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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

SCOTT FISKE, individually and on behalf
of all others similarly situated,

Plaintiff,

vs.

ROBERTSON'S TRANSPORT, LTD.;
and Does 1 through 20, Inclusive,

Defendant.

Case No.: CIVDS2018316

Hon. David Cohn - Dept. S-26

**PLAINTIFF'S UNOPPOSED MOTION FOR
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT**

[Declaration of Jonathan M. Lebe, Declaration
of Scott Fiske, Declaration of Erin La Russa,
Notice of Compliance with Court's Checklist,
[Proposed] Order, and [Proposed] Judgment
Filed Herewith]

Hearing Information:

Date: March 9, 2022

Time: 10:00 a.m.

Location: Dept. S-26

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on March 9, 2022, in Department S-26 of the above-entitled Court, located at 247 West Third Street, San Bernardino, CA 92415, Plaintiff Scott Fiske on behalf of himself and the settlement class members described herein, will and hereby do move for an order to:

1. Finally adjudicate the Settlement as fair, reasonable, and adequate;
2. Direct distribution of Settlement benefits by the Settlement Administrator to participating Settlement Class Members in accordance with the Settlement Agreement;
3. Approve and direct the payment by the Settlement Administrator of \$11,250 for Private Attorneys General Act penalties to the California Labor and Workforce Development Agency (the "LWDA") as its share of the Settlement for civil penalties;
4. Approve and direct payment to Class Counsel for their attorneys' fees in the sum of \$500,000 for attorney fees and reimbursement of their litigation costs in the sum of \$11,101.31.
5. Approve and direct the payment of the Class Representative enhancement award to the Plaintiff and Class Representative Scott Fiske in the sum of \$7,500.
6. Approve and direct the payment to the Settlement Administrator, in the sum of \$12,500 for its fees and costs in administering the Settlement; and
7. Direct the Clerk of the Court to enter final judgment; and without affecting the finality of the final judgment, to reserve the Court's continuing jurisdiction over the Parties for the purposes of implementing, enforcing, or administering the Settlement.

This motion is made on the grounds that the proposed Settlement, which was preliminarily approved by this Court on November 5, 2021, is the product of arm's-length, good-faith negotiations, is fair and reasonable to the Class and should now be finally approved, as more fully discussed in the accompanying Memorandum in Support of Final Approval of Class Action Settlement and Entering Final Judgment.

This motion is based on this notice of motion, the accompanying Memorandum of Points and Authorities in support, Declaration of Class Counsel Jonathan M. Lebe, Declaration of Scott Fiske, Declaration of Erin La Russa on behalf of CPT Group, Inc. the appointed Administrator;

1 the [Proposed] Order Granting Final Approval of Class Action Settlement and Entering Judgment
2 filed and served herewith, the [Proposed] Judgment; and the Court's files in this matter, including
3 but not limited to: (1) the Motion for Order Granting Preliminary Approval; (2) the Order
4 Granting Plaintiff's Motion for Preliminary Approval of Class Action Settlement; (3) all matters
5 of which the Court may take notice, and such oral and documentary evidence presented at the
6 hearing on the motion.

7 This motion is based on this notice and motion, the attached memorandum of points and
8 authorities, the declarations of Jonathan M. Lebe and Plaintiff, all documents on file in this action,
9 and upon such oral argument as may be presented at the time of hearing.

10
11 Dated: February 14, 2022 **Lebe Law, APLC**

12
13
14 By:



Jonathan M. Lebe
Annaliz Loera
Nicolas Tomas

16 Attorneys for Plaintiff Scott Fiske, Individually and on
17 behalf of all others similarly situated
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Scott Fiske (“Plaintiff”), as representative of the putative settlement class,
4 respectfully requests final approval of a class action and Private Attorneys General Act (“PAGA”)
5 settlement on behalf of himself, the other class members and aggrieved employees. The crux of
6 Plaintiff’s claims in this case is that he and other class members were not paid for all time worked,
7 including pre- and post-trip inspection work duties and other non-driving time performing work
8 duties, were not provided accurate itemized wage statements, were not provided legally-
9 compliant meal and rest breaks, were not reimbursed all necessary business expenses, including
10 but not limited to use of personal cellular telephones, and were not paid all final wages.

11 The Parties have entered into a Settlement Agreement which, subject to approval by this
12 Court, fully releases Defendant Robertson’s Transport Ltd. (“Defendant”) from all class and
13 PAGA claims in this action in exchange for a lump sum payment. Per the settlement, the lump
14 sum payment has increased based on an escalator clause. (Declaration of Erin La Russa on behalf
15 of CPT Group, Inc. [“La Russa Decl.”], ¶ 13.) According to CPT’s calculations, there is a total
16 of 134,096 workweeks and an escalator amount of \$90,000, bringing the total settlement to
17 \$1,590,000. (*Id.*)

18 Following the mailing of the Court-approved notice to the Class on December 3, 2021,
19 and the expiration of the deadline to request exclusion from or object to the Settlement on January
20 3, 2022, no Class Members have objected to any term of the Settlement or disputed the number
21 of workweeks worked. (La Russa Decl., ¶ 10.) Moreover, only 6 of the 934 Class Members have
22 requested to be excluded from the settlement, meaning 99.36 percent of the settlement class are
23 participating in this settlement. (La Russa Decl. ¶ 10, 12.) Based on estimated settlement
24 calculations at this time, the average gross payment to each participating Class Member will be
25 \$1,124.73, and the highest payment will be \$2,339.57. (La Russa Decl., ¶ 15.)

26 The proposed Settlement that was preliminarily approved by this Court on November 5,
27 2021 resulted from Class Counsel’s aggressive litigation to achieve the best result for the Class.

1 The Settlement has been embraced by the Class and is fair, reasonable, and adequate. Plaintiff
2 respectfully submits that final approval should now be granted.

3 **II. FACTUAL BACKGROUND**

4 **A. Plaintiff's Claims Against Defendant**

5 Defendant is a trucking company and is headquartered in Rialto, California. Plaintiff
6 worked for Defendant from approximately October 21, 2019 to approximately March 8, 2021, as
7 a Transport Driver. While Plaintiff worked for Defendant, Plaintiff alleges that he and other class
8 members were not paid for all hours worked, including pre- and post-inspection work duties and
9 time subject to employer control and other non-driving time performing work duties. (First
10 Amended Complaint.)

11 On August 21, 2020, Plaintiff filed the present action in San Bernardino County Superior
12 Court, asserting claims for: (1) Failure to Pay Minimum Wages; (2) Failure to Pay Overtime
13 Wages; (3) Failure to Timely Pay All Earned Wages; (4) Unlawful Deduction of Wages; (5)
14 Failure to Pay for Rest and Recovery Periods; (6) Failure to Provide Meal Periods; (7) Failure to
15 Permit Rest Breaks; (8) Failure to Provide Accurate Itemized Wage Statements; (9) Failure to
16 Reimburse Necessary Business Expenses; (10) Violation of Business and Professions Cal. Bus.
17 & Prof. Code § 17200, *et seq.* (Lebe Decl., ¶ 11.) On December 21, 2020, Plaintiff amended his
18 complaint to add an additional cause of action for civil penalties pursuant to the PAGA. (*Id.*)
19 Plaintiff brought this action as a putative class action, seeking to represent a class of drivers
20 employed by Defendant in the State of California within the applicable statute of limitations
21 regarding the above causes of action. (*Id.*)

22 **B. Mediation, the Proposed Settlement, and Notice to the Class**

23 **1. Mediation and Subsequent Arm's-length Negotiations**

24 On April 28, 2021, the Parties mediated before the experienced wage and hour class action
25 mediator Hon. Carl J. West (Ret.). (Lebe Decl., ¶ 10.) In advance of the mediation, the Parties
26 engaged in informal discovery, whereby Defendant provided the following information related to
27 all class members and aggrieved employees: (1) the number of class members; (2) the number of
28 former employees (3) workweeks worked; (4) the number of pay periods; (5) company handbook

1 and policies pertaining to wage and hour issues; (6) all times records for class members; and (7)
2 a random sampling of class members' payroll records. (Id.)

3 At the mediation, on April 28, 2021, the Parties engaged in settlement negotiations,
4 including the exchange of legal analysis and data pertaining to Plaintiff's class and PAGA claims.
5 (Lebe Decl., ¶ 13.) Negotiations were rigorous and conducted at arm's-length. (Id.) The Parties
6 did not settle at mediation but continued their settlement negotiations with the assistance of the
7 mediator. (Id.) On July 21, 2021, the Parties agreed to settle the case. (Id.) Defendant adamantly
8 denies any wrongdoing and believes that it has meritorious defenses to the class issues and on the
9 merits but has concluded that the further defense of this action would be lengthy and expensive
10 for all parties. (Id.) Plaintiff and his counsel have considered the uncertainty and risk involved
11 in further litigation, including the difficulties and potential delays in seeking class certification
12 and the financial health of Defendant. (Id.) Based upon these considerations, Plaintiff and class
13 counsel have determined that the settlement is fair, adequate, and reasonable, and is in the best
14 interests of the class. (Id.)

15 2. Settlement Terms

16 The settlement was reached on a class basis. The settlement class includes Plaintiff and
17 non-exempt employees who held the position of Transport Driver of Defendant in California who,
18 based on Defendant's records, were employed during the class period from April 6, 2016 through
19 November 5, 2021 (the date of preliminary approval of the Settlement). (Lebe Decl., ¶ 14.)

20 In exchange for a release of claims, Defendant is providing substantial compensation to
21 Plaintiff and the settlement class. The settlement includes the following: (1) Plaintiff's attorneys'
22 fees up to one third of the settlement; (2) Plaintiff's counsels' reasonable litigation costs necessary
23 to prosecute and settle this litigation and administer the Agreement, estimated at no more than
24 \$15,000; (3) a \$7,500 enhancement award to Plaintiff¹; (4) settlement administration costs not to
25 exceed \$15,000; (5) and a payment of \$11,250 to the LWDA, which represents 75 percent of the
26

27 _____
28 ¹ Plaintiff has agreed to a general release of all claims, which is broader than the release given by the class. (Lebe
Decl., ¶ 45; Declaration of Scott Fiske ("Fiske Decl.," ¶ 15.)

1 PAGA settlement amount. (Id.) Class members will not be required to return any claims form.
2 (Id.)

3 Pursuant to the Settlement, the total settlement increased proportionally for each full
4 percent that the number of workweeks during the Covered Time Frame exceeded 125,177
5 workweeks (i.e., over 7.5% above the estimated workweeks above). (La Russa Decl., ¶ 13.) Per
6 CPT's calculations, there is a total of 134,096 workweeks and an escalator amount of \$90,000.00
7 bringing the Total Settlement Amount from \$1,500,000.00 to \$1,590,000.00. (Id.)

8 **3. Preliminary Approval**

9 On October 6, 2021, Plaintiff filed his motion for preliminary approval of class action
10 settlement and supporting papers with this Court. (Lebe Decl., ¶ 34.) On October 7, 2021,
11 Plaintiff's counsel filed a supplemental declaration to submit the fully executed settlement to the
12 Court since Defendant did not return a countersigned settlement in time to be include with the
13 motion (Lebe Decl., ¶ 35.)

14 On November 5, 2021, Plaintiff's Unopposed Motion for Preliminary Approval of the
15 Class Action Settlement was granted. (Lebe Decl., ¶ 36.) The Court's Order Granting
16 Preliminary Approval was also filed on that date setting forth the various deadlines regarding
17 final approval and next steps regarding the settlement. (Id.) In its Order, the Court appointed
18 Plaintiff as the Class Representative, his attorneys as Class Counsel, and CPT Group, Inc. as the
19 Administrator, conditionally certified the Class, approved the Class Notice, and directed mailing
20 of the Class Notice to the Class. The Court also preliminarily found that the settlement was fair
21 to the Class. (Id.)

22 **4. Notice To Class Members and Right to Opt Out Or/Object to** 23 **Settlement**

24 On December 3, 2021, the Administrator mailed the Class Notice via first class U.S. Mail.
25 (La Russa Decl., ¶ 7.) The Administrator mailed the notice to 934 Class Members. (Id.) The
26 Notice informed the Class of their right to participate in the Settlement, to automatically receive
27 a payment without the need to return a claim form, to object or exclude themselves from the
28

Settlement, how to dispute the information on which their payments would be made and the procedures and timing for doing each act. (La Russa Decl., ¶ 4, Exhibit A.)

5. The Class Response to the Notice

The deadline to submit disputes, requests for exclusion or objections was January 3, 2022. (La Russa Decl., ¶ 7.) Through the present time, no Class Members have objected to any term of the Settlement or disputed the number of workweeks worked. (La Russa Decl., ¶ 10.) Through the present time, only 6 Class Members timely requested to be excluded. (*Id.*) Through the present time, only one Class Member submitted a late request for exclusion that had been deemed untimely and invalid. (La Russa Decl., ¶ 11.) These facts are indicative that the Settlement is fair, reasonable, and adequate and has been embraced by the Class.

III. LEGAL ARGUMENT

A. The Settlement is Fair, Adequate, and Reasonable

Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement, and supplemental briefing, conducted a thorough analysis of the terms of the proposed Settlement in light of Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th 1794, 1802, (establishing factors to support a presumption of fairness) and Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, 130 (establishing factors to determine whether the proposed Settlement is in the best interest of the Class, and is adequate and reasonable). Having reviewed this analysis, the Court granted the motion and preliminarily approved the settlement. (Lebe Decl., ¶¶ 16-32. [Discussing Plaintiff's Kullar analysis in support of preliminary approval].)

The fourth factor under Dunk, Class reaction to the Settlement and number of objectors, could not be known until after the dissemination of the Notice to the Class. Through the present, no Class Member has objected to any term of the Settlement. Moreover, based on estimated settlement calculations at this time, the average gross payment to each Participating Class Member will be \$1,124.73, and the highest payment will be \$2,339.57. (La Russa Decl., ¶ 15.) Accordingly, the proposed Settlement continues to be entitled to a presumption of fairness and should be finally approved as it provides significant value to the Class.

Class Counsel believes the Settlement is in the best interest of the Class based on the

1 negotiations and a detailed knowledge of the issues present in this Action. (Lebe Decl. ¶ 13.)
2 The length and risks of trial and other normal perils of litigation which affect the value of the
3 claims were all weighed in reaching the Settlement. (*Id.*) In addition, the defenses argued by
4 Defendant, the uncertainty of proceeding as a representative action, and of obtaining class
5 certification, the difficulties of complex litigation, the lengthy process of establishing specific
6 damages, the discretionary nature of civil penalties, and various possible delays and appeals, were
7 also carefully considered by Class Counsel before agreeing to the proposed Settlement. (*Id.*)

8 Class Counsel respectfully requests the Court find the proposed Settlement fair, adequate
9 and reasonable, grant final approval, and enter final judgment in favor of the Class.

10 **B. Attorneys' Fees and Litigation Costs are Reasonable**

11 Class Counsel now applies for an award of attorneys' fees of \$500,000 for attorney fees
12 and reimbursement of their litigation costs in the sum of \$11,101.31. (Lebe Decl. ¶¶ 37-41.)
13 California state and federal courts have recognized that an appropriate method for determining an
14 award of attorneys' fees is based on a percentage of the total value of benefits to Class Members
15 by the settlement, also known as the "common fund" method. (*Serrano v. Priest* (1977) 20 Cal.3d
16 25, 34; *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Vincent v. Hughes Air West, Inc.*
17 (9th Cir. 1977) 557 F.2d 759, 769.)² "Despite its primacy, the lodestar method is not necessarily
18 utilized in common fund cases." (*Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19,
19 27, *Dunk v. Ford Motor Co.*, 48 Cal.App.4th at 1808 [awarding attorney fees as a reasonable
20 percentage of a common fund may be used where a settlement is a certain or easily calculable
21 sum of money].)

22 The California Supreme Court has reaffirmed attorneys' fees in common fund cases are
23 properly granted based on a percentage of recovery. (*Laffitte v. Robert Half International, Inc.*
24 (2016) 1 Cal.5th 480, 503.) A fee award based on a percentage of the common fund recovery
25

26 ²The California Supreme Court also authorizes trial courts to use Federal Rule 23 and cases applying it for guidance.
27 (See *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821; *Green v. Obledo* (1981) 29 Cal.3d 126, 145-146; *Dunk v.*
28 *Ford Co.*, 48 Cal.App. 4th at 1801 fn.7.) Where appropriate, Plaintiffs cite Federal Rule 23 and federal case law as well.

1 here is proper as it spreads the attorneys’ fees among all beneficiaries of the fund, aligns the
2 incentives between plaintiffs’ counsel and the class, is a better approximation of the market
3 conditions in a contingency case, and encourages class counsel to seek early settlement and avoid
4 unnecessarily prolonging the litigation. (*Id.*) The Court also approved the use of a lodestar cross-
5 check at the option of the trial court to double check “the reasonableness of the percentage fee
6 through a lodestar calculation.” (*Id.* at 504.)

7 Here, Class Counsel has undertaken representation at their own expense, with
8 compensation wholly contingent upon providing a benefit to the Class. (Lebe Decl., ¶ 41.) Class
9 Members will benefit significantly by the terms of the proposed Settlement by receiving
10 substantial monetary compensation. (*Id.*) Because there is a defined and clearly traceable benefit
11 to the Class, the Court should base its award of attorneys’ fees using a “common fund” approach
12 to compensate Class Counsel.

13 **1. The Requested Attorneys’ Fee Is Within the Range of Fees Approved**
14 **in Comparable Common Fund Cases.**

15 Several studies of class action fee awards have found the median common fund fee award
16 is approximately one-third of the total settlement fund. (See, e.g., Chavez v. Netflix, Inc. (2008)
17 162 Cal. App. 4th 43, 66, n.11 [numerous studies have shown “fee awards in class actions average
18 around one-third of the recovery.”]; Reagan W. Silber and Frank E. Goodrich, Common Funds
19 and Common Problems: Fee Objections and Class Counsel’s Response, 17 Rev. Litig. 525, 546
20 (1998); T. Willging, L. Hooper and R. Niemic, Empirical Study of Class Actions in Four Federal
21 District Courts: Final Report to the Advisory Committee on Civil Rules, 90 (1996) [finding that
22 attorneys’ fees in class litigation “were generally in the traditional range of approximately one-
23 third of the total settlement”].)

24 Here, Class counsel seeks \$500,000 in attorney’s fees out of the \$1,590,000 settlement.
25 Class Counsel’s request for 31.4 percent of the common fund created falls in the mid-range of fee
26 percentage awards which commonly range from 25% to 50% of a common fund. The requested
27 sum constitutes fair compensation for undertaking complex, risky, expensive, and time-
28 consuming litigation on a contingent basis for years, and compensating Class Counsel for their

1 efforts and the results achieved for the Class as well as for Defendant’s current and future
2 employees. Numerous state and federal courts in California routinely approve fee requests equal
3 to or more than the amount sought herein. Some courts have found an award of 33% of the
4 common fund represents the “benchmark” in California. (Smith v. CRST Van Expedited, Inc.,
5 10-CV-1116- IEG WMC, 2013 WL 163293, *5 (S.D. Cal. Jan. 14, 2013) [“These percentages
6 compare favorably with both California (33%) and federal (25%) benchmarks.”]; Dennis v.
7 Kellogg Co., 09-CV-1786-L WMC, 2013 WL 6055326, at *7 (S.D. Cal. Nov. 14, 2013) [“This
8 percentage compares favorably with both California (33%) and federal (25%) benchmarks and
9 the requested fee compares well with a lodestar cross-check as well.”].)

10 Class Counsel’s fee request is in line with awards in similar cases in California and
11 nationwide and demonstrates Class Counsel’s fee request is consistent with market rates and is
12 reasonable.

13 **2. A Lodestar Cross-Check Confirms the Reasonableness of the**
14 **Requested Fee as Class Counsel’s Lodestar Exceeds the Fees**
15 **Requested**

16 Class Counsel’s fee request is reasonable when calculated using the lodestar method.
17 Under the lodestar method, a base fee amount is calculated from a compilation of time reasonably
18 spent on the case and the reasonable hourly compensation of the attorney. (Serrano v. Priest
19 (1977) 20 Cal. 3d 25, 48.) The court then enhances this lodestar figure by a “multiplier” to
20 account for a range of factors, such as the novelty and difficulty of the case, its contingent nature,
21 and the degree of success achieved. (See Id. at 49; see also Ketchum v. Moses (2001) 24 Cal.4th
22 1122, 1132-36; PLCM Group, Inc. v. Drexler (2000) 22 Cal.4th 1084, 1096; Thayer v. Wells
23 Fargo Bank (2001) 92 Cal.App.4th 819, 834 [“[t] there is no ... rule limiting the factors that may
24 justify an exercise of judicial discretion to [adjust the] lodestar”].

25 The lodestar fee on Class Counsel’s hours is \$185,363. (Lebe Decl., ¶ 39.) Class Counsel
26 seeks \$500,000 in fees which reflects the lodestar fee times a multiplier of approximately 2.7.
27 The requested multiplier is reasonable and consistent with California law. Indeed, under
28 California law, lodestar multipliers can range from 2 to 4 or even higher. (4 Newberg On Class

1 Actions § 14.7 [courts typically approve percentage awards based on lodestar cross-checks of 1.9
2 to 5.1 or even higher]; Vizcaino, 290 F.3d at 1050 [affirming fee award where the lodestar
3 multiplier was 3.65]; McKenzie v. Fed. Express Corp. (C.D.Cal. July 2, 2012, No. CV 10-02420
4 GAF (PLAx)) 2012 U.S.Dist.LEXIS 103666, at *2 [approving a multiplier of 3.2 on a lodestar
5 cross-check in percentage-based fees in wage and hour class action]; Spann v. J.C. Penney Corp.
6 (C.D.Cal. 2016) 211 F. Supp. 3d 1244, 1265 [finding that a 3.07 multiplier is “well within the
7 range for reasonable multipliers” under Laffitte.)]

8 In class actions, such as this one, where the value of the benefit conferred to the class “can
9 be monetized with a reasonable degree of certainty,” court may, “adjust the lodestar in comparison
10 to a percentage of the common fund to ensure that the fee awarded is reasonable and within the
11 range of fees freely negotiated in the legal marketplace in comparable litigation.” (Consumer
12 Privacy Cases (2009) 175 Cal.App.4th 545, 557.) In doing so, “the court determines,
13 retrospectively, whether the litigation involved a contingent risk or required extraordinary legal
14 skill justifying augmentation of the unadorned lodestar in order to approximate the fair market
15 for such services.” (Id. at 556; *see also* Laffitte, 1 Cal.5th at 503-05.)

16 The fee award requested here, including the lodestar multiplier, is justified because Class
17 Counsel achieved a significant monetary recovery for the Settlement Class in an uncertain and
18 risky case while bearing the substantial burdens of representation on a contingency basis, and the
19 fees requested are in line with the market rate. (Vizcaino v. Microsoft Corp. (9th Cir. 2002) 290
20 F.3d 1043, 1048-51 [finding that exceptional results in a contingency case, significant risk and
21 the absence of supporting precedents, are proper considerations in awarding attorneys’ fees].)
22 Here, Class Counsel negotiated a substantial recovery for the Settlement Class without a single
23 Settlement Class member objecting to the Settlement or Class Counsel’s requested fees. (La
24 Russa Decl., ¶ 10.)

25 Additionally, the average settlement payment in this case (which will be \$1,124.73 and
26 the highest recovery will be \$2,339.57) **significantly exceeds** average settlement payments in
27 similar wage and hour class action settlements. (*See, e.g.,* Schiller v. David’s Bridal, Inc.
28 (E.D.Cal. June 11, 2012, No. 1:10-cv-00616-AWI-SKO) 2012 U.S.Dist.LEXIS 80776, at *48

1 [finding that average payment to class members of less than \$200 was a “good” result]; Williams
2 v. Centerplate, Inc. (S.D.Cal. Aug. 26, 2013, No. 11-CV-2159 H-KSC) 2013 U.S.Dist.LEXIS
3 121307, at *8 [granting final approval of class action settlement where average recovery for each
4 class member was approximately \$108].)

5 This sizable settlement was further in the best interests of the class as this case was fraught
6 with risk as to both class certification and merits consideration. Indeed, the issue of class
7 certification had not yet been presented to the Court. Further, Defendant argues that there all
8 hours worked were paid for at the correct rate, and if there was, individual issues predominate as
9 to what extent class members worked off-the-clock for non-productive time and that it did in fact
10 pay for non-productive time. Defendant also argues that none of their wage and hour policies are
11 facially invalid, and that Defendant appropriately paid its employees at all times and was
12 compliant with all applicable wage-and-hour laws. Moreover, Defendant argued Plaintiff’s meal
13 and rest break claims are preempted by the Motor Carrier Act and the Federal Motor Carrier
14 Safety Administration, which would wipe out those claims completely if true. Defendant argues
15 that it provided addendums to wage statements that provided the necessary information pursuant
16 to Labor Code section 226. If successful at defeating a class certification motion, the class would
17 have recovered nothing as a result of this litigation. Indeed, class certification is a major hurdle
18 for Plaintiff and the Class. (See Munoz, 186 Cal. App. 4th at 411 [uncertainty of class treatment
19 was significant question which supported the decision to settle].)

20 Here, Class Counsel should also be compensated for the risks involved in undertaking this
21 litigation, and expending considerable effort, all while working on a pure contingency basis.
22 Since undertaking representation of Plaintiffs, Class Counsel have borne all the costs of litigation
23 without receiving any compensation to date. Class Counsel’s efforts have included conducting
24 pre-filing investigation, analyzing Plaintiff’s claims, conducting ongoing legal research,
25 performing substantial data analysis of Defendant’s time and payroll records, preparing for and
26 attending mediation, preparing the Motions for Preliminary and Final Approval, and otherwise
27 litigating this case. Given the considerable potential for adverse outcomes in this case, including,
28 but not limited to, losing on class certification and/or merits issues, the contingent risk borne by

1 Class Counsel was great.

2 Indeed, a multiplier is further justified primarily because Plaintiff settled prior to filing a
3 time-consuming certification motion. The decision to settle early is to be lauded and not
4 punished, since Class Members will now avoid the risks of additional litigation and are assured
5 of substantial and immediate monetary recovery. Indeed, under California law, “the promptness
6 of settlement cannot be used to justify the refusal to apply a multiplier to reflect the size of the
7 class recovery without exacerbating the disincentive to settle promptly inherent in the lodestar
8 methodology.” (Lealao, 82 Cal. App. 4th at 53.) According to Lealao, to not apply a multiplier
9 under these circumstances would be deleterious to California policy, as “awards that are too small
10 [will] chill the private enforcement essential to the vindication of many legal rights and obstruct
11 the representative actions that often relieve the courts of the need to separately adjudicate
12 numerous claims.” (Id. at 53.)

13 As the results obtained by Class Counsel for the Class are great and the risks presented by
14 this litigation significant taken on contingency were significant, Class Counsel submit that the
15 requested fee award is fair, reasonable, and adequate and should be approved.

16 **3. Class Counsel’s Hourly Rates are Reasonable**

17 A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and
18 experience in the relevant community. (PLCM Group, Inc. v. Drexler (2000) 22 Cal. 4th 1084,
19 1095; Hopson v. Hanesbrands Inc. (N.D. Cal. Apr. 3, 2009) 2009 U.S. Dist. LEXIS 33900.)
20 When determining a reasonable hourly rate, courts may consider factors such as the attorney’s
21 skill and experience, the nature of the work performed, the relevant area of expertise and the
22 attorney’s customary billing rates. (Flannery v. California Highway Patrol (1998) 61 Cal. App.
23 4th 629, 632.)

24 Lebe Law, APLC sets its billing rates of its attorneys to be consistent with the prevailing
25 market rates in the private sector for attorneys and staff of comparable skill, qualifications and
26 experience by monitoring the prevailing market rates charged by both defense and plaintiff law
27 firms. (Lebe Decl., ¶¶ 38-40.) Jonathan M. Lebe’s hourly rate is \$700 and is in line with rates
28 typically approved in wage-and-hour class action litigation in California and has been approved

by numerous California state and federal courts. (Lebe Decl., ¶¶ 39-40.) As Associate Attorneys of Lebe Law, APLC, Annaliz Loera’s hourly rate is \$375 and Nicolas Tomas’ hourly rate is \$350. (Lebe Decl., ¶ 39.) Class Counsel’s skill and experience support their hourly rates. (Id., ¶¶ 3-10, 40.) Their practice is limited exclusively to litigation, focusing on the representation of employees and specifically in wage-and-hour employment class action matters. (Lebe Decl., ¶¶ 3-10.) Class Counsel have been appointed Class Counsel or Co-Class Counsel in numerous cases. (Id., ¶¶ 3-8.) Class Counsel’s hourly rate has been accepted by numerous Courts in the past. (Id., ¶¶ 3-8.) Other wage-and-hour attorneys working as Class Counsel before California courts charge comparable if not higher rates, and Class Counsel’s proposed rates are consistent with those suggested by the Laffey Matrix and 2020 Real Rate Report. (Lebe Decl. ¶ 40, Exhibits F and G.)

C. The Litigation Expenses Are Reasonable

Class Counsel seeks reimbursement of their litigation costs and expenses of \$11,101.31, which is less than the \$15,000.00 budgeted by the parties in the settlement agreement. These costs were reasonable and necessary to the prosecution of this case, are reasonable, and are unopposed by the Class and Defendant. (Lebe Decl., ¶ 37, Exhibit B.)

D. Settlement Administration Expenses are Reasonable

Class Counsel also seeks payment of \$12,500 to CPT Group, Inc. for its work in administering the Settlement. (La Russa Decl., ¶ 17.) The La Russa Declaration details CPT Group, Inc.’s work to date including, among other things: receipt, review and analysis of data produced by Defendant following preliminary approval; a database search of the U.S. Post Office to update all mailing addresses before the initial mailing; formatting the Class Notice; mailing via first class U.S. Mail; forwarding returned Class Notices; constructing and maintaining a website for this matter; providing weekly status reports; and, following final approval, calculation of Settlement Payment checks, mailing checks with tax forms to the 928 Participating Class Members; distribution of other funds as ordered by the Court; preparing tax reports; and handling Class Member calls and uncashed checks.

E. The Proposed PAGA Payment is Reasonable

The settlement of claims under the Private Attorneys General Act of 2004, as amended

1 (“PAGA”) for civil penalties in the sum of \$15,000. Of this amount, 75 percent (\$11,250) will
2 be paid to the Labor Workforce Development Agency (“LWDA”) and 25 percent of the remaining
3 funds (\$3,760) will be paid to the aggrieved employees, as required by the statute. The PAGA
4 settlement of \$15,000 is reasonable and appropriate under the circumstances. The Parties
5 negotiated a good faith amount for PAGA penalties to be paid to the LWDA and to the Class. The
6 portions to be paid to the LWDA and the Class was not the result of self-interest at the expense
7 of any Class Member. Where parties “negotiate[] a good faith amount” for PAGA penalties and
8 “there is no indication that this amount was the result of self-interest at the expense of other Class
9 Members,” such amounts are generally considered reasonable. (Hopson v. Hanesbrands Inc., No.
10 CV-08-0844 EDL, 2009 WL 928133, at *9 (N.D. Cal. Apr. 3, 2009).) The amount to be paid to
11 the LWDA is considerably higher than other approved PAGA settlements. (*See, e.g., Hopson*,
12 2008 WL 3385452, at *1 [approving PAGA settlement of 0.3% or \$1,500]; Garcia v. Gordon
13 Trucking, Inc., No. 1:10-CV-0324 AWI SKO, 2012 WL 5364575, at *3 (E.D. Cal. Oct. 31, 2012)
14 [approving settlement of 0.27%]; Villacres v. ABM Indus. Inc., 189 Cal. App. 4th 562 (2010),
15 review denied (Feb. 16, 2011) [PAGA claims may be settled without any money allocated to
16 those claims].)

17 Moreover, Plaintiffs provided notice to the LWDA of the proposed settlement at the time
18 that they filed their motion for preliminary approval. No objection or response has been received
19 from the LWDA. This is indicative of a fair PAGA settlement.

20 **F. The Requested Service Payment Award is Reasonable**

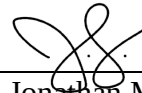
21 Plaintiff and appointed Class Representative Scott Fiske respectfully requests an award of
22 \$7,500 for having initiated and prosecuted this litigation on behalf of the Class for the past one
23 and one-half years, for work performed, providing information and documents to Class Counsel,
24 providing a general release of all claims, assuming responsibility of defense costs had this case
25 been lost, and the substantial benefits to be received by the other 928 Participating Class
26 Members. (Lebe Decl., ¶ 45; Fiske Decl., ¶ 15.)
27
28

1 **IV. CONCLUSION**

2 The Settlement reached in this class action litigation will efficiently, economically, and
3 favorably resolve this litigation which has been ongoing for over five years. Accordingly, Plaintiff
4 and the Class respectfully request the Settlement be given final approval, and that Class Counsel
5 attorneys' fees and litigation costs, the Class Representative's service payment, the
6 Administrator's expenses, and the PAGA payment be awarded as requested by this motion.

7
8 Dated: February 14, 2022 **Lebe Law, APLC**

9
10 By:



Jonathan M. Lebe

Annaliz Loera

Nicolas Tomas

11
12
13 Attorneys for Plaintiff Scott Fiske, Individually and on
14 behalf of all others similarly situated