regarding wage and hour policies and procedures, plus special interrogatories
21 seeking putative class contact information, to each of the Defendants (74 special interrogatories in
22 the aggregate). (Orshansky Decl. ¶ 25.) The Parties also met and conferred over the formal
23 discovery, along with a contemplated *Belaire-West* opt-out notice. (Orshansky Decl. ¶ 25.) In
24 advance of mediation, Plaintiff also made an informal discovery request for information and
25 documents that further expanded on the discovery sought. (*Ibid.*)

26 Class Counsel's discovery and investigation yielded information and substantial
27 documentation concerning the claims alleged, such as Plaintiff's personnel file and Defendants'
28 written policies concerning the claims at issue, including, Defendants' employee handbooks,

1 policies and procedures regarding the payment of wages, the provision of meal and rest breaks, time
2 keeping policies, such as recording hours, issuance of wage statements, and providing all wages at
3 separation. (Orshansky Decl. ¶ 26.) Defendants also provided composite data for the Class,
4 including total number of putative class members; mix of current versus former non-exempt
5 employees; total number of pay periods; total number of workweeks; and the average hourly rate in
6 effect, and produced a random sample of 18.7% of time and pay records for Class Members.² (*Id.*
7 at ¶ 27.)

8 Class Counsel analyzed the documents and data produced to determine Defendants' degree
9 of liability and potential amounts due in damages. (Orshansky Decl. ¶ 28.)

10 **B. Mediation and Settlement**

11 Thereafter, the Parties participated in a mediation session with the Honorable Lisa Hart Cole
12 (Ret.) of Signature Resolution, where they debated and discussed their respective positions.
13 (Orshansky Decl. ¶ 29.) In addition to her nearly twenty-five (25) years on the bench, Judge Cole is
14 experienced in mediating and arbitrating complex general litigation, labor and employment claims,
15 class actions, and PAGA cases, among others. (*Ibid.*) During the mediation, the Parties exchanged
16 further information and discussed all aspects of the case, including the risks and delays of litigation
17 and the risk to both Parties for proceeding with a motion for class certification and liability under
18 the claims asserted, along with the potential for PAGA penalties to be asserted. (*Ibid.*) These were
19 contentious issues because of the factual and legal complexity of the case. (*Ibid.*)

20 The case did not settle at mediation. (Orshansky Decl. ¶ 30.) After continued settlement
21 negotiations with the assistance of Judge Cole, on November 17, 2022, a written mediator's proposal
22 was made to all parties with an expiration date of December 5, 2022; however, the matter still did
23 not resolve. (*Ibid.*) After further mediator facilitation and months of continued negotiations, on
24 March 8, 2023, the Parties agreed to resolve the matter and reached the terms of this proposed arm's-
25 length settlement. (*Ibid.*) The settlement negotiations were hard fought and conducted in good faith

26 ² Courts have found that the use of similar percentage samples is appropriate. (*See e.g., Brum v.*
27 *MarketSource, Inc.* (E.D.Cal. 2018) 2018 WL 3861558, at *5 [10% sample]; *Talavera v. Sun Maid*
28 *Growers of California* (E.D.Cal. 2017) 2017 WL 495635, at *4 [10% sample]; *Kaminske v. JP*
Morgan Chase Bank N.A. (C.D.Cal. 2010) 2010 WL 5782995, at *5 [10% sample].)

1 and at arm's length between attorneys with substantial experience litigating class actions,
2 representative actions, and wage and hour cases. (*Id.* at ¶ 31.) The settlement was the product of a
3 non-collusive settlement process in which the Parties were forced to make significant compromises
4 in the interest of reaching a full and complete settlement of the action. (*Ibid.*)

5 From Class Counsel's review of the facts, strengths, and weaknesses of the case, the risks
6 and delays posed by further litigation, and Class Counsel's own prior litigation experience, Class
7 Counsel believe that the recovery being made available to Class Members and PAGA Group
8 Members is fair, reasonable, and adequate taking into consideration the amounts received in other
9 wage and hour class and representative actions, the risks inherent in litigation of this genre, and the
10 reasonable tailoring of each Class Member's and PAGA Group Member's claim to the settlement
11 award he or she will receive. (Orshansky Decl. ¶ 32.) Class Counsel believe that the settlement serves
12 the best interests of Class Members and PAGA Group Members. (*Ibid.*) The Parties have concluded
13 that it is in their best interests to compromise, settle, and accept the terms of the Settlement
14 Agreement. (Settlement Agreement ¶ 41.)

15 The Motion for Preliminary Approval of the Class and Representative Action Settlement and
16 supporting documents (with the original Settlement Agreement) were filed on August 14, 2023.
17 (Orshansky Decl. ¶ 12.) Following the hearing on the Motion for Preliminary Approval, and the
18 submission of supplemental documents and the Amended Settlement Agreement per the Court's
19 instructions, the Court granted the Motion on December 1, 2023, preliminarily approving the
20 settlement as set forth in the Amended Settlement Agreement (referred to herein as the Settlement
21 Agreement), a true and correct copy of which is attached to the Orshansky Declaration as **Exhibit**
22 **A.** (*See* Amended Order Granting Preliminary Approval of Class and Representative Action
23 Settlement entered December 1, 2023.)

24 On February 16, 2024, after performing a National Change of Address ("NCOA") search to
25 update and verify addresses for Class Members, the Settlement Administrator, CPT Group, Inc.
26 ("CPT"), mailed the Court Approved Notice of Class Action Settlement and Hearing Date for Final
27 Court Approval ("Class Notice") via U.S. first class mail to all Class Members and PAGA Group
28 Members. (*See* Morales Decl. ¶¶ 6-7.) The finalized 8-page Class Notice was printed in both English

1 and Spanish. (Morales Decl. ¶ 4 and Exh. A.) As a result of the NCOA search, CPT was able to
2 locate 120 new addresses. (*Id.* at ¶ 6.) Class Members had until April 1, 2024 to submit disputes,
3 requests for exclusion, or objections. (*Id.* at ¶ 7.) In the interim, some of the Class Notices mailed
4 by CPT were returned as undeliverable, but CPT received updated addresses and/or conducted
5 further skip-trace searches, and thereafter remailed 62 Class Notices. (*Id.* at ¶ 8.) As of the date of
6 this filing, CPT has received no objections, and one request for exclusion out of 1,547 Class
7 Members, for a participation rate of 99.94%. (*Id.* at ¶¶ 10-12.) Given the participation rate and
8 estimated deductions from the Gross Settlement Amount, the average individual settlement payment
9 to Settlement Class Members is \$402.33. (*Id.* at ¶ 12.) Plaintiff now respectfully submits the
10 settlement for this Court’s final approval.

11 **III. SUMMARY OF THE SETTLEMENT AND NOTICE PROCESS**

12 **A. The Class Definition**

13 For settlement purposes only, the Class to be confirmed for certification is as follows: all
14 individuals who are or previously were employed by one or more Defendants in the State of
15 California who were classified as hourly, non-exempt employees during the period from December
16 23, 2016 to December 31, 2022. (Settlement Agreement ¶¶ 4, 7.)

17 **B. Monetary Terms**

18 Defendants have agreed to pay a non-reversionary settlement amount of One Million Two
19 Hundred Thousand Dollars (\$1,200,000) (“Gross Settlement Amount”). (Settlement Agreement ¶¶
20 14, 49; Orshansky Decl. ¶ 4.) The Gross Settlement Amount shall be inclusive of all settlement
21 payments to Settlement Class Members, the Service Award to Plaintiff as the Class Representative,
22 the Settlement Administration Expenses to the Settlement Administrator, the Attorneys’ Fees and
23 Costs to Class Counsel, and the PAGA Payment, including payment to PAGA Group Members and
24 to the LWDA for civil penalties pursuant to statute. (Orshansky Decl. ¶ 5.) The Net Settlement
25 Amount is the amount remaining from the Gross Settlement Amount after deducting Court-
26 approved amounts for Class Counsel’s attorneys’ fees (*i.e.*, \$400,000), reimbursement of litigation
27 costs to Class Counsel (*i.e.*, \$14,705.09 [which is less than the agreed upon \$25,000]), the Service
28 Payment to the Class Representative (*i.e.*, \$8,000), PAGA Payment (*i.e.*, \$120,000—of which 75%

1 is allocated for payment to the LWDA for civil penalties pursuant to statute and 25% is to be
2 distributed to all PAGA Group Members), and Settlement Administrator Expenses (*i.e.*, \$25,000).
3 (Settlement Agreement ¶ 49; Orshansky Decl. ¶ 7.) Based on these figures, the Net Settlement
4 Amount is approximately \$632,294.91.³ (Orshansky Decl. ¶ 6.) The average individual settlement
5 payment is estimated at \$402.33. (Morales Decl. ¶ 12.)

6 As a non-reversionary settlement, the entire Net Settlement Amount shall be paid out to
7 Settlement Class Members. Settlement Class Members shall automatically receive payments
8 without the need to submit a claim form, and PAGA Group Members shall receive PAGA payments
9 irrespective of whether they opt out. (Settlement Agreement ¶¶ 22, 46(d); Orshansky Decl. ¶ 6.)

10 The Net Settlement Amount will be the amount that is available for distribution to Settlement
11 Class Members on a pro rata basis based on workweeks during the Class Period. (Settlement
12 Agreement ¶ 49(e); Orshansky Decl. ¶ 7.) Each Settlement Class Member's individual share
13 ("Individual Settlement Share") shall be calculated as follows: the sum of all Settlement Class
14 Members' individual workweeks will be the "Total Workweeks," and the Net Settlement Amount
15 will be divided by the Total Workweeks to yield the "Workweeks Value." (Orshansky Decl. ¶ 7.)
16 Then, each Settlement Class Member's Individual Settlement Share will be determined by
17 multiplying his or her individual workweeks by the Workweek Value. (*Ibid.*)

18 In addition, each PAGA Group Member will receive a proportional share of the 25% of the
19 PAGA Payment on a pro rata basis based on pay periods during the PAGA Period (*i.e.*, individual
20 recovery depends on each PAGA Group Member's ratio of his or her pay periods relative to the
21 total of pay periods of all PAGA Group Members), irrespective of whether he or she is a Settlement
22 Class Member. (Settlement Agreement ¶ 49(d); Orshansky Decl. ¶ 8.)

23 The net payment to each Settlement Class Member will be the sum of his or Individual
24 Settlement Share plus, if applicable, the individual PAGA payment (collectively, "Individual
25 Settlement Payment"). (Settlement Agreement ¶¶ 15, 49(f); Orshansky Decl. ¶ 9.) As a result of the
26

27 ³ The Parties originally estimated the Net Settlement Amount at \$622,000. However, the actual Net
28 Settlement Amount is \$632,294.91 because Class Counsel's actual litigation costs are \$14,705.09
(*see* Orshansky Decl. ¶ 124), which is less than the allocated costs amount of \$25,000.

1 distribution formula, the consideration paid to each Settlement Class Member and PAGA Group
2 Member is tailored to the impact of Defendants’ alleged violations as well as to the claims he or she
3 is releasing. (Orshansky Decl. ¶ 9.)

4 Payments to the Settlement Class Members will be classified as twenty percent (20%) wages
5 to be reported on an IRS Form W-2, and eighty percent (80%) penalties and interest to be reported
6 on an IRS Form 1099. (Settlement Agreement ¶ 51(a); Orshansky Decl. ¶ 11.)

7 **C. Summary of Notice Process**

8 On January 28, 2024, counsel for Defendant provided CPT, the Court-approved Settlement
9 Administrator, with a list of Class Members containing their last known mailing addresses, Social
10 Security numbers, and employment dates during the Class Period and PAGA Period (“Class List”).
11 (Morales Decl. ¶ 5.) The Class List contained 1,547 Class Members. (*Ibid.*) After performing a
12 NCOA search to update and verify addresses, CPT mailed the Class Notice via U.S. first class mail
13 to all Class Members and PAGA Group Members. (*Id.* at ¶¶ 6-7.) As a result of either a skip trace,
14 request from counsel or the Class Member, a total of 62 Class Notices have been re-mailed. (*Id.* at ¶
15 8.) Class Members had until April 1, 2024 to submit disputes, requests for exclusion, or objections.
16 (*Id.* at ¶ 7.) As of the date of this filing, not a single Class Member has objected to the settlement,
17 and only one Class Member opted out of the class settlement. (*Id.* at ¶¶ 9-11.)

18 **D. Timing of Payments**

19 The settlement calls for the Gross Settlement Amount along with employer payroll taxes
20 owed on the wage portion of the Individual Settlement Payments to be funded within fifteen (15)
21 calendar days after the Effective Date.⁴ (Settlement Agreement ¶ 59(a).) Within ten (10) calendar
22 days after Defendants fully fund the Gross Settlement Amount, the Settlement Administrator shall
23 distribute the following: (a) payment of the Court-approved Service Award to Plaintiff; (b) payment
24 to the LWDA for its 75% portion of the PAGA Payment; (c) payment of the Court-approved

25 _____
26 ⁴ “Effective Date” means the date of entry of the Final Approval Order if no objections to the
27 settlement are filed. If objections are filed and overruled or withdrawn, and no appeal is taken, then
28 the Effective Date will be sixty-five (65) calendar days after the entry of the Final Approval Order.
If an appeal is taken from the Court’s overruling of objections to the settlement, then the Effective
Date will be twenty (20) calendar days after the appeal is dismissed or after an appellate decision
affirming the Final Approval Order becomes final. (Settlement Agreement ¶ 11.)

1 Settlement Administration Expenses; (d) payment of the Court-approved Attorneys' Fees and Costs
2 to Class Counsel; and (e) payment of the Individual Settlement Payments to Settlement Class
3 Members and PAGA Group Members. (Settlement Agreement ¶ 59(c).)

4 **IV. ARGUMENT**

5 **A. This Court Should Confirm Its Conditional Certification of the Settlement Class**
6 **for Settlement Purposes Because It Meets All of the Requirements for Class**
7 **Certification under Code Civ. Proc., § 382**

8 Under Code of Civil Procedure section 382, a class may be certified if: (1) it is ascertainable
9 and its members are too numerous for joinder to be practical; (2) the representative and absent class
10 members share a community of interest, and questions of law and fact common to the class
11 predominate over questions unique to individual class members; (3) the representative's claims are
12 typical of the class's claims; and (4) the representative will fairly and adequately represent the
13 class's interests. (*See Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470.) .) Here, this
14 Court found that the Settlement Class meets all the requirements for class certification for settlement
15 purposes when it granted preliminary approval of the settlement (as set forth in the Amended
16 Settlement Agreement) on December 1, 2023. (*See* Amended Order Granting Preliminary Approval
17 of Class and Representative Action Settlement entered December 1, 2023; Orshansky Decl. ¶ 12.)
18 Since then, no events have cast doubt on the propriety of this determination, and in fact, the reaction
19 of the Class Members has thus far been overwhelmingly supportive of the settlement, not a single
20 Class Member objected to the settlement and only one Class Member, out of a total of 1,547, opted
21 out of the class settlement, resulting in an outstanding 99.94% settlement participation rate. (*See*
22 *Morales Decl.* ¶¶ 10-12.) This Court should therefore confirm its conditional certification of the
23 Settlement Class.

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

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

1 to class members. (*Malibu Outrigger Bd. of Governors v. Superior Court* (1980) 103 Cal.App.3d
2 573, 578-79.) This approval process consists of preliminary settlement approval, notice given to
3 class members, and a final fairness and approval hearing at which class members have the
4 opportunity to be heard with respect to the settlement. (*Ibid.*) Now that notice has been provided to
5 Class Members, Plaintiff respectfully requests that the Court finally approve the settlement as fair,
6 adequate, and reasonable.

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

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

20 [T]he strength of plaintiffs’ case, the risk, expense, complexity and likely duration of
21 further litigation, the risk of maintaining class action status through trial, the amount
22 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.

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

26 “In the context of a settlement agreement, the test is not the maximum amount plaintiffs
27 might have obtained at trial on the complaint, but rather whether the settlement is reasonable under
28 all of the circumstances.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 250.)

1 Because settlements inherently involve compromise, even settlements providing for substantially
2 narrower relief than what may be obtained if the suit were successfully litigated can be reasonable
3 because “the public interest may indeed be served by a voluntary settlement in which each side gives
4 ground in the interest of avoiding litigation.” (*Ibid.* [quoting *Air Lines Stewards, etc., Local 550 v.*
5 *American Airlines, Inc.* (7th Cir. 1972) 455 F.2d 101, 109].)

6 Here, the settlement resulted from extensive arm’s-length settlement negotiations between
7 qualified and experienced counsel with the assistance of a well-respected mediator. (*See* Orshansky
8 Decl. ¶¶ 29-31.) While Plaintiff maintains that his claims are meritorious, Plaintiff acknowledges
9 the substantial risks and uncertainty in proceeding with class certification and eventually trial, which
10 justify a downward departure from the maximum exposure that Plaintiff calculated that each claim
11 carried. (*Id.* at ¶¶ 34-36.) For the reasons discussed herein, Class Counsel posit that the settlement is
12 fair, adequate, and reasonable for all Settlement Class Members and PAGA Group Members.

13 Defendants presented numerous defenses to Plaintiff’s claims, both on the merits and with
14 respect to class certification. (Orshansky Decl. ¶ 35.) For example, Defendants defended against the
15 minimum and overtime wage claims by relying on written policies that explicitly required Class
16 Members to certify the accuracy of time recorded and further required pre-authorization for overtime
17 work. (Orshansky Decl. ¶ 36.) Defendants argued that any alleged off-the-clock hours, to the extent
18 such work was performed, are unquantifiable and de minimis. (*Ibid.*) Defendants further contended
19 that, as of 2017, employees were required to sign a “Meal Break Waiver Form,” which would
20 significantly ameliorate any meal period liability. (*Ibid.*) Moreover, after Plaintiff initiated this
21 lawsuit, Defendants allege they have rolled out an arbitration agreement policy for new hire and
22 rehire employees. (*Ibid.*) Finally, Defendants argued that Class Members worked in different store
23 locations and had different job positions and duties and that, as a result, Defendants contended there
24 is a variation in circumstances raising highly individualized questions of fact. (*Ibid.*) These were
25 contentious issues because of the factual and legal complexity of the case (*i.e.*, purported on-duty
26 meal break waivers, evidentiary difficulty of proving off-the-clock claims and the post-litigation
27 implementation of an arbitration policy for new hires and re-hires) as well as legal uncertainty
28 regarding many of the central issues of the litigation (*i.e.*, certification, liability, and devising a

1 theory that properly measures monetary recovery, especially given overlap of penalties and
2 arguments against stacking). (*Ibid.*) Even if Plaintiff prevailed and certified a class action, there is
3 no guarantee Defendants would not later move for and obtain decertification. (*Id.* at ¶ 39.) If the
4 Court either denied class certification or later decertified it, the Class would recover nothing, and
5 Class Members would be forced to retain their own counsel and proceed on the basis of individual
6 claims only. (*Ibid.*)

7 Applying the *Clark* and *Kullar* analysis, Class Counsel's valuation is that the Gross
8 Settlement Amount reflects an estimated 15% to 25% of the maximum-to-realistic possible damages
9 recoverable at trial. (Orshansky Decl. ¶ 41.) Specifically, the Parties posited as follows:

10 **Unpaid Minimum and Overtime Wage Claims.** Plaintiff, along with other hourly non-
11 exempt employees, performed pre- and post-shift off-the-clock work to minimize the incidence of
12 overtime. (Orshansky Decl. ¶ 43.) Plaintiff estimated that that Defendants are liable for an aggregate
13 of approximately ten (10) minutes of unpaid straight and overtime pay per shift (or, fifty (50)
14 minutes per workweek) attributed to uncompensated time. (*Id.* at ¶ 45) Data produced by Defendants
15 showed 16.4% of Class Members' shifts were greater than 8 hours in length. (*Id.* at ¶ 43.) However,
16 Defendants contended that Plaintiff's claim for off-the-clock work is not amenable to class
17 treatment, because employees worked in a variety of job positions with different requirements,
18 across nine store locations, and it would require an unmanageable series of mini-trials to determine
19 how much time was actually worked without pay. (*Id.* at ¶ 46.) Further, in terms of merit defenses,
20 Defendants vigorously disagreed with Plaintiff's theories regarding how much off-the-clock work
21 occurred in reality, and the credibility of those claimed hours, given Defendants' express written
22 policies to the contrary. (*Id.* at ¶ 47.) Defendant also responded that such off-the-clock time is
23 unauthorized and de minimis. (*Id.* at ¶ 49.) Plaintiff countered that such defense lacks viability in
24 light of *Troester v. Starbucks Corp.* (2018) 5 Cal.5th 829, given that the California Supreme Court
25 refused to allow the de minimis defense to insulate Starbucks from having to pay employees for
26 small amounts of work regularly performed off-the-clock. (Orshansky Decl. ¶ 49.) What is not clear,
27 however, is to what extent the de minimis defense would apply where uncaptured hours were
28 associated with an occasional recurring activity. (*Ibid.*) Plaintiff recognizes that off-the-clock claims

1 are inherently difficult to prove in the absence of recordkeeping. (*Id.* at ¶ 48.) In light of these
2 arguments, Plaintiff applied appropriate discounts for the risk of non-certification and being
3 unsuccessful on the merits. (*Id.* at ¶ 50.)

4 **Meal and Rest Period Violations.** On February 25, 2021, in *Donohue v. AMN Services,*
5 *LLC* (2021) 11 Cal.5th 58, the California Supreme Court reversed the Fourth Appellate District and
6 set forth two clear rules: (1) employers are not permitted to round time records when determining if
7 employees are entitled to meal premium pay, and (2) it is the employer’s burden to show that
8 compliant meal periods were provided to employees if the time records show otherwise.

9 Although Defendants’ meal period policies were theoretically compliant, the Parties
10 diverged on one significant issue: the validity—or invalidity—of Defendants’ meal break waiver
11 form. (Orshansky Decl. ¶ 52.) Plaintiff contended that the meal break waiver form does not actually
12 say that an employee is waiving his or her 30-minute meal break, only that said options exists. (*Ibid.*)
13 Without the express waiver by mutual consent of the employee, the document does nothing to alter
14 employees’ meal break rights. (*Ibid.*) Further, in actual practice, Plaintiff’s review of the data of
15 employee time-punches demonstrates Defendants’ non-compliance—records produced by
16 Defendants indicated that meal periods were often “missed,” “short,” or “late,” and that second meal
17 periods for shifts worked in excess of ten (10) hours were nearly non-existent. (*Id.* at ¶ 53.) Further,
18 there is no indication that Defendants made anywhere close to a corresponding equivalent of meal
19 period premiums for “missed,” “short,” or “late” meal periods. (Orshansky Decl. ¶ 54; *c.f.* IWC
20 Wage Order No. 5-2001, § 11(b).) Consequently, Plaintiff alleges that Defendants violated Labor
21 Code sections 226.7 and 512, and applicable Wage Orders, by failing to compensate Plaintiff and
22 Class Members for short, late, interrupted, and missed meal periods. (Orshansky Decl. ¶ 54.)

23 Defendants, however, contended that they had practices, policies, and procedures to provide
24 meal and rest breaks every workday to their employees that fully complied with the law. (Orshansky
25 Decl. ¶ 55.) Foremost, Defendants raised the affirmative defense of reliance on a valid meal break
26 waiver—if credited, the meal break waiver would substantially reduce the alleged meal break
27 violation rate and undercut Plaintiff’s theory of liability. For shifts exceeding six hours and outside
28 the reach of the meal break waivers, Defendants vehemently argued that they complied with the

1 requirements articulated by the California Supreme Court in *Brinker Restaurant Corp. v. Superior*
2 *Court* (2012) 53 Cal.4th 1004. (Orshansky Decl. ¶ 56.) Specifically, Defendants maintained that
3 they provided employees with a reasonable opportunity to take timely meal periods of at least 30
4 minutes, relieved employees of all duties during meal periods, and relinquished control over
5 employees' activities, including the ability to leave the premises to take meal periods. (*Ibid.*)

6 Plaintiff faced significant challenges to his Labor Code section 226.7 meal period liability
7 claim for two reasons. (Orshansky Decl. ¶ 57.) First, the existence of the signed meal break waivers
8 posed a serious risk in terms of the legal obligations imposed and evidence that may be used to
9 prove liability and damages. (*Ibid.*) Second, like most employers facing meal period litigation,
10 Defendants argued that where time records otherwise show a deficiency, employees were apprised
11 of their right to take meal periods but chose to voluntarily waive them. (Orshansky Decl. ¶ 58.)
12 Defendants contended that the issue of voluntary waiver would necessarily devolve into a series of
13 individualized mini-trials, precluding class certification (*Ibid.*; see *Duran v. U.S. Bank National*
14 *Association* (2014) 59 Cal.4th 1, 25 [holding that the defendant must be provided an opportunity to
15 litigate affirmative defenses, even when they turn on individual questions].) To account for the
16 above-described certification and liability risks, Plaintiff applied an appropriate discount to the
17 maximum value of this claim. (Orshansky Decl. ¶ 61.)

18 Plaintiff also alleged that hourly employees 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 ¶ 61.) Due to Defendants' work demands and inadequate staffing, Plaintiff and hourly employees
22 did not receive timely rest breaks, nor did Defendants relinquish control over how employees spent
23 their 10-minute rest breaks. (*Ibid.*) Significantly, Plaintiff did not receive rest break premium
24 payments for non-compliant rest breaks, nor is there evidence that Defendants made rest break
25 premium payments to Class Members. (*Id.* at ¶ 62.)

26 Defendants again disputed liability and damages. (Orshansky Decl. ¶ 63.) Defendants
27 maintained that they authorized and permitted duty-free rest breaks of not less than ten minutes for
28

1 every major fraction of four hours worked. (*Ibid.*) Defendants explained that Class Members had
2 ample opportunity to take, and did take, regular rest breaks. (*Ibid.*)

3 Unlike meal periods, rest breaks need not be recorded, and thus establishing Defendants'
4 exertion of pressure, control, and resulting violations is likely to be more difficult. (Orshansky Decl.
5 ¶ 64.) Class Counsel applied a violation rate for Class Members' rest breaks that is roughly half of
6 the 44.5% violation rate of meal breaks. (*Ibid.*) For settlement purposes, however, Class Counsel
7 applied appropriate discounts to account for the difficulties of certifying and proving unrecorded
8 rest break violations. (*Ibid.*)

9 **Unreimbursed Expenses.** Plaintiff and Class Members alleged that they incurred costs for
10 dress-code compliant attire, as well as costs associated with use of a personal vehicle for business
11 purposes, and personal cell phone use for business purposes, yet Defendants failed to reimburse for
12 these necessary business expenses. (Orshansky Decl. ¶ 65.) Consequently, Plaintiffs alleged that
13 Defendants violated Labor Code section 2802, subdivision (a), for failing to reimburse all necessary
14 business expenses incurred.

15 For settlement purposes, with recognition that this claim is difficult to certify class-wide and
16 quantify in terms of damages, Plaintiff assigned a relatively nominal flat \$50 rate per Class Member.
17 (Orshansky Decl. ¶ 66.)

18 **Wage Statement Violations.** Plaintiff alleged a cause of action under Labor Code section
19 226, subdivision (a), for Defendants' failure to provide accurate itemized wage statements.
20 (Orshansky Decl. ¶ 67.) This cause of action is derivative of the foregoing causes of action because
21 if Defendants did not provide minimum and overtime wages for all hours worked, or owed
22 premiums for non-compliant meal and rest breaks, unreimbursed business expenses, and so forth,
23 then the wage statements were inevitably inaccurate. (*Ibid.*) Failure to comply with the statute
24 entitles employees to recover the greater of all actual damages or fifty dollars (\$50) for the initial
25 pay period in which a violation occurs and one hundred dollars (\$100) for each violation in a
26 subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000). (Lab.
27 Code, § 226, subd. (e).) Defendants contended, however, that Labor Code section 226, subdivision
28 (e), penalties are not automatic; rather, the employee must show that Defendants' noncompliance

1 was “knowing and intentional.” (Orshansky Decl. ¶ 68.) Defendants suggested that any
2 noncompliance was not knowing and intentional. (*Ibid.*) For example, Defendants argued that any
3 wage statement penalties derivative of non-compliant meal and rest breaks are not appropriate
4 because entitlement to such penalties was not clearly established law until the May 2022 California
5 Supreme Court decision in *Naranjo v. Spectrum Security Services, Inc.* (2022) 15 Cal.5th 93.⁵
6 (Orshansky Decl. ¶ 68.) The fluctuating legal landscape thus arguably engendered a good-faith
7 dispute and potential safe harbor defense precluding penalties.

8 Because the damages for this cause of action are penalties, the statute of limitations is only
9 one year prior to the filing of the original complaint. (Code Civ. Proc., § 340.) The Parties discussed
10 these issues, and in light of these considerations, Class Counsel factored in a reduction of liability
11 and damages to estimate the wage statement violation exposure. (Orshansky Decl. ¶ 69.)

12 **Waiting Time Violations.** Plaintiff further asserted causes of action against Defendants
13 for failure to timely pay all wages due employees at separation (*see* Lab. Code, §§ 201-203).
14 (Orshansky Decl. ¶ 70.) As with other claims, Defendants vigorously disagreed that they engaged
15 in any conduct giving rise to liability or entitlement to recovery of penalties or equitable relief.
16 (*Ibid.*) For example, Defendants argued that waiting time penalties are not appropriate because
17 they attempted to pay employees all final wages owed in good faith upon their separation, thereby
18 precluding a finding of willfulness necessary to obtain waiting time penalties. (*Id.* at ¶ 71.)
19 Moreover, Defendants maintained that no waiting time penalties were recoverable from alleged
20 meal or rest period violations. (*Ibid.*) Again, Defendants argued that payment of waiting-time
21 penalties are not appropriate here because entitlement to such penalties for missed meal breaks
22 and rest periods was not clearly established law until the May 2022 California Supreme Court
23 decision in *Naranjo, supra*, 15 Cal.5th 93. (Orshansky Decl. ¶ 72.) As with wage statements, the
24 fluctuating legal landscape arguably engendered a good-faith dispute and potential safe harbor
25 defense precluding penalties. (*Ibid.*) To account for the uncertainty of proving the underlying
26

27 ⁵ Post-mediation, the appellate court, re-visiting *Naranjo* on remand, substantiated such arguments.
28 (*See Naranjo v. Spectrum Security Services, Inc.* (2023) 88 Cal.App.5th 937, review granted May
31, 2023, No. S279397.)

1 claims amid the fluctuating legal landscape, Plaintiff factored in a thirty percent reduction from
2 the estimated maximum value of this claim. (*Id.* at ¶ 73.)

3 **PAGA Penalties.** The success of Plaintiff’s PAGA claim is wholly dependent upon the
4 success of his underlying claims occurring within the one-year statute of limitations applicable to
5 the PAGA. (Orshansky Decl. ¶ 74.) In response, Defendants contended that these penalties are
6 derived from the underlying wage and hour violations discussed above, which Defendants dispute.
7 (*Id.* at ¶ 75.) Defendants maintained, and continue to maintain, that they had legally compliant
8 employment policies and practices throughout the statutory period. (*Ibid.*) Defendants denied, and
9 continue to deny, that they ever violated any provision of the California Labor Code and argued
10 that, even assuming such violations occurred, Defendants will not be treated as having engaged in
11 subsequent violations giving rise to heightened penalties. (*Ibid.*) In other words, Defendants argued
12 that heightened civil penalties for subsequent violations would not be assessed unless it could be
13 shown that Defendants had notice that they were violating the law, *e.g.*, having been cited by a labor
14 agency or adjudged by a court to have done so. (*Ibid.*; *see, e.g., Amaral v. Cintas Corp.* (2008) 163
15 Cal.4th 1157, 1209.) Thus, Defendants contended that, at best, even if a violation giving rise to a
16 penalty was shown for each pay period, only the lower civil penalty associated with initial violations
17 would apply. (Orshansky Decl. ¶ 75.) Defendants further postured that because since March 15,
18 2021, new hire and rehire employees were required to sign arbitration agreements, that further risk
19 should be factored in light of the United States Supreme Court’s decision in *Viking River Cruises,*
20 *Inc. v. Moriana* (2022) ___ U.S. ___ [142 S.Ct. 1906]. (Orshansky Decl. ¶ 76.)

21 Class Counsel applied discounts for the risks involving the post-March 2021 pay periods in
22 light of *Viking River*, as well as for the risks involved with establishing manageability and possible
23 bifurcation of discovery and/or trial, the risks regarding success on the merits and establishing
24 liability, and the risks with proving the extent of penalties that are warranted and possible
25 discretionary reduction of penalties by the Court. (Orshansky Decl. ¶¶ 78-79.)

26 **Summary.** The foregoing considerations not only bore heavily on the negotiations leading
27 to the settlement, but also confirm that the settlement is a fair, adequate, and reasonable compromise
28 in view of the risks of further litigation. Class Counsel took into consideration, when valuing the

1 merits of these claims, the chances of prevailing on the derivative causes of action, as well as the
2 additional hurdles of prevailing under each standalone cause of action in light of the defenses raised
3 and applied the appropriate discounts. These factors each indicated that the interests of Settlement
4 Class Members and PAGA Group Members are best served by a settlement of this action in the
5 manner and upon the terms set forth in the Settlement Agreement.

6 Plaintiff and Class Counsel carefully vetted the claims at issue to arrive at a comprehensive
7 damages model for Defendants' liability. (Orshansky Decl. ¶ 34.) After calculating the realistic
8 possible recovery to Class Members for each claim, the aggregate result was \$7,847,147.00 in total
9 damages and penalties. (Orshansky Decl. ¶ 80.) Thus, the proposed settlement amount of \$1,200,000
10 represents an approximate 15% of Plaintiff's potential realistic recovery, while avoiding the further
11 expense and serious risk of proceeding toward class certification and trial. (*Ibid.*) Plaintiff reiterates
12 that at least two highly contested issues—*i.e.*, the purported meal break waiver and post-March 2021
13 arbitration agreements—posed risks akin to all-or-nothing that, if played out, could drastically alter
14 potential recoveries. (*Ibid.*) After assuming multiple discounts tailored to the various claims for these
15 risks as well as others, Plaintiff estimated that approximately \$4,765,688 would be the realistic value
16 of Class Members' claims, for which \$1,200,000 therefore represents 25% of the realistic possible
17 exposure for Defendants. (*Id.* at ¶ 81.) In sum, the data coupled with factual and legal analysis shows
18 that the settlement reflects an estimated range of 15%-25% of the potential maximum/realistic
19 damages recoverable at trial. (*Ibid.*)

20 “The fact that a proposed settlement may only amount to a fraction of the potential recovery
21 does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be
22 disapproved.” (*Linney v. Cellular Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242 [internal
23 quotations omitted]; *see, e.g., Altamirano v. Shaw Industries, Inc.* (N.D.Cal. 2015) 2015 WL
24 4512372, at *9 [preliminarily approving wage and hour class action settlement stating, “[a]lthough
25 15% represents a modest fraction of the hypothetical maximum recovery estimated by Plaintiff, that
26 figure is sufficient for the Court to grant preliminary approval given the merits of Plaintiff's
27 claims.”].) Taking into account the risks of non-certification, failure to prevail on the merits, and the
28

1 Court's power to reduce the civil penalties, the proposed settlement falls within the realm of being
2 fair, reasonable, and adequate. (Orshansky Decl. ¶ 82.)

3 For reasons of economy and space, Plaintiff refers the Court to his prior preliminary approval
4 filing, and to the concurrently filed Orshansky Declaration, for a detailed *Clark* and *Kullar* analysis.
5 While the above-described risks are far from exhaustive, they demonstrate that the settlement is fair,
6 adequate, and reasonable in light of them.

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

11 Individual settlement payments will be calculated based on the number of workweeks
12 worked by each Settlement Class Member during the Class Period, and the number of pay periods
13 worked by each PAGA Group Member during the PAGA Period. This method of distribution
14 compensates Settlement Class Members and PAGA Group Members based on the estimated extent
15 of their injuries, as individuals employed for a longer period would have been subject to more of the
16 alleged wage and hour violations than those who employed for a shorter period. Thus, the formulas
17 for compensating Settlement Class Members and PAGA Group Members are fair, adequate, and
18 reasonable, as they are tethered to the damages and penalties that could be recovered by them. (*See*
19 discussion in III.B, *supra*.)

20 **3. The Absence of Any Objections Confirms That the Settlement is Fair,**
21 **Adequate, and Reasonable.**

22 The Class Members' response to the settlement is relevant in evaluating whether it merits
23 final approval. (*Dunk, supra*, 48 Cal.App.4th at p. 1801.) Further, the absence of objections and
24 requests for exclusion support a fairness presumption. (*See 7-Eleven Owners for Fair Franchising*
25 *v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1152-53 [finding 9 objections and 80 opt-outs
26 showed a "particularly impressive" response from class members].) Here, ***not a single Class***
27 ***Member has filed an objection*** to the settlement after receiving notice of the proposed settlement
28 and the projected individual settlement payments, and only a single Class Member requested

1 exclusion from the class settlement. (Morales Decl. ¶¶ 10-11.) This extremely positive reaction from
2 the Class further confirms that the settlement is fair, adequate, and reasonable.

3 **C. The Requested Award of Attorneys' Fees Is Reasonable as a Percentage of the**
4 **Common-Fund Settlement Amount.**

5 A percentage method may be used to calculate a reasonable fee in a common fund case such
6 as this. (*Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th 480, 503.) A fee award is justified where
7 the legal action has produced its benefits by way of a voluntary settlement. (*See, e.g., Maria P. v.*
8 *Riles* (1987) 43 Cal.3d 1281, 1290-91; *Westside Community for Independent Living, Inc. v. Obledo*
9 (1983) 33 Cal.3d 348, 352-53.) When a settlement results in a common fund for the benefit of a
10 class, class counsel may be awarded fees as a percentage of the common fund. (*See Wershba, supra,*
11 91 Cal.App.4th at p. 254 [recognizing the “percentage of recovery” method].) The California
12 Supreme Court confirmed in *Laffitte v. Robert Half Int’l, Inc.* that “[t]he percentage of fund method
13 survives in California class action cases.” (*Lafitte, supra*, 1 Cal.5th at p. 506.) Specifically, the
14 *Laffitte* court held:

15 The recognized advantages of the percentage method - including relative ease of
16 calculation, alignment of incentives between counsel and the class, a better
17 approximation of market conditions in a contingency case, and the encouragement it
18 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.

19 (*Id.* at p. 503 [internal citation omitted]; *see also, e.g., Serrano v. Priest* (1977) 20 Cal.3d 25, 34
20 [“when a number of persons are entitled in common to a specific fund, and an action brought by a
21 plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund, such
22 plaintiff or plaintiffs may be awarded attorney’s fees out of the fund.”]; *Serrano v. Unruh* (1982) 32
23 Cal.3d 621, 627 [in awarding a fee from the common fund obtained for the benefit of all parties, the
24 trial court acts within its equitable power to prevent the other parties’ unjust enrichment]; *Rawlings*
25 *v. Prudential-Bache Properties, Inc.* (6th Cir. 1993) 9 F.3d 513, 516 [the percentage of the fund
26 method for calculating attorneys’ fees more accurately reflects the results achieved for the class than
27 the lodestar method and “establishes reasonable expectations on the part of plaintiffs’ attorneys as
28 to their expected recovery; and it encourages early settlement, which avoids protracted litigation.”];

1 *In re Rite Aid Corp. Securities Litigation* (3d Cir. 2005) 396 F.3d 294, 300 [“The percentage-of-
2 recovery method is generally favored in common fund cases because it allows courts to award fees
3 from the fund ‘in a manner that rewards counsel for success and penalizes it for failure.’”].)

4 The settlement calls for the payment of up to 33⅓% of the Gross Settlement Amount for
5 attorneys’ fees, and up to \$25,000 in litigation costs, for which only \$14,705.09 is sought for actual
6 reimbursement. (Settlement Agreement ¶ 49(a), Orshansky Decl. ¶ 96.) Here, Class Counsel’s fee
7 request is fair and reasonable based on a percentage of the recovery, and adequate to compensate
8 Class Counsel for the substantial work they have put into this case and the risk they assumed by
9 taking it in the first place. (*Ibid.*)

10 This request is fair, reasonable, and adequate to compensate Class Counsel for the excellent
11 results achieved in a wage-and-hour case with estimated average settlement payments of \$402.33,
12 and no objectors, and a 99.94% settlement participation rate. (Orshansky Decl. ¶ 97; Morales Decl.
13 ¶¶ 10-12.) That Class Counsel achieved these results in the face of serious defense challenges, and
14 in the face of an uncertain legal landscape, confirms the strength of the results achieved. (Orshansky
15 Decl. ¶ 97.)

16 The attorneys’ fees award requested is also consistent with Class Counsel’s experience in
17 similar wage and hour class action matters. (Orshansky Decl. ¶ 99.) Indeed, the attorney fees award
18 requested is also consistent with what courts have awarded in other class and representative actions.
19 (*Ibid.*) The following list shows PAGA/class action cases where attorney’s fees were awarded on a
20 common fund basis in a range between 33.33% and 40%:

- 21 • *Banda v. Verizon California, Inc.*, Los Angeles Superior Court Case No. BC434587
22 (**35% fee awarded** on \$15,000,000 settlement of mixed PAGA/class claims);
- 23 • *Padilla v. Staffmark Investment, Inc.*, San Bernardino County Superior Court Case
24 No. CIVDS1408641 (**33.33% fee awarded** on \$2,000,000 settlement of a PAGA
25 only case);
- 26 • *Birch v. Office Depot*, United States District Court for the Southern District of
27 California, Case No. 06cv1690 DMS (**40% fee awarded** on \$16,000,000 settlement
28 of mixed PAGA/class claims); and

- *Zelada v. Majestic Terminal Services*, San Bernardino Superior Court Case No. CIVDS1916968 (**38% fee awarded** on \$1,800,000 settlement of a PAGA only case).

Class Counsel’s application for attorneys’ fees in light of the facts and circumstances surrounding this case is well within the range of reasonableness. In fact, historically courts have awarded fees as high as fifty percent (50%) of the settlement in complex actions. (*See In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494 [**awarding attorneys’ fees in the amount of 45%** of the \$7.3 million total settlement amount]; *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F.Supp. 1195 [awarding approximately **53% of the settlement as attorneys’ fees**]; *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 fn. 11 [lower court found the range of contingency fees in marketplace to be up to 40 percent and determined such a percentage fee was appropriate]; *Van Vranken v. Atlantic Richfield Co.* (N.D.Cal. 1995) 901 F.Supp. 294, 297-298 [observing that “[m]ost of the cases Class Counsel have cited in which high percentages such as 30-50 percent of the fund were awarded involved relatively smaller funds of less than \$10 million”]; *see also* Conte & Newberg, 4 Newberg on Class Actions § 14.6 (4th Ed. 2002) [“No general rule can be articulated on what is a reasonable percentage of a common fund. Usually 50% of the fund is the upper limit on a reasonable fee award from a common fund in order to assure that the fees do not consume a disproportionate part of the recovery obtained for the class, although somewhat larger percentages are not unprecedented.”].)

The attorneys’ fees award is intended to reimburse Class Counsel for all uncompensated work that they have already done and for all the work they will continue to do. (Orshansky Decl. ¶ 101.) To investigate, litigate, and ultimately negotiate and craft the settlement, Class Counsel spent a significant amount of time involved in activities, including but not limited to, the following: (1) thorough pre-litigation investigation of facts with a focus on class certification elements; (2) investigation of Defendants’ organizational and corporate structure as it relates to the employment and management of employees; (3) comparative analysis and cross-checking of all available job postings by Defendants in order to determine any variation and identify job duties and responsibilities that would be susceptible to being performed off the clock or during meal or rest

breaks; (4) research and investigation regarding staffing models and staffing levels; (5) drafting the PAGA notice to the LWDA and pleadings; (6) extensive legal research and analysis into substantive law; (7) interviewing Class Members; (8) reviewing policies and procedures regarding Defendants' payment of wages, provision and tracking of meal and rest breaks, reimbursement of business-related expenses, and timekeeping protocol, including recording hours, issuance of wage statements, and providing all wages at separation; (9) examining Class Members' time records and wage statements in conjunction with Class Member interviews to determine Defendants' degree of liability; (10) meeting and conferring with defense counsel; (11) building a comprehensive damages model; (12) preparing a mediation brief; (14) preparing for and attending mediation; (15) negotiating and preparing the original long-form Settlement Agreement, Amended Settlement Agreement, and related documents; (16) preparing the motion for preliminary approval and supporting documents, as well as supplemental paperwork; (17) overseeing the notice process; (18) responding to questions from Class Members; and (19) preparing the motion for final approval and supporting documents. (*Ibid.*) It bears mentioning that Class Counsel's responsibilities will not end with final approval. (*Ibid.*) Class Counsel will remain available to answer any Settlement Class Member inquiries and to work with Defendants' counsel and the Settlement Administrator to complete administration and finalize this settlement. (*Ibid.*) Based on prior experience, this will likely add further hours of work by Class Counsel and their staff. (*Ibid.*)

The fee award requested here is also justified because Class Counsel achieved a significant monetary recovery for Settlement Class Members and PAGA Group Members in an uncertain, complex, and risky case while bearing the substantial burdens of representation on a contingency basis, and the fees requested are in line with the market rate. (*See Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1048-1051 [finding that exceptional results in a contingency case, significant risk and the absence of supporting precedents, are proper considerations in awarding attorneys' fees]; Orshansky Decl. ¶ 103.) Here, Class Counsel negotiated a substantial recovery for the Settlement Class, and not a single Class Member objected to the settlement, nor to Class Counsel's requested fees. (*See Morales Decl.* ¶ 10.) Further, the average individual settlement payment of approximately \$402.33 exceeds average settlement payments in similar wage and hour

1 class action settlements.⁶ (*Id.* at ¶ 12.) Class Counsel achieved these results in the face of serious
2 defense challenges (*e.g.*, evidentiary challenges of off-the-clock work, waiver of meal and rest break
3 arguments, and existence of arbitration agreements for post-March 2021 hires), and in the face of
4 an uncertain legal landscape (*e.g.*, potential distinguishability of *Augustus* as to on-premises rest
5 breaks and the then-pending California Supreme Court’s *Naranjo* decision). (Orshansky Decl. ¶
6 104.)

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. Accordingly, it is fair and reasonable to
9 account for these risks in compensating Class Counsel. Class Counsel should also be compensated
10 for the risks involved in undertaking this litigation and expending considerable effort, all while
11 working on a pure contingency basis. (Orshansky Decl. ¶ 107.) Since undertaking representation of
12 Plaintiff, Class Counsel expended costs and devoted substantial time to this litigation. (Orshansky
13 Decl., *passim*.) Given the considerable potential for adverse outcomes in this case, including, but
14 not limited to, being unable to proceed on a class-wide basis and/or risking unfavorable adjudication
15 on the merits, the contingent risk borne by Class Counsel was great. (*Id.* at ¶ 107.)

16 Class Counsel’s previous experience litigating wage and hour class actions also supports the
17 reasonableness of the fee request. Class Counsel are well-versed in plaintiff-side wage and hour
18 class and representative action litigation, with substantial experience litigating claims for unpaid
19 wages, meal and rest period violations, and related penalties, and have been certified as class counsel
20 in numerous other cases. (Orshansky Decl. ¶¶ 83-86, 105.) Class Counsel’s experience in similar
21 matters was integral to evaluating the strengths and weaknesses of this case and the reasonableness
22

23 ⁶ (*See, e.g., Ressler v. Federated Department Stores, Inc.* (L.A. County Super. Ct. Jan. 2, 2009) No.
24 BC335018 [average recovery of \$90]; *Palencia v. 99 Cents Only Stores* (Sacramento County Super.
25 Ct.) No. 34-2010-00079619 [average recovery of \$80]; *Lim v. Victoria’s Secret Stores, Inc.* (Orange
26 County Super. Ct. Jan. 20, 2006) No. 04CC00213 [average recovery of \$35]; *Gomez v. Amadeus*
27 *Salon, Inc.* (L.A. County Super. Ct. July 23, 2010) No. BC392297 [average recovery of \$20];
28 *Sorenson v. PetSmart, Inc.* (E.D.Cal. 2008, No. 2:06-CV-02674-JAM-DAD) [wage and hour class
action settlement approved where average class member recovery was approximately \$60]; *Schiller*
v. David’s Bridal, Inc. (E.D.Cal. June 11, 2012, 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]; and
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].)

1 of the settlement. (*Id.* at ¶ 106.) Practice in the narrow field of wage and hour litigation requires skill
2 and knowledge concerning the rapidly evolving substantive state and federal law, as well as the
3 procedural law of class and representative action litigation. (*Ibid.*)

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

7 **D. The Lodestar Cross-Check Confirms That the Requested Award of Attorneys’**
8 **Fees Is Reasonable.**

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

21 The lodestar “cross-check” also supports the fee request here. First, Class Counsel have spent
22 a significant amount of time on this case and expect to spend additional time overseeing this case
23 through completion. (Orshansky Decl. ¶¶ 113, 115.) Next, Class Counsel’s hourly rates are
24 commensurate with the prevailing market rates for attorneys of comparable experience and skill
25 handling complex litigation, and their rates have been approved by state and federal courts in
26 California. (Orshansky Decl. ¶ 117.) The reasonableness of Class Counsel’s hourly rates are further
27 confirmed in light of the hourly rates identified based on years of experience in the inflation-adjusted
28 Laffey Matrix. (Orshansky Decl. ¶ 118.)

1 As set forth in more detail in the concurrently submitted Orshansky Declaration, the lodestar
2 figure for CounselOne is \$ 228,051.00. (Orshansky Decl. ¶ 119.) Based on this figure, Class Counsel
3 respectfully request a multiplier of approximately 1.75, which yields the requested attorneys' fees.
4 (*Id.* at ¶ 120.) Class Counsel have invested a significant amount of time in this case, and advanced
5 all costs incurred by Plaintiff to date. (*Ibid.*) As described above and set forth in detail in the
6 accompanying declarations, Class Counsel performed this work, diligently prosecuting this action
7 for Plaintiff against Defendants, all while facing an uncertain legal landscape with no guarantee of
8 recovery. (*Ibid.*) Further, their work on this case prevented them from taking on other matters,
9 including hourly and flat-fee work. (*Ibid.*) Despite these circumstances, Class Counsel zealously
10 represented Plaintiff and Class Members, and negotiated a settlement providing for significant
11 recovery to Class Members. (*Ibid.*) That Class Counsel achieved these results without engaging in
12 a protracted legal battle, in the face of serious defense challenges and an uncertain legal landscape,
13 with no objections from the Class as to the attorneys' fee award, confirms the strength of the results
14 achieved.

15 Finally, the requested multiplier is within even the modest multipliers that are awarded by
16 California courts, and in fact is much lower than in many comparable cases. (*See Vizcaino, supra*,
17 290 F.3d 1043, 1050-1051 [looking to multipliers awarded in comparable cases as evidence of
18 reasonableness; **affirming 3.65 multiplier**].) **Multipliers routinely range from 3 to 5**, and it is not
19 uncommon that **multipliers of between 5 and 10**, or higher, are applied. (*See, e.g., Wilson v. Bank*
20 *of Am. Natl. Trust & Savs. Assn.* (Cal. Sup. Ct. Aug. 16, 1982) Case No. 643872 [**multiplier of 10**];
21 *Glendora Comm. Redev. Agency v. Demeter* (1984) 155 Cal.App.3d 456, 465 [affirming **multiplier**
22 **of 12**, and expressly rejecting argument that fee was either exorbitant or unconscionable]; *Wershba*,
23 *supra*, 91 Cal.App.4th at p. 255 [noting that “[m]ultipliers can range from 2 to 4 or even higher”];
24 *Van Vranken, supra*, 901 F.Supp. at p. 298 [**multipliers of 3-4** are in the “range [of] common”
25 multipliers for class actions]; *Holleran v. Rita Medical Systems, Inc.* (Cal. Super. Oct. 04, 2007, No.
26 RG06302394) 2007 WL 7759253 [**multiplier of 4.57**]; *Gutierrez v. Wells Fargo Bank, N.A.*
27 (N.D.Cal. May 21, 2015, No. C 07-05923 WHA) 2015 WL 2438274, at *7 & 8 fn. 3 [**multiplier of**
28 **4.53**]; *Johnson v. Fujitsu Tech. & Bus. of Am., Inc.* (N.D.Cal. May 11, 2018, No. 16-CV-03698-NC)

1 2018 WL 2183253, at *7 [**multiplier of 4.375**]; *Buccellato v. AT & T Operations, Inc.* (N.D.Cal.
2 Jun. 30, 2011, No. C10-00463-LHK) 2011 WL 3348055, at *2 [**multiplier of 4.3**]; *Chau, et al v.*
3 *CVS RX Services, Inc.*, Los Angeles County Superior Court No. BC349224, Order Granting Final
4 Approval of Class Action Settlement, Reasonable Attorneys’ Fees and Costs and Service Payments
5 to the Class Representatives [a **3.8 multiplier** was applied based primarily on contingent risk and
6 the “excellent results [] obtained [] with relative efficiency”).]

7 Therefore, the requested multiplier is warranted in this case. The lodestar cross-check
8 affirms that the fee award requested does in fact fall within the range of reasonableness.

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

11 Class Counsel respectfully request reimbursement of \$14,705.09—which is less than the
12 Settlement Agreement’s allocation of up to \$25,000—in litigation costs. (Orshansky Decl. ¶ 124
13 and **Exhibit C** [Itemized Costs Spreadsheet].) Class Counsel’s request is fair, adequate, and
14 reasonable, as all of these costs are documented and reasonably incurred. Moreover, the costs for
15 which Plaintiff seeks reimbursement are all the types of costs routinely approved by courts. (*See,*
16 *e.g., Harris v. Marhoefer* (9th Cir. 1994) 24 F.3d 16, 19 [counsel should recover “those out-of-
17 pocket expenses that would normally be charged to a fee paying client”]; *Ashker v. Sayre* (N.D.Cal.
18 2011; No. 05-03759-CW) 2011 WL 825713, at * 3 [“costs of reproducing pleadings, motions and
19 exhibits are typically billed by attorneys to their fee-paying clients” and are reimbursable]; *Trustees*
20 *of Const. Industry & Laborers Health and Welfare Trust v. Redland Ins. Co.* (9th Cir. 2006) 460
21 F.3d 1253, 1258-1259 [legal research costs are reimbursable]; *In re Immune Response Securities*
22 *Litigation* (S.D.Cal. 2007) 497 F.Supp.2d 1166, 1177-78 [mediation expenses, legal research,
23 copies, postage, filing fees, messenger and overnight delivery costs are reimbursable].) No
24 Settlement Class Member objected to the settlement, including Class Counsel’s request for up to
25 \$25,000 in reimbursement of costs. (*See Morales Decl.* ¶ 10.) Because the expenses by Class
26 Counsel were reasonably incurred, the Court should grant the request for reimbursement of
27 \$14,705.09 for litigation costs.

28 ///

1 **F. The Court Should Finally Approve the Requested Settlement Administrator**
2 **Expenses.**

3 Plaintiff also requests that the Court approve \$25,000.00 for reimbursement of expenses to
4 the Settlement Administrator. (*See* Settlement Agreement ¶ 49(b); Morales Decl. ¶ 14.) As detailed
5 in the Morales Declaration submitted concurrently with this Motion, CPT performed duties in
6 connection with this settlement that were instrumental in effectuating the settlement and the notice
7 process. Among other things, CPT calculated each Class Member's and PAGA Group Member's
8 individual settlement payment, updated addresses contained in the Class List supplied by
9 Defendants (*e.g.*, NCOA and skip-traces), formatted the Class Notices for mailing, mailed Class
10 Notices to all Class Members and PAGA Group Members, kept the Parties informed of any
11 communications received from the Class Members, and otherwise administered the settlement. (*See*
12 Morales Decl., *passim*.) For these reasons, CPT's requested costs are fair, reasonable, and adequate,
13 and should be finally approved.

14 **G. The Court Should Finally Approve the Service Award to the Class**
15 **Representative Because the Amount Is Fair, Adequate, and Reasonable in Light**
16 **of Plaintiff's Efforts and Risks Assumed on Behalf of the Class.**

17 Courts routinely approve enhancement payments to compensate named plaintiffs for the
18 services they provide and the risks they incur during class action litigation. (*See, e.g., Bell v.*
19 *Farmers Ins. Exchange* (2004) 115 Cal.App.4th 715, 726 [upholding "service payments" to named
20 plaintiffs for their efforts in bringing the case]; *Van Vranken, supra*, 901 F.Supp. at p. 294
21 [approving \$50,000 service payment].)

22 Here, Plaintiff seeks a service award in the amount of \$8,000. This request is reasonable
23 given his time and effort in this case, the positive response by Class Members, the risks he undertook
24 on behalf of Class Members, the potential of being assessed Defendants' costs of suit, prosecuting
25 the action on behalf of others similarly situated, and his general release of all claims against
26 Defendants subject to a waiver of Civil Code section 1542. (*See* Settlement Agreement ¶ 49(c);
27 Orshansky Decl. ¶¶ 126-130; Morales Decl. ¶¶ 10-12.) Plaintiff spent considerable time and effort
28 in the prosecution of this action. (*See* Declaration of Michael Manzo ("Manzo Decl."), filed

1 concurrently herewith, at ¶¶ 14-20.) Plaintiff participated in the prosecution of this matter in
2 particular, but not exclusively, through their discussions with Class Counsel regarding Defendants'
3 policies, practices, and procedures, identifying potential witnesses, providing factual information
4 and strategic considerations in support of their claims, answering questions, providing information
5 regarding the duties of other employees, proposing case-related ideas, discussing and evaluating the
6 terms of the settlement, and communicating with counsel about the status of the case. (*Id.* at ¶¶ 14-
7 20.)

8 Plaintiff has diligently, adequately, and fairly represented Settlement Class Members, is a
9 member of the Settlement Class, has no conflicts, and has not placed his interests above those of
10 any member of the Settlement Class. (Orshansky Decl. ¶ 128.) In fact, as part of the settlement,
11 Plaintiff entered into a general release of claims which is broader than the release that applies to the
12 unnamed Settlement Class Members. (Settlement Agreement ¶ 48.) Moreover, after receiving notice
13 of the proposed amount for the Class Representative Service Award, no Settlement Class Member
14 objected. (Orshansky Decl. ¶ 129; *see* Morales Decl. ¶ 10.) Thus, Plaintiff's requested service award
15 is appropriate and justified as part of the settlement, and should be approved.

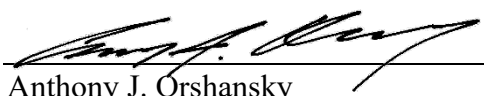
16 **V. CONCLUSION**

17 For the reasons stated herein, Plaintiff respectfully requests that this Court grant this Motion,
18 and enter the Proposed Judgment and Proposed Order Granting Plaintiff's Motion for Final Approval
19 of Class and Representative Action Settlement, Attorneys' Fees and Costs, and Class Representative
20 Service Award submitted concurrently herewith.

21
22 Dated: April 26, 2024

Respectfully submitted,

23 COUNSELONE, PC

24 By: 

25 Anthony J. Orshansky

26 Justin Kachadoorian

27 Attorneys for Plaintiff, Settlement Class
28 Members, and PAGA Group Members