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

13 JAIME CORONA, on behalf of himself and
others similarly situated,

14
15 Plaintiff,

16 v.

17 FAIRVIEW FORD SALES, INC., a California
corporation; FAIRWAY FORD SALES, INC., a
18 California corporation; and DOES 1 through 100,
19 inclusive,

20 Defendants.
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Case No.: CIVSB2124446

Assigned for all purposes to:
Hon. David Cohn, Dept. S26

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

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

Final Approval Hearing

Date: August 9, 2022
Time: 10:00 a.m.
Dept.: S26

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:

PLEASE TAKE NOTICE that on August 9, 2022 at 10:00 a.m., or as soon thereafter as the matter may be heard in Department S26 of the Superior Court of California, County of San Bernardino, located at 247 West Third Street, San Bernardino, California 92415, before the Honorable David Cohn, plaintiff Jaime Corona (“Plaintiff” or “Class Representative”), individually and on behalf of all others similarly situated, will and hereby does move this Court for entry of an order pursuant to California Code of Civil Procedure section 382 and California Rules of Court, Rule 3.769:

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

2. Confirming the appointment of Plaintiff Jaime Corona as the Class Representative for settlement purposes;

3. Confirming the appointment of CounselOne, P.C. as Class Counsel for settlement purposes;

4. Granting final approval of the parties’ Class and Representative Action Settlement Agreement (“Settlement Agreement”);

5. Approving an award of \$84,000 in attorneys’ fees to Class Counsel;

6. Approving an award of \$9,243.69 in actual litigation costs reimbursement to Class Counsel;

7. Approving an award of \$10,000 to CPT Group, Inc. for its settlement administration services;

8. Approving an enhancement payment in the amount of \$5,000 to Plaintiff as a service award; and

9. Entering final judgment in the form of the [Proposed] Judgment and entering the Order Granting Plaintiff’s Motion for Final Approval of Class and Representative Action Settlement, Attorneys’ Fees and Costs, and Class Representative’s Service Award, which are both submitted concurrently with this Motion.

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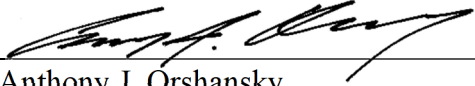
1 This motion is made on the following grounds: (1) the conditionally certified Class continues
2 to meet the requirements for class certification for settlement purposes only under Code of Civil
3 Procedure section 382; (2) Plaintiff and Class Counsel continue to be adequate representatives of
4 the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

11 This motion is based on this Notice of Motion; the attached Memorandum of Points and
12 Authorities; the supporting declarations of Anthony J. Orshansky, Jaime Corona, and Abel E.
13 Morales of CPT Group, Inc. and the exhibits attached thereto; the Settlement Agreement; all other
14 pleadings and papers on file in this action; and on any further oral or documentary evidence or
15 argument presented at the time of hearing. Finally, given the multiplicity of issues addressed in this
16 motion, Plaintiff believes that there is good cause to exceed the 20-page limit set forth in California
17 Rules of Court, Rule 3.764(c)(2), and respectfully request that the Court consider Plaintiff's
18 Memorandum of Points and Authorities, which is 30 pages in length.

19
20 Dated: July 18, 2022

Respectfully submitted,

COUNSELONE, PC

21
22 By: 

23 Anthony J. Orshansky
24 Jennifer L. Connor
25 Justin Kachadoorian
26 Attorneys for Plaintiff
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Jaime Corona (“Plaintiff” or “Class Representative”) hereby submits this Memorandum of Points and Authorities in support of his Motion for Final Approval of this class and representative action settlement on behalf of all salespersons, finance managers, and service writers who are or have been employed by defendants Fairview Ford Sales, Inc. and Fairway Ford Sales, Inc. (“Defendants”) in the State of California as non-exempt employees at any time from August 18, 2016 to June 30, 2021 (the “Class” or “Class Members”).¹

The Class and Representative Action Settlement Agreement (“Settlement Agreement”, attached to the concurrently filed Declaration of Anthony J. Orshansky as **Exhibit “1”**) between Plaintiff and Defendants (together, the “Parties”), if approved, will resolve specific claims of Plaintiff, Settlement Class Members,² and PAGA Group Members/Aggrieved Employees³ in exchange for Defendants’ agreement to pay ***Two Hundred Forty Thousand Dollars (\$240,000) into a non-reversionary common settlement fund.*** In this non-reversionary settlement, all Settlement Class Members will ***automatically receive*** payments without the need to submit a claim form, resulting in an average individual settlement award payment of approximately \$738.96. (See Declaration of Abel E. Morales Regarding Notification and Settlement Administration (“Morales Decl.”), filed concurrently herewith, at ¶ 11.) This is a very favorable resolution of the disputed wage and hour claims in this case. As of the date of filing of this motion, ***not a single Class Member has filed an objection*** to the settlement after receiving notice of the proposed settlement and the projected individual settlement payments, and ***not a single Class Member requested exclusion*** from the settlement, resulting in a ***100% settlement participation rate.*** (*Id.* at ¶¶ 9-11.)

¹ “Class Period” is defined as the period from August 18, 2016 and ending on June 30, 2021. (Settlement Agreement ¶ 7.)

² “Settlement Class” or “Settlement Class Members” means all Class Members who have not submitted a timely and valid request for exclusion from the settlement. (Settlement Agreement ¶ 5.)

³ Aggrieved Employees” are defined as all Class Members who are employed or have been employed during the PAGA Period. (Settlement Agreement ¶ 2.) “Aggrieved Employees” and “PAGA Group Members” are used interchangeably throughout. The “PAGA Period” is defined as the period from August 18, 2019 through June 30, 2021. (*Id.* at ¶ 23.)

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

II. FACTUAL AND PROCEDURAL BACKGROUND

On August 18, 2020, Class Counsel submitted a ten-page pre-filing letter pursuant to California Labor Code § 2699 to the California Labor and Workforce Development Agency ("LWDA") outlining the factual and legal bases for Plaintiff's allegations of wrongdoing on behalf of himself and aggrieved employees, along with mailing a certified copy to Defendants. (Declaration of Anthony J. Orshansky in Support of Plaintiff's Motion for Final Approval of Class and Representative Action Settlement ("Orshansky Decl."), filed concurrently herewith, ¶ 23.)

On September 24, 2021, Plaintiff filed a Class and Representative Action Complaint (the "Complaint") asserting the following claims: (1) Violation of California Labor Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages); (2) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime); (3) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums); (4) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums); (5) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses); (6) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements); (7) Violation of California Labor Code §§ 201-204 (Failure to Pay All Wages Owed Timely and Upon Separation of Employment); (8) Violation of California Labor Code § 1174(d) (Failure to Keep Requisite

1 Payroll Records); (9) Violation of California Business & Professions Code §§ 17200, *et seq.*; and
2 (10) Penalties Pursuant to California Labor Code §§ 2698, *et seq.* (Private Attorneys General Act).⁴

3 Plaintiff's lawsuit thus sought to recover unpaid wages, premiums for improper meal and
4 rest breaks, reimbursement of business expenses, restitution, liquidated damages, penalties for
5 improper wage statements, waiting time penalties, civil penalties pursuant to the PAGA, injunctive
6 and other equitable relief, prejudgment interest, and attorneys' fees and costs. (Orshansky Decl. ¶
7 25.)

8 Defendants deny Plaintiff's allegations of wrongdoing. (Settlement Agreement ¶¶ 39, 41,
9 44.) Defendants do not believe that any liability to Plaintiff or Class Members/PAGA Group
10 Members exists, or that Plaintiff or Class Members/PAGA Group Members are entitled to any
11 recovery. (*Ibid.*) In settling, Defendants do not admit liability with respect to the alleged claims and
12 make no admission regarding any facts or law related to the action. (*Id.* at ¶ 44.)

13 **A. Discovery and Investigation.**

14 Here, the Parties exchanged substantial information and documents, which enabled them to
15 thoroughly evaluate Plaintiff's claims, the claims of the putative class members, and the aggrieved
16 employees' PAGA claim, along with Defendants' affirmative defenses, and the likely outcomes,
17 risks and expense of pursuing litigation.

18 Prior to initiating the action, as early as August 2020, Class Counsel thoroughly investigated
19 the claims and considered the facts and circumstances underlying the pertinent issues and applicable
20 law. (Orshansky Decl. ¶ 22.) This required thorough discussions and interviews with Plaintiff and
21 other Class Members as well as research into the various legal issues involved in the case. (*Ibid.*)
22 After conducting their initial investigation, Class Counsel determined that the claims were well
23 suited for class action adjudication owing to what appeared to be a common course of conduct
24 affecting a similarly situated group of employees. (*Ibid.*)

25 The Parties participated in an informal exchange of information and documents which
26 yielded information and documentation concerning the claims alleged, including Defendants' pay

27 ⁴ The Parties entered into a tolling agreement prior to the filing of the Complaint that extends the
28 putative class period back to August 18, 2016.

1 plans, employee handbooks, policies and procedures regarding the payment of wages, the provision
2 of meal and rest breaks, time keeping policies, such as recording hours, issuance of wage statements,
3 and providing all wages at separation, as well as composite data regarding the number of Class
4 Members and the mix of current versus former employees, total number of pay periods, total number
5 of workweeks, and the average hourly rate in effect. (Orshansky Decl. ¶ 27.) Defendants also
6 produced time and pay records for Class Members. (*Ibid.*) Counsel met and conferred at length
7 regarding the information and documents produced. (*Ibid.*) Class Counsel analyzed the documents
8 and data produced in conjunction with Class Member interviews and consultation with an expert to
9 determine Defendants' degree of liability and potential amounts due in damages. (*Id.* at ¶ 28.)

10 **B. Mediation and Settlement.**

11 Thereafter, the Parties participated in a full-day mediation with Jill R. Sperber, Esquire of
12 Judicate West, where they debated and discussed their respective positions. (Orshansky Decl. ¶ 29.)
13 Ms. Sperber is experienced in mediating complex general litigation, labor and employment claims,
14 class actions, and PAGA actions, among others. (*Ibid.*) During the mediation, the Parties exchanged
15 further information and discussed all aspects of the case, including the risks and delays of litigation
16 and the risk to both Parties for proceeding with a motion for class certification, liability under the
17 claims asserted, and the implications of a PAGA representative action. (*Id.* at ¶ 30.) These were
18 contentious issues because of the factual and legal complexity of the case. (*Ibid.*)

19 After Ms. Sperber made a mediator's proposal for a settlement, the Parties reached an
20 agreement for resolution, and subsequently embodied the agreement in a Memorandum of
21 Understanding. (Orshansky Decl. ¶ 31.) The settlement negotiations were hard fought and conducted
22 in good faith and at arm's length between attorneys with substantial experience litigating class and
23 representative actions. (*Id.* at ¶ 32.) The settlement was the product of a non-collusive settlement
24 process in which the Parties were forced to make significant compromises in the interest of reaching
25 a full and complete settlement of the action. (*Ibid.*)

26 From Class Counsel's review of the facts, strengths, and weaknesses of the case, the risks
27 and delays posed by further litigation, and Class Counsel's own prior litigation experience, Class
28 Counsel believe that the recovery being made available to Settlement Class Members and PAGA

1 Group Members is fair, reasonable, and adequate taking into consideration the amounts received in
2 other wage and hour class and representative actions, the risks inherent in litigation of this genre,
3 and the reasonable tailoring of each Settlement Class Member's and PAGA Group Member's claim
4 to the settlement award he or she will receive. (Orshansky Decl. ¶ 33.) Class Counsel believe that
5 the settlement serves the best interests of Settlement Class Members and PAGA Group Members.
6 (*Ibid.*) The Parties have concluded that it is in their best interests to compromise, settle, and accept
7 the terms of the Settlement Agreement. (Settlement Agreement ¶ 41.)

8 The Parties engaged in extensive negotiations to finalize the long-form Settlement
9 Agreement, along with the Notice of Proposed Class and Representative Action Settlement, and
10 Plaintiff filed his Motion for Preliminary Approval of Class and Representative Action Settlement.
11 (Orshansky Decl. ¶ 31.) After the Motion for Preliminary Approval was filed, and the hearing
12 thereon conducted, the Court issued its Order Granting Preliminary Approval of Class and
13 Representative Action Settlement on May 3, 2022, attached at **Exhibit "2"** to the Orshansky Decl.
14 filed concurrently herewith, preliminarily approving the Settlement Agreement.

15 On May 23, 2022, after performing a National Change of Address ("NCOA") search to
16 update and verify addresses, the Settlement Administrator, CPT Group, Inc. ("CPT"), mailed via
17 U.S. first class mail the Notice of Proposed Class and Representative Action Settlement ("Notice")
18 to all Class Members and PAGA Group Members. (*See* Morales Decl. ¶¶ 6, 7 and Exhibit A
19 (Notice).) Class Members had until July 7, 2022 to submit disputes, requests for exclusion, or
20 objections. (*Id.* at ¶ 7.) As of the date of this filing, CPT received *no objections* and *no requests for*
21 *exclusion* rendering an overall *settlement participation rate of 100%*. (*Id.* at ¶¶ 9-11.) Given the
22 participation rate and estimated deductions from the Gross Settlement Amount, the average gross
23 individual settlement payment is approximately \$738.96. (*Id.* at ¶ 11.) Plaintiff now respectfully
24 submits the settlement for this Court's final approval.

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

26 **A. The Class Definition**

27 For settlement purposes only, the Class to be confirmed for certification is as follows: all
28 salespersons, finance managers, and service writers who are employed or have been employed by

1 Defendants in the State of California as non-exempt employees from August 18, 2016 through June
2 30, 2021.

3 **B. Monetary Terms**

4 Defendants have agreed to pay a non-reversionary settlement amount (“Gross Settlement
5 Amount”) of Two Hundred Forty Thousand Dollars (\$240,000). (*See* Settlement Agreement ¶ 48;
6 Orshansky Decl. ¶ 5.) The Gross Settlement Amount shall be inclusive of all individual settlement
7 payments to Settlement Class Members, the enhancement payment to the Class Representative, the
8 costs to the Settlement Administrator, the attorneys’ fees and litigation costs to Class Counsel, and
9 the payment under the Private Attorneys General Act (“PAGA”), including payment to PAGA
10 Group Members and to the California Labor and Workforce Development Agency (“LWDA”) for
11 civil penalties pursuant to statute. (Orshansky Decl. ¶ 6.) The Net Settlement Amount is the amount
12 remaining from the Gross Settlement Amount after deducting Court-approved amounts for
13 attorneys’ fees (*i.e.*, \$84,000), actual litigation costs reimbursement (*i.e.*, \$9,243.69 [which is less
14 than the agreed upon \$12,000]), Class Representative’s enhancement payment (*i.e.*, \$5,000), PAGA
15 payment (*i.e.*, \$20,000—of which 75% is allocated for payment to the LWDA for civil penalties
16 pursuant to statute and 25% is to be distributed on a *pro rata* basis to all PAGA Group Members),
17 and settlement administration expenses (*i.e.*, \$10,000). (*See* Settlement Agreement ¶ 48(a)-(e);
18 Orshansky Decl. ¶ 7.) Based on these figures, the Net Settlement Amount is approximately
19 \$111,756.31.⁵ (Orshansky Decl. ¶ 7.) The average individual settlement payment is estimated at
20 \$738.96. (Morales Decl. ¶ 11.)

21 The entire Net Settlement Amount will be paid out to Settlement Class Members. Settlement
22 Class Members will automatically receive payments without the need to submit a claim form, and
23 PAGA Group Members will receive individual PAGA payments irrespective of whether they opt
24 out. (*See* Settlement Agreement ¶ 55(a).)

25
26
27 ⁵ The Parties originally estimated the Net Settlement Amount at \$109,000. However, the actual Net
28 Settlement Amount is \$111,756.31 because Class Counsel’s actual litigation costs are \$9,243.69
(*see* Orshansky Decl. ¶ 116), which is less than the allocated costs amount of \$12,000.

1 The Net Settlement Amount will be the amount that is available for distribution to Settlement
2 Class Members on a *pro rata* basis, based on workweeks during the Class Period. (Settlement
3 Agreement ¶ 36.) The Workweek Rate shall mean the amount yielded from dividing the Net
4 Settlement Amount by the total of all Workweeks Worked credited to all Settlement Class Members.
5 (*Ibid.*) Each Settlement Class Member's Settlement Payment is equal to the Workweek Rate
6 multiplied by his or her individual Workweeks Worked for Defendants as a non-exempt salesperson,
7 finance manager, and/or service writer during the Class Period. (*Ibid.*) Therefore, the amount of
8 each Settlement Class Member's Settlement Payment is tied to the number of Workweeks Worked
9 that each Settlement Class Member worked for Defendants in the State of California during the
10 Class Period in comparison to all Workweeks Worked by all Class Members in the State of
11 California during the Class Period. (*Ibid.*)

12 In addition, each PAGA Group Member will receive a PAGA Payment on a *pro rata* basis,
13 based on workweeks during the PAGA Period. (Settlement Agreement ¶ 24.) The PAGA Workweek
14 Rate is \$5,000 (*i.e.*, the remainder after subtracting the \$15,000 allocated to the LWDA from the
15 \$20,000 total amount of this settlement allocated to PAGA) divided by the total number of PAGA
16 Workweeks Worked credited to all PAGA Group Members. (*Ibid.*) Each PAGA Group Member's
17 PAGA Payment is equal to the PAGA Workweek Rate multiplied by his or her individual PAGA
18 Workweeks Worked. (*Ibid.*) Therefore, the amount of each PAGA Group Member's PAGA
19 Payment is tied to the number of PAGA Workweeks Worked that each PAGA Group Member
20 worked for Defendants in the State of California during the PAGA Period in comparison to all
21 PAGA Workweeks Worked by all PAGA Group Members working for Defendants in the State of
22 California during the PAGA Period. (*Ibid.*)

23 As a result of the distribution formulas, the consideration paid to each Settlement Class
24 Member and PAGA Group Member is tailored to the impact of Defendants' alleged violations as
25 well as to the claims he or she is releasing. (Orshansky Decl. ¶ 10.)

26 Payments to the Settlement Class Members will be classified as twenty percent (20%) wages
27 to be reported on an IRS Form W-2, and eighty percent (80%) penalties and interest to be reported
28 on an IRS 1099 Form. (*See* Settlement Agreement ¶ 50(a).)

1 **C. Summary of Notice Process**

2 On May 13, 2022, counsel for Defendants provided CPT Group, Inc. (“CPT”), the Court-
3 approved Settlement Administrator, with a list of Class Members and PAGA Group Members
4 containing the full names, last known mailing addresses, Social Security numbers, and employment
5 dates for each Class Member and PAGA Group Member. (*See* Morales Decl. ¶ 5.) After performing
6 a NCOA search to update and verify addresses, CPT mailed via U.S. first class mail the Notice to
7 all Class Members and PAGA Group Members. (*Id.* at ¶¶ 6-7.) As a result of either a skip trace,
8 request from counsel or the Class Member, a total of two Class have been re-mailed. (*Id.* at ¶ 8.)
9 Class Members had until July 7, 2022 to submit disputes, requests for exclusion, or objections. (*Ibid.*)
10 As of the date of this filing, not a single Class Member has submitted a dispute as to workweeks
11 listed on the Notice, objected to the settlement, nor has any Class Member opted out of the
12 settlement; accordingly, this results in a **100% settlement participation rate**. (*Id.* at ¶¶ 9-11.) The
13 average individual settlement payment is \$738.96. (*Id.* at ¶ 11.)

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

15 The settlement calls for the Gross Settlement Amount along with the Defendants’ share of
16 the payroll and employment taxes to be funded within ten (10) calendar days of the Effective Date.
17 (Settlement Agreement ¶ 59.) The Settlement Administrator shall distribute settlement payments
18 within twenty (20) calendar days after the Effective Date. (*Id.* at ¶¶ 34, 59.)

19 In the event any settlement checks are not cashed, deposited, or negotiated within one
20 hundred and fifty (150) calendar days from the date of issuance, then the check(s) will be cancelled
21 and the funds associated with the cancelled check(s) will be transmitted to *cy pres* recipient CASA
22 California in accordance with Code of Civil Procedure section 384. (*See* Settlement Agreement ¶
23 60; Orshansky Decl. ¶ 14.)

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

25 The Court’s Final Approval Order and Judgment will be posted on the Settlement
26 Administrator’s website pursuant to California Rules of Court, Rule 3.771(b). (Orshansky Decl. ¶
27 126.)

28 ///

1 **IV. ARGUMENT**

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

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

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

21 California courts have a strong policy in favor of settlement. (*See, e.g., Stambaugh v.*
22 *Superior Court* (1976) 62 Cal.App.3d 231, 236.) Unlike individual settlements, class action
23 settlements involve a court approval process that exists to prevent fraud, collusion, and unfairness
24 to class members. (*Malibu Outrigger Bd. of Governors v. Superior Court* (1980) 103 Cal.App.3d
25 573, 578-79.) This approval process consists of preliminary settlement approval, notice given to
26 class members, and a final fairness and approval hearing at which class members have the
27 opportunity to be heard with respect to the settlement. (*Ibid.*) Now that notice has been provided to
28

1 Class Members, Plaintiff respectfully requests that the Court finally approve the settlement as fair,
2 adequate, and reasonable.

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

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

16 [T]he strength of plaintiffs’ case, the risk, expense, complexity and likely duration of
17 further litigation, the risk of maintaining class action status through trial, the amount
18 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.

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

22 “In the context of a settlement agreement, the test is not the maximum amount plaintiffs
23 might have obtained at trial on the complaint, but rather whether the settlement is reasonable under
24 all of the circumstances.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 250.)
25 Because settlements inherently involve compromise, even settlements providing for substantially
26 narrower relief than what may be obtained if the suit were successfully litigated can be reasonable
27 because “the public interest may indeed be served by a voluntary settlement in which each side gives
28

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

3 Here, the settlement resulted from extensive arm’s-length settlement negotiations between
4 qualified and experienced counsel with the assistance of a well-respected mediator. (*See* Orshansky
5 Decl. ¶ 32.) While Plaintiff maintains that his claims are meritorious, Plaintiff acknowledges the
6 substantial risks and uncertainty in proceeding with class certification and eventually trial, which
7 justify a downward departure from the maximum exposure that Plaintiff calculated that each claim
8 carried. (*Id.* at ¶¶ 35-36.) For the reasons discussed herein, Class Counsel posit that the settlement is
9 fair, adequate, and reasonable for all Settlement Class Members.

10 As detailed in Plaintiff’s Motion for Preliminary Approval (“Plaintiff’s MPA”), Defendants
11 argued that Plaintiff would be unable to certify a class outside of the settlement context for a variety
12 of reasons. For example, Defendants contended that all work performed by Class Members was
13 “directly related” to the activities that were being compensated via commissions, and therefore they
14 did not need to be separately compensated for any “non-productive” time. (Orshansky Decl. ¶ 36.)
15 Additionally, Class Members worked in different job positions and had different managers, and as
16 a result, Defendants contended there was variation to the circumstances that could allegedly cause
17 employees to be deprived of the opportunity to take legally compliant, duty-free meal and rest
18 periods, and this variation in circumstances raised highly individualized questions of fact. (*Id.* at ¶¶
19 36, 38.) Defendants also disputed Plaintiff’s characterization of working conditions, liability, and
20 damages, and possessed documentary and testimonial evidence rebutting Plaintiff’s allegations. (*Id.*
21 at ¶ 38.)

22 Further, Plaintiff would face significant hurdles to certification given that Class Members
23 signed arbitration agreements with class action waivers as a condition of their employment.
24 (Orshansky Decl. ¶ 39; *see Epic Sys. Corp. v. Lewis* (2018) 138 S.Ct. 1612 [class action waivers in
25 arbitration agreements are enforceable].) If Defendants’ arbitration agreement defense is successful,
26 it would severely limit the potential relief available to those Class Members who signed arbitration
27 agreements with class action waivers. (Orshansky Decl. ¶ 39.) In addition, Defendants contended
28 Plaintiff would face significant hurdles to certification given that Defendants raised individualized

1 affirmative defenses such as waiver of meal periods and that on-premises rest breaks are not
2 equivalent to on-call liability in the *Augustus* case progeny. (*Id.* at ¶ 107.) If Plaintiff prevailed and
3 certified a class action, there is no guarantee that Defendants would not later move for and obtain
4 decertification. (*Id.* at ¶¶ 39, 107.) If the Court either denied class certification or later decertified it,
5 the Class would recover nothing, and Class Members would be forced to retain their own counsel
6 and proceed on the basis of individual claims only. (*Ibid.*)

7 Looking at the merits of Plaintiff’s claims, Defendants contended that there is substantial
8 uncertainty due to the factual and legal complexity of the case (*i.e.*, factual variance and evidentiary
9 difficulty of proving unpaid wages for “non-productive” time and unrecorded rest break violations,
10 and legal complexity as to defenses such as waiver of meal and rest breaks, the legality of on-
11 premises rest breaks absent other indicia of control, and/or unpaid meal and rest break premiums as
12 predicate for wage statement and waiting time penalties). Applying the *Clark* and *Kullar* analysis,
13 Class Counsel’s valuation is that the Gross Settlement Amount recovery reflects an estimated
14 46.43% of the potential damages recoverable at trial. (Orshansky Decl. ¶¶ 41, 78.) Specifically, the
15 Parties posited as follows:

16 **Unpaid Wages.** Plaintiff contended that Defendants did not fully compensate Plaintiff and
17 Class Members for “non-productive” time (*i.e.*, non-sales activity). (Orshansky Decl. ¶ 43.) Non-
18 sales activity is compensable time. (*See Vaquero v. Stoneledge Furniture, LLC* (2017) 9 Cal.App.5th
19 98; *Balasanyan v. Nordstrom* (S.D. Cal. 2012) 913 F.Supp.2d 1001.) Based on Defendants’ records
20 and, in conjunction with interviews of Plaintiff and Class Members, Plaintiff estimated that
21 Defendants are liable for an aggregate of approximately sixty (60) minutes of non-sales activity
22 performed per workweek. (Orshansky Decl. ¶ 45.) However, Defendants contended that Plaintiff’s
23 claim for unpaid wages stemming from non-sales activity is not amenable to class treatment, because
24 employees worked in a variety of departments with different requirements, and it would require an
25 unmanageable series of mini-trials to determine how much time was spent performing non-sales
26 activity. (*Id.* at ¶ 46.) Further, in terms of merit defenses, Defendants vigorously disagreed with
27 Plaintiff’s theories regarding how much non-sales activity occurred in reality and the credibility of
28

1 those claimed hours. (*Id.* at ¶ 47.) In light of these considerations, Plaintiff applied appropriate
2 discounts for the risk of non-certification and being unsuccessful on the merits. (*Id.* at ¶ 48.)

3 **Stoneledge Rest Period Violations.** Plaintiff asserted that Defendants failed to separately
4 compensate Class Members for rest breaks as held in *Stoneledge, supra*, 9 Cal.App.5th 98, noting
5 that his commission pay plan is the functional equivalent of the commission pay plan found to be
6 unlawful in that case. (Orshansky Decl. ¶ 49.) In *Stoneledge*, sales associates who worked for Ashley
7 Furniture Store were paid on a commission pay plan, which guaranteed a minimum hourly rate as
8 an advance against commission earned in later pay periods. The *Stoneledge* court held the
9 commission pay plan was unlawful because it failed to separately compensate sales associates for
10 rest breaks in weeks where the employee was paid on a commission basis. In essence, the reasoning
11 of the *Stoneledge* court was a natural extension of its prior holding in *Bluford v. Safeway, Inc.* (2013)
12 216 Cal.App.4th 864, 872, which held that “under the rule of *Armenta v. Osmose, Inc.* (2005) 135
13 Cal.App.4th 314, 323, rest periods must be separately compensated in a piece-rate system.” (*See*
14 *Stoneledge, supra*, 9 Cal.App.5th at p. 110 (“We agree with *Bluford* that Wage Order 7 requires
15 employers to separately compensate employees for rest periods if an employer’s compensation plan
16 does not already include a minimum hourly wage for such time.”).) As a result, Plaintiff contended
17 that Class Members are entitled to rest period premium pay for every rest period not separately
18 compensated for by Defendants. (Orshansky Decl. ¶ 50.) Defendants argued that they are not liable
19 for rest period premiums, but that they are only liable for the missed and unpaid rest period minutes
20 at most. (*Ibid.*) In light of these considerations, Plaintiff discounted the *Stoneledge* rest break
21 valuation to 20 minutes of unpaid time per shift during weeks Plaintiff and Class Members earned
22 commissions.

23 **Meal and Rest Period Violations.** Plaintiff asserted that there are compliance issues *vis-à-*
24 *vis* meal breaks—some are late, missed, short, or interrupted. (Orshansky Decl. ¶ 52.) On February
25 25, 2021, in *Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58, the California Supreme Court
26 reversed the Fourth Appellate District and set forth two clear rules: (1) employers are not permitted
27 to round time records when determining if employees are entitled to meal premium pay, and (2) it
28 is the employer’s burden to show that compliant meal periods were provided to employees if the

1 time records show otherwise. Defendants failed to make the corresponding equivalent of meal
2 period premiums for “missed,” “short,” or “late” meal periods to employees. (Orshansky Decl. ¶ 54;
3 *c.f.* Wage Order Nos. 4-2001 and 7-2001, § 11(b).)

4 Defendants, however, contended that they had practices, policies, and procedures to provide
5 meal and rest breaks every workday to their employees that fully complied with the law. (Orshansky
6 Decl. ¶ 55.) Defendants vehemently argued that they complied with the requirements articulated by
7 the California Supreme Court in *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th
8 1004. (*Ibid.*) Specifically, Defendants maintained that they “provide” employees with a reasonable
9 opportunity to take timely meal periods of at least 30 minutes, relieve employees of all duties during
10 meal periods, and relinquish control over employees’ activities, including the ability to leave the
11 premises during meal periods. (*Ibid.*)

12 Like most employers facing meal period litigation, Defendants argued that employees were
13 apprised of their right to take meal periods and provided compliant meal periods, but some may
14 have voluntarily waived them. (Orshansky Decl. ¶ 56.) Defendants contended that the issue of
15 voluntary waiver would necessarily devolve into a series of individualized mini-trials, precluding
16 class certification. (*Ibid.*; *see Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 25
17 [holding that the defendant must be provided an opportunity to litigate affirmative defenses, even
18 when they turn on individual questions].) Based upon the analysis of Class Members’ time and
19 payroll records and, in conjunction with interviews of Plaintiff and Class Members, Plaintiff
20 determined that 32.8 percent of eligible shifts were the subject of unique violations for missed, short,
21 or late meal periods. (Orshansky Decl. ¶ 57.)

22 Plaintiff also alleged that Class Members did not receive authorized rest breaks as required
23 whereby employers “relinquish control over how employees spend their time and relieve employees
24 of all duties.” (*Augustus v. ABM Security Service, Inc.* (2016) 2 Cal.5th 257, 260; Orshansky Decl.
25 ¶ 58.) Due to Defendants’ work demands and inadequate staffing, Plaintiff and Class Members did
26 not receive timely and compliant rest breaks, nor did Defendants relinquish control over how
27 employees spent their 10-minute rest breaks. (Orshansky Decl. ¶ 58.) As with the meal periods,
28 Plaintiff did not receive rest break premium payments for non-compliant rest breaks, nor is there

1 evidence that Defendants made rest break premium payments to Class Members, as required under
2 Labor Code § 226.7. (*Id.* at ¶ 59.)

3 Defendants again disputed liability and damages. (Orshansky Decl. ¶ 60.) Defendants
4 maintained that they authorized and permitted duty-free rest breaks of not less than ten minutes for
5 every major fraction of four hours worked (*Ibid.*) Defendants explained that Class Members had
6 ample opportunity to take, and did take, regular rest breaks. (*Ibid.*) Defendants argued that any Class
7 Member who failed to take a rest break, or took a short or late rest break, did so voluntarily and that
8 all applicable rest breaks were still authorized and provided. (*Ibid.*) Defendants also attempted to
9 distinguish *Augustus, supra*, which involved security guards who were required to monitor a pager,
10 phone, or other device as having an added constraint that is not present in the matter *sub judice*.
11 (*Ibid.*)

12 Unlike meal periods, rest breaks need not be recorded and thus establishing Defendants'
13 exertion of pressure, control, and resulting violations is likely to be more difficult. (Orshansky Decl.
14 ¶ 61.) Class Counsel applied a 20 percent violation rate based on the narratives of Plaintiff and other
15 Class Members. (*Ibid.*) Class Counsel applied appropriate discounts to account for the difficulties
16 of certifying and proving unrecorded rest break violations. (*Ibid.*)

17 **Unreimbursed Expenses.** Plaintiff and Class Members alleged that they were required to
18 use their personal cell phones to communicate with supervisors and coworkers for reasons related
19 to work, yet Defendants failed to reimburse for these necessary business expenses. (Orshansky Decl.
20 ¶ 62.) Consequently, Defendants violated Labor Code § 2802 for failing to reimburse all necessary
21 business expenses incurred. In contrast, Defendants contended that they have a policy and practice
22 of reimbursing employees for necessary business-related expenses. (*Id.* at ¶ 63.) Defendants also
23 contended that, with respect to the alleged expenses for which Plaintiff and other Class Members
24 never requested reimbursement from Defendants, Defendants did not know and had no reason to
25 know that the alleged business-related expenses were incurred. (*Ibid.*) Moreover, to the extent it
26 occurred, Defendants asserted that this claim is not suitable for class treatment as it would require
27 individualized determinations as to whether each employee used a personal cell phone for work-
28 related purposes and, if so, how much of that use was a reasonable percentage of his or her individual

1 monthly phone bill. (*Ibid.*) Defendants also argued that the California Labor Code only requires
2 reimbursement of “necessary” expenses—as opposed to any expense that is incurred in the course
3 of performing work—and argued that distinguishing a necessary expense from an unnecessary one
4 would require individualized inquiry. (*Ibid.*; see Labor Code § 2802; *Gattuso v. Harte-Hanks*
5 *Shoppers, Inc.* (2007) 42 Cal.4th 554.) Furthermore, whether an expense was necessary would
6 depend in part on the reasonableness of the employee’s choice and would thus have to be established
7 by way of extensive individual factual inquiry and/or statistical evidence. (*Cochran v. Schwan’s*
8 *Home Services, Inc.* (2014) 228 Cal.App.4th 1137.) For the foregoing reasons, and taking into
9 account the wide variety of telephone plans, providers and costs creates evidentiary complexities on
10 an individual basis, let alone class-wide, Plaintiff assigned *de minimis* value to this claim.
11 (Orshansky Decl. ¶ 65.)

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

1 ruled that premium pay for missed meal and rest breaks constitutes “wages” that must be reported
2 on wage statements and paid within the statutory deadlines for when an employee leaves the job,
3 thereby overturning the decision of the Court of Appeal.

4 Because the damages for this cause of action are penalties, the statute of limitations is only
5 one year prior to the filing of the original complaint. (Orshansky Decl. ¶ 68; *see* Code Civ. Proc. §
6 340.) The Parties discussed these issues, and in light of these considerations, Class Counsel factored
7 in a reduction of liability and damages to estimate the wage statement violation exposure.
8 (Orshansky Decl. ¶ 68)

9 **Waiting Time and UCL Claims.** Plaintiff further asserted causes of action against
10 Defendants for failure to timely pay all wages due employees at separation and for engaging in
11 unfair, unlawful, and fraudulent business practices. (Orshansky Decl. ¶ 69; *see* Labor Code § 203
12 and Business and Professions Code §§ 17200, *et seq.*) As with other claims, Defendants vigorously
13 disagreed that they engaged in any conduct giving rise to liability or entitlement to recovery of
14 penalties or equitable relief. (Orshansky Decl. ¶ 69.) For example, Defendants argued that waiting
15 time penalties are not appropriate because they attempted to pay employees all final wages owed
16 in good faith upon their separation, thereby precluding a finding of willfulness necessary to obtain
17 waiting time penalties. (*Id.* at ¶ 70.) Moreover, Defendants maintained that no waiting time
18 penalties are recoverable from alleged meal or rest period violations. (*Ibid.*) Defendants raised the
19 Second Appellate District’s decision in *Naranjo*, *supra*, 40 Cal.App.5th 444, to argue that meal
20 and rest break violations trigger neither wage statement nor waiting time penalties. (*Ibid.*) At that
21 time, the *Naranjo* decision was still pending before the California Supreme Court, and though a
22 decision has since issued (on May 23, 2022) the uncertainty and risk of an adverse decision added
23 additional weight to the Defendants’ defense. (*Ibid.*) Finally, Defendants argued that adequate
24 remedies at law exist to render the action unsuitable for equitable remedies, and again contended
25 that the allegations underlying the unfair competition claim lacked merit. (*Ibid.*) To account for
26 the uncertainty of proving the underlying claims and risk of an adverse decision in *Naranjo*, Class
27 Counsel made a realistic allowance with the agreed upon settlement dollar figure. (*Id.* at ¶ 71.)
28

1 **PAGA Penalties.** The success of Plaintiff’s PAGA claim is wholly dependent upon the
2 success of his underlying claims occurring within the one-year statute of limitations applicable to
3 the PAGA. (Orshansky Decl. ¶ 72.) Defendants maintained and continue to maintain that they had
4 legally compliant employment policies and practices throughout the statutory period. (*Id.* at ¶ 73.)
5 Defendants denied and continue to deny that they ever violated any provision of the California Labor
6 Code and argued that, even assuming such violations occurred, Defendants will not be treated as
7 having engaged in subsequent violations giving rise to heightened penalties. (*Ibid.*) In other words,
8 Defendants argued that heightened civil penalties for subsequent violations would not be assessed
9 unless it could be shown that Defendants had notice that they were violating the law, *e.g.*, they had
10 been cited by a labor agency or adjudged by a court to have done so. (*Ibid.*; *see, e.g., Amaral v.*
11 *Cintas Corp.* (2008) 163 Cal.4th 1157, 1209.) Thus, Defendants contended that, at best, even if a
12 violation giving rise to a penalty was shown for each pay period, only the lower civil penalty
13 associated with initial violations would apply. (Orshansky Decl. ¶ 73.)

14 Moreover, Defendants asserted that, before a PAGA claim could be tried, under existing law,
15 the court of law would have to be satisfied that the adjudication of the PAGA claim, based on a
16 theory of uniform wage and hour practices relating to a large group of aggrieved employees, is
17 sufficiently “manageable” so as not to interfere with Defendants’ right to due process. (Orshansky
18 Decl. ¶ 74.) Defendants reiterated how employees’ job duties and work hours varied. (*Id.* at ¶ 75.)
19 Defendants contended that there was variation as to the circumstances that could allegedly cause
20 employees to perform non-sales activity or to be deprived of the opportunity to take legally
21 compliant, duty-free meal and/or rest periods. (*Ibid.*) Defendants further opined that these issues
22 presented challenges not only to liability but also challenges to Plaintiff’s ability to show that a
23 PAGA claim could be efficiently and manageably adjudicated without abridging Defendants’ due
24 process rights. (*Ibid.*)

25 Defendants maintained that the Court has discretion to reduce any award of PAGA penalties
26 where it views them as duplicative. (Orshansky Decl. ¶ 76; *see* Labor Code § 2699e(2) [the Court
27 may “award a lesser amount than the maximum civil penalty amount [authorized by PAGA] if, based
28

on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.”].)

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Class Counsel applied discounts for the risks in establishing manageability and possible bifurcation of discovery and/or trial, the risks regarding success on the merits and establishing liability, and the risks with proving the extent of penalties that are warranted and possible discretionary reduction of penalties by the Court.⁶ (Orshansky Decl. ¶ 77.)

Summary. The foregoing considerations not only bore heavily on the negotiations leading to the settlement, but also confirm that the settlement is a fair, adequate, and reasonable compromise in view of the risks of further litigation. Plaintiff and Class Counsel carefully vetted the claims at issue and conducted a detailed analysis of Defendants’ produced data to arrive at the calculated damages. In the end, it was determined that the \$240,000 Gross Settlement Amount represents an approximate 46.43% of the possible damages recoverable at trial. (Orshansky Decl. ¶ 78.) Plaintiff presented a detailed *Clark* and *Kullar* analysis in connection with his motion for preliminary approval, which has not significantly changed in the interim. Thus, for reasons of economy and space, Plaintiff refers the Court to his prior preliminary approval filing and to the concurrently filed Orshansky Decl. ¶¶ 43-78, for detailed claim valuation estimates. While the above-described risks are far from exhaustive, they demonstrate that the settlement is fair, adequate, and reasonable in light of them.

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

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

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

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

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

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

A percentage method may be used to calculate a reasonable fee in a common fund case such as this. (*Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th 480, 503.) A fee award is justified where the legal action has produced its benefits by way of a voluntary settlement. (*See, e.g., Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1290-91; *Westside Community for Independent Living, Inc. v. Obledo* (1983) 33 Cal.3d 348, 352-53.) When a settlement results in a common fund for the benefit of a class, class counsel may be awarded fees as a percentage of the common fund. (*See Wershba, supra*, 91 Cal.App.4th at p. 254 [recognizing the “percentage of recovery” method].) The California

1 Supreme Court confirmed in *Laffitte v. Robert Half Int’l, Inc.* that “[t]he percentage of fund method
2 survives in California class action cases.” (*Lafitte, supra*, 1 Cal.5th at p. 506.) Specifically, the
3 *Laffitte* Court held:

4 ///

5 The recognized advantages of the percentage method - including relative ease of
6 calculation, alignment of incentives between counsel and the class, a better
7 approximation of market conditions in a contingency case, and the encouragement it
8 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.

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

23 The settlement calls for the payment of up to 35% of the Gross Settlement Amount for
24 attorneys’ fees. (Settlement Agreement ¶ 48(a).) This request is fair, reasonable, and adequate to
25 compensate Class Counsel for the excellent results achieved with average settlement payments of
26 \$738.96, no objectors, and a 100% settlement participation rate. (*See Morales Decl.* ¶¶ 9-11;
27 *Orshansky Decl.* ¶ 92.) First, Class Counsel negotiated a substantial recovery for Class Members
28 resulting in a settlement participation rate of 100%. (*See Morales Decl.* ¶ 11; *Orshansky Decl.* ¶ 92.)

1 Second, not a single Class Member objected to the settlement or to Class Counsel's requested fees.
2 (See Morales Decl. ¶ 9; Orshansky Decl. ¶ 92.) That Class Counsel achieved these results in the face
3 of serious defense challenges (*i.e.*, waiver of meal and rest break arguments), and in the face of an
4 uncertain legal landscape (*i.e.*, potential distinguishability of *Augustus* as to on-premises rest breaks,
5 existence of arbitration agreements, and the then-pending California Supreme Court's *Naranjo*
6 decision). (Orshansky Decl. ¶¶ 92, 98.)

7 The attorneys' fees requested is also consistent with Class Counsel's experience in similar
8 wage and hour class action matters. (Orshansky Decl. ¶ 94.) Additionally, the fee request is
9 consistent with the contingency-fee agreement entered into by Plaintiff. (*Id.* at ¶ 96) Further, the
10 attorneys' fees award requested is also consistent with what courts have awarded in other class and
11 representative action cases. (See, *e.g.*, *Ochoa v. Haralambos Beverage Co.*, Los Angeles County
12 Super. Ct., Case No. BC319588 (33.3% fee award with no mention of lodestar crosscheck); *Jones*
13 *v. Alliance Imaging, Inc.*, Alameda County Super. Ct., Case No. RG05210418 (33% fee award with
14 no mention of lodestar crosscheck); *Wisniewski v. Pacific Maritime Assoc.*, Los Angeles County
15 Super. Ct., Case No. BC293134 (30.7% fee award from \$12.9 million settlement with no mention
16 of lodestar crosscheck); *Garcia v. Save Mart Supermarkets*, Stanislaus County Super. Ct., Case No.
17 312026 (33% fee award with no mention of lodestar crosscheck); *Terrell v. Ocean's 11 Casino, Inc.*,
18 San Diego County Super. Ct., Case No. GIC795732 (approving 33% fee award); *Big Lots Overtime*
19 *Cases*, San Bernardino County Super. Ct., JCC Proceeding No. 4283 (approving a 33% fee
20 recovery); *Tokar v. GEICO*, San Diego Super. Ct., Case No. GIC 810166) (approving award of 33-
21 1/3%); *Davis v. The Money Store, Inc.*, San Diego County Super. Ct., Case No. 99AS01716 (33-
22 1/3% of the settlement).) In fact, numerous courts have awarded attorneys' fees of up to, or in excess
23 of 40% of the common fund. (See *Ammari Electronics, et al. v. Pacific Bell Directory*, Alameda
24 County Sup. Ct., Case No. RG05198014 (awarded 43.8%); *Zelada v. Majestic Terminal Services*,
25 San Bernardino Super. Ct., Case No. CIVDS1916968 (38% fee awarded on \$1,800,000 settlement);
26 *In re California Indirect Purchaser X Ray Film Antitrust Litigation*, San Francisco Super. Ct. (citing
27 *Abzug v. Kerkorian*, Los Angeles Super. Ct., Case No. CA-00981 (45%) and *Haitz v. Meyer*,
28 Alameda County Sup. Ct., Case No. 5729683 (45%)); *Banda v. Verizon California, Inc.*, Los

1 Angeles Super. Ct., Case No. BC434587 (35% fee on \$15,000,000 settlement); *Hall v. Cinema 7,*
2 *Inc.*, San Francisco Super. Ct., Case No. CGC-01-409105 (53%); *Birch v. Office Depot*, United
3 States District Court for the Southern District of California, Case No. 06cv1690 DMS (40% fee
4 awarded on \$16,000,000 settlement); and *Rundberg v. Intrawest Napa Dev. Co.*, Napa County
5 Super. Ct., Case No. 26-56886 (40%).)

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

22 The fee award requested here is also justified because Class Counsel achieved a significant
23 monetary recovery for Settlement Class Members and PAGA Group Members in an uncertain and
24 risky case while bearing the substantial burdens of representation on a contingency basis, and the
25 fees requested are in line with the market rate. (*See Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290
26 F.3d 1043, 1048-1051 [finding that exceptional results in a contingency case, significant risk and
27 the absence of supporting precedents, are proper considerations in awarding attorneys’ fees];
28 Orshansky Decl. ¶ 97.) Class Counsel negotiated a substantial recovery for the Settlement Class

Members, resulting in a settlement participation rate of 100%. (*See* Morales Decl. ¶ 11; Orshansky Decl. ¶ 97.) Moreover, no Class Member objected to the settlement or to Class Counsel’s requested fees. (*See* Morales Decl. ¶ 10.) Further, the average individual settlement payment of \$738.96 far exceeds average settlement payments in similar wage and hour class action settlements.⁷ (Orshansky Decl. ¶ 97.) Class Counsel achieved these results in the face of serious defense challenges (*i.e.*, waiver of meal and rest break arguments), and in the face of an uncertain legal landscape (*i.e.*, potential distinguishability of *Augustus* as to on-premises rest breaks, existence of arbitration agreements, and the then-pending California Supreme Court’s *Naranjo* decision). (*Id.* at ¶ 98.)

As discussed above, this case presented significant risks of both non-certification as well as potential challenges on the merits of Plaintiff’s claims. (Orshansky Decl., *passim*.) Accordingly, it is fair and reasonable to account for these risks in compensating Class Counsel. Class Counsel should also be compensated for the risks involved in undertaking this litigation and expending considerable effort, all while working on a pure contingency basis. (*Id.* at ¶¶ 92, 96-98, 101-104.) Since undertaking representation of Plaintiff, Class Counsel expended costs and devoted substantial time to this litigation. (*See id.* at ¶ 101.) Given the considerable potential for adverse outcomes in this case, including, but not limited to, being unable to proceed on a class-wide basis and/or risking unfavorable adjudication on the merits, the contingent risk borne by Class Counsel was great. (*Id.* at ¶ 104.)

Class Counsel’s previous experience litigating wage and hour class actions also supports the reasonableness of the fee request. (Orshansky Decl. ¶ 99.) Class Counsel are well-versed in plaintiff-side wage and hour class and representative action litigation, with substantial experience litigating

⁷ *See, e.g., Ressler v. Federated Department Stores, Inc.* (L.A. County Super. Ct. Jan. 2, 2009) Case No. BC335018 [average recovery of \$90]; *Palencia v. 99 Cents Only Stores* (Sacramento County Super. Ct.) Case No. 34-2010-00079619 [average recovery of \$80]; *Lim v. Victoria’s Secret Stores, Inc.* (Orange County Super. Ct. Jan. 20, 2006) Case No. 04CC00213 [average recovery of \$35]; *Gomez v. Amadeus Salon, Inc.* (L.A. County Super. Ct. July 23, 2010) Case No. BC392297 [average recovery of \$20]; *Sorenson v. PetSmart, Inc.* (E.D. Cal. 2008) Case No. 2:06-CV-02674-JAM-DAD [wage and hour class action settlement approved where average class member recovery was approximately \$60]; *Williams v. Centerplate, Inc.* (S.D. Cal. 2013) 2013 WL 4525428, at *4 ([granting final approval of class action settlement where average recovery for each class member was approximately \$108]; and *Schiller v. David’s Bridal, Inc.* (E.D. Cal. June 11, 2012) Case No. 1:10-cv-00616-AWI-SKO, 2012 WL 2117001 at *17 [finding that average payment to class members of less than \$200 was a “good” result].

1 claims for unpaid wages, meal and rest period violations, and related penalties, and have been
2 certified as class counsel in numerous other cases. (*Ibid.*) Class Counsel’s experience in similar
3 matters was integral to evaluating the strengths and weaknesses of this case and the reasonableness
4 of the settlement. (*Id.* at ¶ 100.) Practice in the narrow field of wage and hour litigation requires skill
5 and knowledge concerning the rapidly evolving substantive state and federal law, as well as the
6 procedural law of class and representative action litigation. (*Ibid.*)

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

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

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

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

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

12 The *Serrano* factors militate strongly in favor of the requested fee award. (Orshansky Decl.
13 ¶ 107.) Chief among these are factual risks and evidentiary challenges of substantiating unrecorded
14 time and Defendants’ failure to authorize and permit breaks on a class-wide basis. (*Ibid.*) Also, class
15 certification was by no means a foregone conclusion. Defendants argued that Plaintiff would be
16 unable to certify a class outside of the settlement context because Plaintiff’s claims on the merits
17 would require a series of individualized mini-trials. (*Ibid.*) Moreover, Plaintiff would face
18 significant hurdles to certification given that Defendants raised individualized affirmative defenses
19 such as waiver of meal periods and that on-premises rest breaks are not equivalent to on-call liability
20 in the *Augustus* case progeny. (*Ibid.*) Further, Defendants contended Plaintiff would face significant
21 hurdles to certification given that Class Members signed arbitration agreements with class action
22 waivers as a condition of their employment, which if enforceable would convert a putative class
23 action (with the potential for class-wide damages) into an individual dispute and action. (*Ibid.*) If
24 Plaintiff prevailed and certified a class action, there is no guarantee that Defendants would not later
25 move for and obtain decertification. (*Ibid.*) If the Court either denied class certification or later
26 decertified it, the Settlement Class would recover nothing and Settlement Class Members would be
27 forced to retain their own counsel and proceed on the basis of individual claims only. (*Ibid.*)

1 The attorneys' fees award is intended to reimburse Class Counsel for all uncompensated
2 work that they have already done and for all the work they will continue to do. To investigate,
3 litigate, and ultimately negotiate and craft the settlement, Class Counsel expended a significant
4 amount of time on the following: (1) regular discussions with Plaintiff; (2) thorough pre-litigation
5 investigation of facts with a focus on class certification elements; (3) investigation of Defendants'
6 organizational and corporate structure, and executive reporting structure as it relates to the
7 employment and management of employees; (4) research and investigation re: staffing models and
8 staffing levels; (5) drafting the PAGA notice to the LWDA and pleadings; (6) legal research and
9 analysis into substantive law; (7) developing and executing settlement and litigation strategies; (8)
10 conducting informal discovery; (9) meet and conferring with defense counsel; (10) interviewing
11 Class Members; (11) reviewing policies and procedures regarding Defendants' pay plans, payment
12 of wages, provision and tracking of meal and rest breaks, and timekeeping protocol, including
13 recording hours, issuance of wage statements, and providing all wages at separation; (12) research
14 and investigation re: various software programs Defendants use to conduct everyday business,
15 including timekeeping software, with a focus on what documents (both paper and electronic) are
16 created in the normal course of business; (13) examining Class Members' time records and wage
17 statements in conjunction with Class Member interviews to determine Defendants' degree of
18 liability; (14) consulting with a damages expert; (15) building a comprehensive damages model;
19 (16) preparing a mediation brief; (17) preparing for and attending mediation; (18) negotiating and
20 preparing the memorandum of understanding, long-form Settlement Agreement and Notice; (19)
21 preparing the motion for preliminary approval and supporting documents; (20) overseeing the class
22 notice process; (21) responding to questions from Class Members; and (22) preparing the motion
23 for final approval and supporting documents. (Orshansky Decl. ¶ 108.)

24 The work performed by Class Counsel performed was meaningful, and Class Counsel's
25 hourly rate is commensurate with experience and the prevailing rates among defense and plaintiffs'
26 firms that regularly litigate wage-and-hour class actions (Orshansky Decl. ¶ 109.) Class Counsel's
27 rate is commensurate with the prevailing market rates in California for attorneys of comparable
28 experience and skill handling complex litigation. (*Id.* at ¶ 111.) Class Counsel's rate is based on

1 prevailing fees in this geographical area and has been approved in California and Ninth Circuit
2 courts. (*Ibid.*) The reasonableness of Class Counsel’s hourly rate is further confirmed in light of the
3 hourly rates identified based on years of experience in the *Laffey* Matrix, submitted concurrently
4 herewith. (*See* Orshansky Decl. ¶ 112 and Exhibit 3 (*Laffey* Matrix).)

5 As set forth in detail in the accompanying Declaration of Anthony J. Orshansky, Class
6 Counsel spent a substantial amount of time during the course of its representation of Plaintiff and
7 the prosecution of this action, for a total aggregated lodestar figure of \$123,975. (Orshansky Decl.
8 ¶ 114 and Exhibit 4 (Attorney Task and Time Chart).) This lodestar amount exceeds the fee request
9 of \$84,000, hence, a multiplier is not necessary to yield the requested fees. (*Id.* at ¶ 114.)

10 As a result, the lodestar cross-check affirms that the fee award requested does in fact fall
11 within the range of reasonableness. (Orshansky Decl. ¶ 114.)

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

14 Class Counsel incurred and respectfully request reimbursement of \$9,243.69—which is less
15 than the Settlement Agreement’s allocation of up to \$12,000—in litigation costs. (Orshansky Decl.
16 ¶ 116, along with itemized cost chart.) Class Counsel’s request is fair, adequate, and reasonable, as
17 all of these costs are documented and reasonably incurred. Moreover, the costs for which Plaintiff
18 seeks reimbursement are all the types of costs routinely approved by courts. (*See, e.g., Harris v.*
19 *Marhoefer* (9th Cir. 1994) 24 F.3d 16, 19 [counsel should recover “those out-of-pocket expenses
20 that would normally be charged to a fee paying client”]; *Ashker v. Sayre* (N.D. Cal. 2011) No. 05-
21 03759-CW, 2011 WL 825713, at * 3 [“costs of reproducing pleadings, motions and exhibits are
22 typically billed by attorneys to their fee-paying clients” and are reimbursable]; *Trustees of Const.*
23 *Industry & Laborers Health and Welfare Trust v. Redland Ins. Co.* (9th Cir. 2006) 460 F.3d 1253,
24 1258-1259 [legal research costs are reimbursable]; *In re Immune Response Securities Litigation*
25 (S.D. Cal. 2007) 497 F.Supp.2d 1166, 1177-78 [mediation expenses, legal research, copies, postage,
26 filing fees, messenger and overnight delivery costs are reimbursable].) The requested
27 reimbursement of costs of up to \$12,000 was fully disclosed to Class Members and there have been
28 no objections. (*See* Morales Decl. ¶ 9.) Because the expenses by Class Counsel were reasonably

1 incurred, and no Class Member has objected to them, the Court should grant the request for
2 reimbursement of \$9,243.69 for litigation costs.

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

5 Plaintiff also requests that the Court approve \$10,000 in administration costs to the
6 Settlement Administrator. (*See* Settlement Agreement ¶ 48(c) [agreeing to an amount up to
7 \$10,000]); Morales Decl. ¶ 12.) As detailed in the declaration Abel E. Morales submitted
8 concurrently with this Motion, CPT performed duties in connection with this settlement that were
9 instrumental in effectuating the settlement and the notice process. Among other things, CPT
10 calculated each Class Member’s individual settlement payment, updated addresses contained in the
11 class data supplied by Defendants (*e.g.*, NCOA and skip-traces), formatted the Notices for mailing,
12 mailed the Notices to all Class Members and PAGA Group Members, kept the Parties informed of
13 any communications received from the Class Members and PAGA Group Members, and otherwise
14 administered the settlement. (*See* Morales Decl., *passim*.) For these reasons, CPT’s requested costs
15 are fair, reasonable, and adequate, and should be finally approved.

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

19 A class representative must possess the same interest and suffer the same injury as the class
20 members. “To assure ‘adequate’ representation, the class representative’s personal claim must not
21 be inconsistent with the claims of other members of the class.” (*J.P. Morgan & Co., Inc. v. Sup. Ct.*
22 *Heliotrope General, Inc.*) (2003) 113 Cal.App.4th 195, 212.) Thus, the adequacy requirement is
23 satisfied when the class representative’s interests are not antagonistic to those of the class. (*McGhee*
24 *v. Crocker-Citizens Nat. Bank* (1976) 60 Cal.App.3d 442, 451.) Plaintiff has no conflicts with the
25 Settlement Class and in fact his interests are aligned with those of the Settlement Class. (*See*
26 Orshansky Decl. ¶ 119 and Declaration of Jaime Corona (“Corona Decl.”), filed concurrently
27 herewith, at ¶¶ 9, 13.) Because Plaintiff’s claims are the same as those that would be asserted by
28 unnamed class members were they before the Court, Plaintiff has every interest in zealously

1 representing the unnamed class members. (*See id., passim.*) Plaintiff has not shirked from his
2 responsibility; on the contrary, Plaintiff, along with his counsel, prosecuted this case with allegiance
3 and dedication. (*Id.* at ¶¶ 10-12; Orshansky Decl. ¶ 119.)

4 ///

5 Courts routinely approve enhancement payments to compensate named plaintiffs for the
6 services they provide and the risks they incur during class action litigation. (*See, e.g., Bell v.*
7 *Farmers Ins. Exchange* (2004) 115 Cal.App.4th 715, 726 [upholding “service payments” to named
8 plaintiffs for their efforts in bringing the case]; *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal.
9 1995) 901 F.Supp.294 [approving \$50,000 service payment].

10 Here, Plaintiff seeks a service award in the amount of \$5,000, and believes that this request
11 is reasonable given for his efforts in initiating the action, the time and effort involved, the benefits
12 conferred on the Settlement Class Members and PAGA Group Members, and the risks assumed by
13 him. (Orshansky Decl. ¶ 123.) Plaintiff actively participated in the prosecution of this matter in
14 particular but not exclusively through his discussions with Class Counsel, identifying potential
15 witnesses, providing factual information to Class Counsel about Defendants’ pay plans, policies,
16 practices, and procedures, providing documents, monitoring the progress of the case, participating
17 in settlement discussions, evaluating the terms of the settlement, and reviewing and signing the
18 Settlement Agreement. (*See* Orshansky Decl. ¶ 120; Corona Decl. ¶¶ 10-12.) Plaintiff invested
19 significant time and effort into seeing this litigation through resolution. (*See* Orshansky Decl. ¶ 120;
20 Corona Decl. ¶¶ 10-12.)

21 Plaintiff has diligently, adequately, and fairly represented Class Members, is a member of
22 the Settlement Class, has no conflicts as outlined above, and has not placed his interests above those
23 of any member of the Settlement Class. (Orshansky Decl. ¶ 121; Corona Decl., *passim.*)
24 Furthermore, the requested service award to the Class Representative was fully disclosed to Class
25 Members in the Notice and no objections have been made. (*See* Morales Decl. ¶ 9.)

26 Thus, Plaintiff’s request for a service award is appropriate and justified as part of the
27 settlement and should be finally approved.

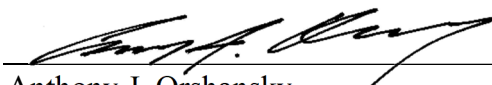
1 **V. CONCLUSION**

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

6 Dated: July 18, 2022

Respectfully submitted,

7 COUNSELONE, P.C.

8 By: 

9 Anthony J. Orshansky
10 Jennifer L. Connor
11 Justin Kachadoorian
12 Attorneys for Plaintiff
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