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7
8

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

12 RAYMOND L. SMITH, on behalf of himself and
others similarly situated,

13
14 Plaintiff,

15 v.

16 CAMILO LOPEZ, INC. dba C.L. CONCRETE,
and DOES 1 through 100, inclusive,

17
18 Defendants.
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Case No. 20STCV47555

Assigned for all purposes to:
Hon. David S. Cunningham, Dept. 11

CLASS ACTION

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

[Declarations of Jennifer L. Connor and
Raymond L. Smith in Support, Declaration of
Abel E. Morales Regarding Notification and
Settlement Administration, Proposed Final
Approval Order, and Proposed Final Judgment
submitted concurrently herewith]

Final Approval Hearing

Date: February 2, 2023
Time: 9:00 a.m.
Dept.: 11

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

2 **PLEASE TAKE NOTICE** that on February 2, 2023 at 9:00 a.m., or as soon thereafter as
3 the matter may be heard before the Honorable David S. Cunningham in Department 11 of the above-
4 captioned court located at 312 North Spring Street, Los Angeles, California 90012, Plaintiff
5 Raymond L. Smith (“Plaintiff” or “Class Representative”), individually and on behalf of all others
6 similarly situated, will and hereby does move this Court for an order pursuant to California Code of
7 Civil Procedure section 382 and California Rules of Court, Rule 3.769:

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

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

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

14 4. Granting final approval of the settlement as fair, adequate, and reasonable based upon
15 the terms set forth in the Further Amended Stipulation of Class and PAGA Settlement (“Settlement
16 Agreement” or “Further Amended Stipulation”) including payment by Defendant Camilo Lopez,
17 Inc. dba C.L. Concrete (“Defendant” or “C.L. Concrete”) of the non-reversionary Maximum
18 Settlement Amount totaling \$325,000 for a putative class of approximately 95 current and former
19 non-exempt employees who worked for Defendant in California from December 14, 2016 to January
20 03, 2022 (“Class Period”);

21 5. Approving an award of \$113,750 in attorneys’ fees to Class Counsel;

22 6. Approving an award of \$11,196.13 in litigation costs to Class Counsel;

23 7. Approving an award of \$15,000 to CPT Group, Inc. for its settlement administration
24 services;

25 8. Approving a service award in the amount of \$7,500 to Plaintiff as the Class
26 Representative;

27 9. Approving an award of \$20,000 for PAGA penalties, \$15,000 of which will be paid
28 to the Labor & Workforce Development Agency (“LWDA”); and

1 10. Entering final judgment in the form of the Proposed Final Judgment, and entering
2 the Proposed Order Granting Plaintiff's Motion for Final Approval of Class and Representative
3 Action Settlement, Attorneys' Fees and Costs, and Class Representative Service Award, which are
4 both submitted concurrently with this Motion.

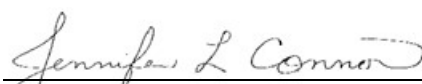
5 This Motion is made on the following grounds: (1) the conditionally certified Class continues
6 to meet the requirements for class certification for settlement purposes only under Code of Civil
7 Procedure section 382; (2) Plaintiff and Class Counsel continue to be adequate representatives of
8 the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

15 This motion is based on this Notice of Motion; the attached Memorandum of Points and
16 Authorities; the supporting declarations of Jennifer L. Connor and Raymond L. Smith, and Abel E.
17 Morales, along with the exhibits attached thereto; the Settlement Agreement dated September 27,
18 2022; all other pleadings and papers on file in this action; and on any further oral or documentary
19 evidence or argument presented at the time of hearing. Finally, given the multiplicity of issues
20 addressed in this motion, Plaintiff believes that there is good cause to exceed the 20-page limit set
21 forth in California Rules of Court, Rule 3.764(c)(2), and respectfully request that the Court consider
22 Plaintiff's Memorandum of Points and Authorities, which is 32 pages in length.

23 Dated: December 21, 2022

Respectfully submitted,

COUNSELONE, PC

26 By: 

Jennifer L. Connor
Anthony J. Orshansky
Attorneys for Plaintiff

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Raymond L. Smith (“Plaintiff” or “Class Representative”) hereby submits this
4 Memorandum of Points and Authorities in support of his Motion for Final Approval of this class
5 and representative action settlement on behalf of all current and former non-exempt employees who
6 worked for defendant Camilo Lopez, Inc. dba C.L. Concrete (“Defendant” or “C.L. Concrete”) at
7 in the State of California at any time from December 14, 2016 to January 3, 2022 (the “Class” or
8 “Class Members”).¹

9 The Further Amended Stipulation of Class Action and PAGA Settlement (“Settlement” or
10 “Settlement Agreement”), entered into between Plaintiff and Defendant (together, the “Parties”), if
11 approved, will resolve specific claims of Plaintiff, Participating Class Members,² and PAGA Group
12 Members,³ in exchange for Defendant’s agreement to pay ***Three Hundred Twenty-Five Thousand***
13 ***Dollars (\$325,000) into a non-reversionary common settlement fund.*** In this non-reversionary
14 settlement, all Participating Class Members will ***automatically receive*** payments without the need
15 to submit a claim form, ***resulting in an average individual settlement award payment of***
16 ***approximately \$1,618.42.*** (See Declaration of Abel E. Morales Regarding Class Notification and
17 Settlement Administration (“Morales Decl.”), filed concurrently herewith, at ¶ 14.) This is a very
18 favorable resolution of the disputed wage and hour claims in this case. Moreover, after receiving
19 notice of the proposed Settlement and projected estimated settlement amounts, the Settlement
20 Administrator reports that ***no objections*** were made to the Settlement and ***no requests for exclusion***
21 ***resulting in a 100% participation rate.*** (Morales Decl. ¶¶ 10, 12, and 14.)

22 As explained below, the Court should grant Plaintiff’s motion because: (1) the conditionally
23 certified Class continues to meet the requirements for class certification for settlement purposes

24
25 ¹ “Class Period” is the period beginning on December 14, 2016 and ending on January 3, 2022.
(Settlement Agreement ¶ 7.)

26 ² “Participating Class Members” are Class Members who have not submitted a timely and valid
request for exclusion from the settlement. (Settlement Agreement ¶ 30.)

27 ³ “PAGA Group Members” are Class Members, whether or not they submit a request for exclusion
28 from the Class, employed by Defendant during the PAGA Period (which is from December 14, 2019
through January 03, 2022.) (Settlement Agreement ¶¶ 26, 28.)

1 under Code of Civil Procedure section 382; (2) the settlement is a fair, adequate, and reasonable
2 compromise of the disputed claims in this case; and (3) the amounts requested for Class Counsel’s
3 attorneys’ fees and costs, Plaintiff’s service award, and settlement administration costs are all fair,
4 adequate, and reasonable. In light of the foregoing, this Court should enter the Proposed Judgment
5 and the Proposed Order Granting Plaintiff’s Motion for Final Approval of Class and Representative
6 Action Settlement, Attorneys’ Fees and Costs, and Class Representative’s Service Award, submitted
7 concurrently herewith.

8 **II. FACTUAL AND PROCEDURAL BACKGROUND**

9 On August 12, 2020, Plaintiff submitted his pre-filing written notice with California Labor
10 and Workforce Development Agency (“LWDA”) and sent a letter by certified mail to Defendant
11 Camilo Lopez, Inc. dba C.L. Concrete setting forth the facts and theories of the violations alleged
12 against Defendant, on behalf of himself and similarly situated aggrieved employees in accord with
13 California’s Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.* (“PAGA”).
14 (Declaration of Jennifer L. Connor in Support of Plaintiff’s Motion for Final Approval (“Connor
15 Decl.”), filed concurrently herewith, at ¶ 10.) The LWDA did not provide notice of its intent to
16 investigate the alleged violations within 65 calendar days of the submission, thereby, entitling
17 Plaintiff to commence a representative action under PAGA. (*Id.* at ¶ 10.)

18 On December 14, 2020, Plaintiff filed his Complaint in the Los Angeles County Superior
19 Court, on behalf of himself and other similarly situated employees, alleging: (1) Failure to Pay
20 Minimum Wages (Labor Code §§ 1194, 1194.2, 1197, and 1197.1); (2) Failure to Pay Overtime
21 Compensation (Labor Code §§ 510, 1194, and 1198); (3) Meal Period Liability (Labor Code §§
22 226.7 and 512); (4) Rest Break Liability (Labor Code § 226.7); (5) Failure to Provide Accurate
23 Itemized Wage Statements (Labor Code § 226); (6) Penalties pursuant to the PAGA (Labor Code
24 §§ 2698, *et seq.*); and (7) Unfair Competition (Bus. & Prof. Code §§ 17200, *et seq.*) (Connor Decl.
25 ¶ 11.)

26 On March 15, 2020, Defendant filed its Answer asserting a general denial as to Plaintiff’s
27 claims and raising sixty-nine (69) affirmative defenses. (Connor Decl. ¶ 13.) One defense raised at
28 the threshold was that Plaintiff’s claims were subject to mandatory arbitration under the Laborers

1 International Union of North America (“LiUNA”) collective bargaining agreement, Southern
2 California Master Labor Agreement of 2018-2022 (“MLA”), plus a Laborers’ Short-Form
3 Agreement (collectively “the CBAs”). Having failed to resolve their differences during meet and
4 confer, on July 30, 2021, Defendant filed its Motion to Compel Arbitration, Dismiss PAGA, and to
5 Stay Action Pending Completion of Arbitration (“Motion to Compel Arbitration”). On August 27,
6 2021, Plaintiff filed his Opposition to Defendant’s Motion to Compel Arbitration, and on September
7 17, 2021, Defendant filed its Reply in support of the Motion to Compel Arbitration. Although still
8 awaiting hearing, the matter was fully briefed by the Parties such that both sides were fully aware
9 of each other’s legal and factual perspective and arguments in advance of mediation. (Connor Decl.
10 ¶ 14.)

11 Defendant does not believe that any liability to Plaintiff or Class Members or PAGA Group
12 Members exist, or that Plaintiff or Class Members or PAGA Group Members are entitled to any
13 recovery. (Settlement Agreement ¶ 50.) Defendant remains steadfast in its position that, absent
14 settlement, Plaintiff’s claims would be adjudicated in an arbitration rather than judicial forum. In
15 settling, Defendant does not admit liability with respect to the alleged claims made by Plaintiff and
16 makes no admission regarding any facts or law related to the lawsuit. (*Ibid.*)

17 **A. Discovery and Investigation**

18 The Parties engaged in extensive formal and informal discovery, exchanging information
19 and documents, and analyzing extensive data made available by Defendant which enabled the
20 Parties to thoroughly evaluate Plaintiff’s claims, the claims of the putative Class Members, and the
21 aggrieved employees’ PAGA claim, along with Defendant’s affirmative defenses, and the likely
22 outcomes, risks and expense of pursuing litigation.

23 Prior to initiating this action, counsel for Plaintiff, CounselOne, P.C. (“CounselOne”),
24 thoroughly investigated the claims and considered the facts and circumstance underlying the
25 pertinent issues and applicable law. (Connor Decl. ¶ 9.) This required thorough discussions and
26 interviews with Plaintiff as well as research into the various legal issues—including the unique
27 convergence of collective bargaining agreements and construction industry special interest carve-
28 outs—involved in this case. (*Ibid.*) After conducting their initial investigation, Class Counsel

1 determined that the claims were well suited for class action adjudication owing to what appeared to
2 be a common course of conduct affecting a similarly situated group of employees. (*Ibid.*)

3 Given the relatively small putative class size and the fact that Defendant sold many of its
4 assets and ceased operations by May 2021, the Parties advised the Court of their intention to explore
5 early resolution. Nonetheless, Class Counsel conducted a thorough investigation in advance of
6 mediation. Specifically, Class Counsel conducted informal discovery which yielded information
7 and substantial documentation concerning the claims, including Defendant's policies, procedures,
8 and terms of the purportedly-governing collective bargaining agreements, the payment of wages,
9 the provision of meal and rest breaks, time keeping records of hours, and issuance of wage
10 statements, along with Certified Public Accountant compilation of Defendant's financial records.
11 (Connor Decl. ¶ 15.) Class Counsel also spoke with several putative Class Members about their day-
12 to-day experiences and began gathering declarations from same. Defendant also provided composite
13 data for the Class including: total number of putative class members; mix of current versus former
14 non-exempt employees; total number of pay periods; and average hourly rate in effect. (*Ibid.*)
15 Specifically, Defendant produced a *random sampling of time records for 15% (i.e., 14 out of 95*
16 *employees) putative Class Members,*⁴ *which consisted of approximately 1,482 pay periods, plus*
17 *individualized payroll history for non-exempt employees from January 2017 to May 2021.* (*Id.* at
18 ¶ 16.) Class Counsel analyzed the documents and data produced to determine Defendant's degree
19 of liability and potential amounts due in damages. (*Id.* at ¶ 17.)

20 **B. Mediation and Settlement**

21 After having performed extensive investigation and analysis of the legal and factual issues
22 and risks, the Parties participated in a private mediation where they debated and discussed their
23 respective positions. (Connor Decl. ¶ 18.) The Parties' mediation session was facilitated by the
24 Honorable Peter D. Lichtman (Ret.) of Signature Resolution. Judge Lichtman has had a legal and

25
26 ⁴ Notwithstanding the pragmatic reality that Defendant's time records were handwritten hardcopies
27 instead of electronic records, such constitutes a statistically significant sample as courts have found
28 the use of similar percentage samples appropriate. (*See e.g., Brum v. MarketSource, Inc.* (E.D.Cal.
2018) 2018 WL 3861558, at *5 [10% sample]; *Talavera v. Sun Maid Growers of California*
(E.D.Cal. 2017) 2017 WL 495635, at *4 [10% sample]; *Kaminske v. JP Morgan Chase Bank N.A.*
(C.D.Cal., 2010) 2010 WL 5782995, at *5 [10% sample].)

1 judicial career spanning over forty (40) years, including as one of the founders of the Los Angeles
2 County Superior Court's Complex Litigation program, and is well-experienced in mediating
3 complex general litigation, labor and employment claims, class actions, and PAGA cases, among
4 others. (*Ibid.*) During the mediation, the Parties exchanged further information and discussed all
5 aspects of the case, including the risks and delays of litigation and the risk to both Parties of
6 proceeding with a ruling on the pending motion to compel arbitration, the anticipated motion for
7 class certification and liability under the claims asserted, along with the potential for PAGA
8 penalties to be asserted. (*Id.* at ¶ 19.) These were contentious issues because of the factual and legal
9 complexity of the case. (*Ibid.*)

10 With the assistance of the Hon. Peter Lichtman and pursuant to a mediator's proposal, the
11 Parties agreed to resolve the matter and reached the terms of this proposed arm's-length Settlement.
12 (Connor Decl. ¶ 19; Settlement Agreement ¶ 47.) The Parties subsequently memorialized these
13 terms in a long-form Settlement Agreement dated April 2, 2022 (previously submitted to the Court
14 on April 4, 2022 as part of Plaintiff's preliminary approval briefing). (Connor Decl. ¶ 20.) Finally,
15 and after the Court's review at two further hearings, the long-form Settlement Agreement was
16 subsequently modified to reflect the terms presented now in the preliminarily-approved Settlement
17 Agreement (the Further Amended Stipulation).

18 From Class Counsel's review of the facts, strengths, and weaknesses of the case, the risks
19 and delays posed by further litigation, and Class Counsel's own prior litigation experience, Class
20 Counsel believe that the recovery being made available to Class Members is fair, reasonable, and
21 adequate taking into consideration the amounts received in other wage and hour class and
22 representative actions, the risks inherent in litigation of this genre, and the reasonable tailoring of
23 each Class Members' claim to the settlement award he or she will receive. (Connor Decl. ¶ 23.)
24 Class Counsel believe that the Settlement serves the best interests of Class Members. (*Ibid.*) Further,
25 and based on the settlement negotiations, which were hard fought and conducted in good faith and
26 at arm's length between attorneys with substantial experience litigating class actions, representative
27 actions, and wage and hour cases, the Settlement was the product of a non-collusive settlement
28 process in which the Parties were forced to make significant compromises in the interest of reaching

1 a full and complete settlement of the action. (*Id.* at ¶ 22.) Accordingly, the Parties have concluded
2 that it is in their best interests to compromise, settle, and accept the terms of the Settlement
3 Agreement. (Settlement Agreement ¶¶ 49-50; Connor Decl. ¶¶ 23-24.)

4 On June 01, 2022, the Court held a hearing on Plaintiff’s Motion for Preliminary Approval
5 as originally filed on April 4, 2022, but then continued that same hearing twice to allow the Parties
6 to file supplemental briefing to address concerns raised by the Court. (Connor Decl. ¶ 21.) On
7 October 5, 2022, after reviewing Plaintiff’s submission of the proposed Further Amended Stipulation
8 dated September 27, 2022, the Court granted preliminary approval. (*Ibid.* *see also* Further Amended
9 Order Granting Plaintiff’s Motion for Preliminary Approval of Class and Representative Action
10 Settlement (“Preliminary Approval Order”) entered October 5, 2022.) A true and correct copy of the
11 fully executed Settlement Agreement dated September 27, 2022 is attached as **Exhibit “1”** to the
12 Connor Decl. filed concurrently herewith.

13 On October 27, 2022, after performing a National Change of Address (“NCOA”) search to
14 update and verify addresses, the Settlement Administrator, CPT Group, Inc. (“CPT”), mailed via
15 U.S. first class mail the *Notice of Pendency of Class and Representative Action Settlement* (“Class
16 Notice”), the *Information Sheet*, and the *Exclusion Form* (collectively, “Notice Packets”), in both
17 English and Spanish, to all Class Members and PAGA Group Members. (*See* Morales Decl. ¶¶ 2-7,
18 and internal Exhibit A [Notice Packet].) Class Members had until December 12, 2022 to submit
19 disputes, requests for exclusion, or objections. (*Id.* at ¶ 7.) As of the date of this filing, CPT received
20 ***no objections*** and ***no requests for exclusion*** rendering an overall ***settlement participation rate of***
21 ***100%***. (*Id.* at ¶¶ 10-12, 14.) Given the participation rate and assuming the estimated deductions from
22 the Maximum Settlement Amount, the highest individual settlement payment is approximately
23 \$7,866.28 and the lowest individual settlement payment is approximately \$35.76, and the average
24 individual settlement payment is approximately \$1,618.42. (*Id.* at ¶ 14.) Plaintiff now respectfully
25 submits the Settlement for this Court’s final approval.

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

2 **A. The Class Definition**

3 The Class is defined as all current and former non-exempt employees who worked for
4 Defendant Camilo Lopez, Inc. dba C.L. Concrete in the State of California any time between
5 December 14, 2016 and January 3, 2022. (Settlement Agreement ¶¶ 5, 7.)

6 **B. Monetary Terms**

7 Under the terms of the Settlement Agreement, Defendant agreed to pay the non-reversionary
8 amount of Three Hundred Twenty-Five Thousand Dollars (\$325,000) into a common fund to settle
9 the specific wage and hour claims of the Participating Class Members and PAGA Group Members;
10 this amount is called the “Maximum Settlement Amount.” (Settlement Agreement ¶ 21.) This
11 Maximum Settlement Amount shall be inclusive of all individual settlement payments to
12 Participating Class Members, Attorneys’ Fees and Costs to Class Counsel, the Settlement
13 Administration Costs, and the Class Representative Service Award, and the PAGA Settlement
14 Amount, including payment to PAGA Group Members and to the LWDA for civil penalties pursuant
15 to statute. (*Ibid.*)

16 The amount available for distribution to Participating Class Members is determined by
17 deducting the following from the Maximum Settlement Amount:

- 18 • Up to \$113,750 - which is 35% of the Maximum Settlement Amount—for attorneys’ fees
19 and up to \$15,000 in litigation costs [actual is a lesser amount, *i.e.*, \$11,196.13] to Class
20 Counsel (the “Class Counsel Award”);
- 21 • Up to \$7,500 to the Class Representative as a Service Award Payment and in exchange
22 for a broader release of claims (“Class Representative Service Award”);
- 23 • Up to \$15,000 to the Settlement Administrator, CPT, to notify Class Members and PAGA
24 Group Members and administer the Settlement (“Settlement Administration Costs”); and
- 25 • Up to \$20,000 allocated as a PAGA Payment—of which 75% is allocated for payment to
26 the LWDA for civil penalties pursuant to statute and 25% is allocated for payment to
27 PAGA Group Members on a *pro rata* qualified pay period basis.

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1 The amount remaining after the foregoing deductions, approximately \$153,750,⁵ is called the “Net
2 Settlement Amount.” (Settlement Agreement ¶ 22; Connor Decl. ¶ 28.) The entire Net Settlement
3 Amount shall be paid out to Participating Class Members. Participating Class Members shall
4 automatically receive payments without the need to submit a claim form, and PAGA Group
5 Members shall receive PAGA payments irrespective of whether they opt out of the class settlement.
6 (Settlement Agreement ¶ 57(b); Connor Decl. ¶ 28.)

7 **C. Summary of Notice Process**

8 On October 17, 2022, counsel for Defendant provided CPT, the Court-approved Settlement
9 Administrator, with a list of Class Members containing their full names, last-known mailing
10 addresses, last-known telephone numbers, Social Security numbers, start and end dates as a non-
11 exempt employee, Qualified Pay Periods, and Qualified PAGA Pay Periods during the relevant
12 period. (*See* Morales Decl. ¶ 5.) The Class List contained 95 Class Members. (*Ibid.*) After
13 performing a NCOA search to update and verify addresses, on October 27, 2022, CPT mailed the
14 Notice Packets via U.S. first class mail to all Class Members and PAGA Group Members. (*Id.* at ¶¶
15 5-6.) As a result of either a skip trace or request from the Class Member, CPT re-mailed three Notice
16 Packets and, ultimately, none were undeliverable. (*Id.* at ¶ 9.) Class Members had until December
17 12, 2022 to submit disputes, requests for exclusion, or objections. (*Id.* at ¶ 7.) After the close of the
18 response period and the date of this filing, not a single Class Member has submitted a dispute as to
19 pay periods listed in the Notice Packets or objected to the settlement, nor has any Class Member
20 opted out of the settlement; accordingly, this results in a **100% settlement participation rate**. (*Id.* at
21 ¶¶ 10-12, 14.) The average individual settlement payment is \$1,618.42. (*Id.* at ¶ 14.)

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25 ⁵ Plaintiff originally estimated the Net Settlement Amount at \$158,750, but that figure erroneously
26 included the \$5,000 penalties to PAGA Group Members (*i.e.*, 25% PAGA Settlement Amount),
27 which is payable separate from Net Settlement Amount payments to Participating Class Members.
28 Nonetheless, the Net Settlement Amount will still yield closer to that original \$158,750 because the
actual litigation costs are only \$11,196.13 instead of the allocated \$15,000. For consistency
purposes, Plaintiff relies on the \$153,750 dollar amount calculated by the Settlement Administrator.
(*See* Morales Decl. ¶ 14.)

1 **D. Timing of Payments**

2 The settlement calls for the Maximum Settlement Amount, along with the Defendant's share
3 of the payroll and employment taxes, to be funded within fifteen (15) calendar days of the Effective
4 Date. (Settlement Agreement ¶ 57.) The Settlement Administrator shall distribute settlement
5 payments within fourteen (14) calendar days after receipt of the Maximum Settlement Amount. (*Id.*
6 at ¶ 57(a).)

7 In the event any settlement checks are not cashed, deposited, or negotiated within one
8 hundred and eighty (180) calendar days from the date of mailing, then the check(s) will be cancelled
9 and the funds associated with the cancelled check(s) will be transmitted by the Settlement
10 Administrator to the California State Controller's Office Unclaimed Property Fund in the name of
11 the Participating Class Member. (*See* Settlement Agreement ¶ 57(a)(iii); Connor Decl. ¶ 37.)

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

13 The Court's Final Approval Order and Judgment will be posted on the Settlement
14 Administrator's website pursuant to California Rules of Court, Rule 3.771(b). (Connor Decl. ¶ 147.)

15 **IV. ARGUMENT**

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

19 Under Code of Civil Procedure section 382, a class may be certified if: (1) it is ascertainable
20 and its members are too numerous for joinder to be practical; (2) the representative and absent class
21 members share a community of interest, and questions of law and fact common to the class
22 predominate over questions unique to individual class members; (3) the representative's claims are
23 typical of the class's claims; and (4) the representative will fairly and adequately represent the
24 class's interests. (*See Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470.) Here, this Court
25 found that the proposed Class meets all the requirements for class certification for settlement
26 purposes when it granted preliminary approval of the Settlement Agreement on October 5, 2022.
27 (*See* Connor Decl. ¶ 38.) Since then, no events have cast doubt on the propriety of this determination,
28 and in fact the reaction of the Class Members has been overwhelmingly supportive of the settlement,

1 with no Class Member objecting to the settlement and no Class Member opting out of the settlement,
2 for a 100% settlement participation rate. (*See* Morales Decl. ¶¶ 10-12, 14.) This Court should
3 therefore confirm its conditional certification of the Class.

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

6 California courts have a strong policy in favor of settlement. (*See, e.g., Stambaugh v.*
7 *Superior Court* (1976) 62 Cal.App.3d 231, 236.) Unlike individual settlements, class action
8 settlements involve a court approval process that exists to prevent fraud, collusion, and unfairness
9 to class members. (*Malibu Outrigger Bd. of Governors v. Superior Court* (1980) 103 Cal.App.3d
10 573, 578-79.) This approval process consists of preliminary settlement approval, notice given to
11 class members, and a final fairness and approval hearing at which class members have the
12 opportunity to be heard with respect to the settlement. (*Ibid.*) Now that notice has been provided to
13 Class Members, Plaintiff respectfully requests that the Court finally approve the Settlement as fair,
14 adequate, and reasonable.

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

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

1 [T]he strength of plaintiffs' case, the risk, expense, complexity and likely duration of
2 further litigation, the risk of maintaining class action status through trial, the amount
3 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.

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

7 "In the context of a settlement agreement, the test is not the maximum amount plaintiffs
8 might have obtained at trial on the complaint, but rather whether the settlement is reasonable under
9 all of the circumstances." (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 250.)
10 Because settlements inherently involve compromise, even settlements providing for substantially
11 narrower relief than what may be obtained if the suit were successfully litigated can be reasonable
12 because "the public interest may indeed be served by a voluntary settlement in which each side gives
13 ground in the interest of avoiding litigation." (*Ibid.* [quoting *Air Lines Stewards, etc., Local 550 v.*
14 *American Airlines, Inc.* (7th Cir. 1972) 455 F.2d 101, 109].)

15 Here, the settlement resulted from extensive arm's-length settlement negotiations between
16 qualified and experienced counsel with the assistance of a well-respected mediator. (*See* Connor
17 Decl. ¶¶ 18, 22.) While Plaintiff maintains that his claims are meritorious, Plaintiff acknowledges
18 the substantial risks and uncertainty in proceeding with class certification and eventually trial, which
19 justify a downward departure from the maximum exposure that Plaintiff calculated that each claim
20 carried. (*Id.* at ¶¶ 46-86.) For the reasons discussed herein, Class Counsel believe that the Settlement
21 is fair, adequate, and reasonable for all Class Members.

22 As detailed in Plaintiff's Motion for Preliminary Approval, Defendant presented numerous
23 defenses to Plaintiff's claims, both procedurally and on the merits. (Connor Decl. ¶¶ 13, 59.) First
24 and foremost, Defendant's best defense is to avoid Plaintiff's allegations: a procedural strategy
25 which was adopted *vis-à-vis* the undetermined Motion to Compel Arbitration. Plaintiff maintains
26 that the CBAs are unenforceable because the competing arbitration provisions are so inherently
27 contradictory and inconsistent that it cannot be concluded that the Parties agreed to arbitrate. (*Id.* at
28 ¶¶ 14, 46.) Nonetheless, Plaintiff must acknowledge that there exist liberal policies favoring

1 enforcement of employment arbitration agreements and that, if the Court did compel this matter to
2 arbitration, the likely effect would be to obliterate the procedurally representative nature of the case.⁶

3 From a merit's standpoint, Defendant defended against minimum and overtime wage claims,
4 along with the meal and rest breaks, by arguing that the Labor Code and Wage Orders provide for
5 exemptions where collective bargaining agreements provide for wage, hours of work, and working
6 conditions. (Connor Decl. ¶¶ 14, 112.) Defendant also argued that, factually, any travel time that
7 occurred was not mandatory, did not affect all employees and truck drivers were paid 30 mins for
8 their travel time, and that any pre-shift/post-shift activities were *de minimis*. (*Id.* at ¶¶ 58, 61.)

9 From an evidentiary standpoint, off-the-clock hours are notoriously difficult to prove, and
10 such would be the same here where travel time entails accounting for varying job site locations,
11 driver routes, and traffic conditions on any particular day. (Connor Decl. ¶¶ 45, 54, 57.) Defendant
12 contended that such variation in circumstances raised highly individualized questions of fact. (*Id.* at
13 ¶¶ 49, 62) Thus, even if Plaintiff prevailed and certified a class action, there is no guarantee
14 Defendant would not later move for and obtain decertification. (*Id.* at ¶¶ 48-49.) If the Court either
15 denied class certification or later decertified it, the Class would recover nothing and Class Members
16 would be forced to retain their own counsel and proceed on the basis of individual claims only.
17 (*Ibid.*)

18 Pragmatically, after Plaintiff's lawsuit was filed, and in response thereto, Defendant
19 corrected its meal break practices in late 2020 by either providing timely breaks and/or paying
20 premiums. Even further, by April and May 2021, C.L. Concrete ceased operations altogether and
21 thereby altering what any legal victory would mean. (Connor Decl. ¶ 46.)

22 Although Plaintiff was prepared to litigate these claims through class certification and,
23 ultimately, through trial, given the substantial amount offered in settlement, Class Counsel predicted
24 that it was far from certain that Plaintiff would be able to recover a greater amount at trial,
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27 ⁶ For example, Defendant was quick to point out that in 2018, construction industry special interest
28 groups pushed Assembly Bill 1654 through which resulted in enactment of Labor Code section
2699.6, a proviso that expressly permits arbitration for employees in the construction industry with
a valid collective bargaining agreement that meets certain requirements. (Connor Decl. ¶ 81.)

1 particularly after considering Defendant's closure. (Connor Decl. ¶ 50.) Thus, this factor supports
2 preliminary approval of the settlement.

3 Applying a *Clark* and *Kullar* analysis,⁷ Class Counsel's valuation is that the Maximum
4 Settlement Amount recovery reflects an estimated **17% to 27% of the maximum-to-realistic possible**
5 **damages** recoverable at trial. (Connor Decl. ¶¶ 51, 88.) Specifically, the Parties posited as follows:

6 **Unpaid Minimum and Overtime Wages.** Plaintiff alleges that he and other hourly-paid
7 employees were regularly required to work off-the-clock, including during meal breaks and pre-
8 shift and post-shift duties such as: meeting with foreman, gathering materials and supplies (*i.e.*,
9 metal stakes, backs, and planks) for the job, loading and unloading the company truck, and
10 compulsory travel time spent commuting from the reporting location at Defendant's yard to the
11 customer jobsite. (Connor Decl. ¶ 53.) Here, C.L. Concrete faces a situation near analogous to the
12 well-established Ninth Circuit opinion, *Burnside v. Kiewit Pacific Corp.* (2007) 491 F.3d 1053,
13 acknowledging employees' entitlement to compulsory travel time pay from their daily initial
14 reporting place to their jobsites and back. Such right is also conferred by Wage Order 16-2001
15 and independent of collective bargaining agreements. (*Burnside, supra*, 491 F.3d at p. 1070
16 [analyzing identical collective bargaining agreement language]; Connor Decl. ¶ 55.) Finally, given
17 that for at least twenty-five percent of the shifts, the average number of hours was greater than 8
18 hours in length, it is inevitable that some of portion of the off-the-clock hours will result in unpaid
19 overtime under Labor Code sections 510 and 1198. (Connor Decl. ¶ 54.)

20 Based on time records and anecdotal evidence, Plaintiff estimates that Defendant is liable
21 for an aggregate of approximately one hour of unpaid straight time per workday, thus, an aggregate
22 of 21,433 hours of off-the-clock work attributed to uncompensated time. (Connor Decl. ¶ 57.) At
23 the average hourly rate of \$28.21, the straight-time wages owed for all hours worked is \$604,625.
24 Assuming further that 25% of those off-the-clock hours are in excess of eight hours per day, there
25 is an additional \$14.11 overtime premium owed with respect to 5,358 hours. (*Ibid.*) Thus, the
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27
28 ⁷ (*See, i.e., Clark v. American Residential Services, LLC* (2009) 175 Cal.App.4th 785 [hereinafter, "Clark"] and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116 [hereinafter, "Kullar"]).

1 estimated total of owed minimum and overtime wages is \$680,226, without discounting for risks
2 associated with certification or merits. (*Id.* at ¶ 57.)

3 In opposition, however, Defendant contended that Plaintiff's claim for off-the-clock work is
4 not amenable to class treatment, because travel time was not mandatory and some employees chose
5 to use their own vehicles (*i.e.*, distinguishing ordinary commute versus compensatory compulsory
6 travel), travel times varied based on the route taken, job site locations, and traffic conditions, and
7 certain employees (*i.e.*, drivers) were compensated for thirty minutes of travel time. (Connor Decl.
8 ¶ 58.) Substantively, in terms of merit defenses, Defendant vigorously disagreed with Plaintiff's
9 theories regarding applicability of state minimum and overtime regulations in the context of the
10 CBAs and how much off-the-clock work occurred and the credibility of those claimed hours. (*Id.* at
11 ¶ 59.) Here, for Plaintiff to establish the quantity of specific disputed and unrecorded work
12 activities—especially over multiple job sites, worked by different crews of employees—would have
13 been costly, time-consuming, and daunting. (*Id.* at ¶ 60.) Defendant further responded that any pre-
14 shift/post-shift incidences off-the-clock time is *de minimis*. Plaintiff countered that such defense
15 lacks viability in light of *Troester v. Starbucks Corp.* (2018) 5 Cal.5th 829, given that the California
16 Supreme Court refused to allow the *de minimis* defense to insulate Starbucks from having to pay
17 employees for small amounts of work regularly performed off-the-clock. What is not clear, however,
18 is to what extent the *de minimis* defense would apply where the uncaptured hours were associated
19 with an occasionally recurring activity. (Connor Decl. ¶ 61.)

20 In light of these considerations—especially the evidentiary difficulties of demonstrating off-
21 the-clock work on a class-wide basis—Class Counsel acknowledged a fifty percent discount,
22 yielding **\$340,113** in unpaid minimum and overtime wages, that incorporated the risks of non-
23 certification (either due to compelled arbitration or loss of a contested certification motion) and
24 being unsuccessful on the merits. (Connor Decl. ¶ 62.)

25 **Meal and Rest Period Violations.** Defendant contended that it maintained compliant meal
26 and rest period policies and provided timely meal periods and rest breaks to employees. Plaintiff
27 disagrees and will argue that such meal and rest break policies were never provided in the first
28 instance. While Plaintiff acknowledges that during his employment with Defendant he was a

1 member of the LiUNA, the CBAs containing meal break provisos were not distributed to Plaintiff
2 or other employees. If Defendant never communicated entitlement to meal breaks, Plaintiff argues
3 that such meal breaks were never provided in the first instance. (Connor Decl. ¶ 65; *see, e.g., Brinker*
4 *Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004; *Alberts v. Aurora Behavioral Health Care*
5 (2015) 241 Cal.App.4th 338, 410 [holding that a meal and rest policy must specifically advise
6 employees of the proper timing of meal and rest breaks].)

7 As a matter of practice, Plaintiff does not believe that Defendant's time records will survive
8 scrutiny for meal break recordkeeping. Until August 2020, Defendant did not record or maintain
9 timesheets to track lunch times yet presumed that compliant meal breaks were taken. (Connor Decl.
10 ¶ 66; *see Jaimez v. Daiohs USA, Inc.* (2010) 181 Cal.App.4th 1286, 1304 [finding that the
11 defendant's policy and practice of deducting 30 minutes per shift for each of the class members,
12 regardless of whether the class member took a meal break, raised common legal and factual issues].)
13 In terms of violation rate(s), however, the absence of reliable records will likely result in battle of
14 narratives between the Parties as to whether operations ceased at the job sites. This will be a
15 credibility issue for the fact-finder and, to the extent operations did cease, Defendant had an
16 obligation to maintain accurate time records and record meal break times. (*See Donohue v. AMN*
17 *Services, LLC* (2021) 11 Cal.5th 58 [prohibiting California employers from rounding time punches
18 for meal periods and holding that time records of non-compliant meal periods raise a rebuttable
19 presumption of liability].) Plaintiff insists that the default practice was that Defendant demanded
20 that Plaintiff and employees either forego eating entirely and/or take their meal periods on-duty. But
21 even assuming *arguendo* that the meal breaks were duty-free, due to the pre-shift and compulsory
22 travel, such purported lunch breaks would most often be "late." (Connor Decl. ¶¶ 67-68.)

23 Based upon analysis of Class Member time and payroll records, and taking into account
24 Plaintiff's assessment that 75% of eligible shifts were the subject of unique violations for missed,
25 late, or short meal periods (*i.e.*, 16,104 unique meal period violations), Plaintiff calculated the
26 potential maximum exposure of this claim to be \$454,294. However, to account for the above-
27 described certification and liability risks, Plaintiff took a twenty-five percent discount for associated
28 risks to yield **\$340,721** as the realistic exposure. (Connor Decl. ¶ 69.)

1 Here, Plaintiff also alleges that hourly employees did not receive timely and compliant rest
2 breaks, nor did Defendant relinquish control over how employees spent their 10-minute rest periods.
3 (Connor Decl. ¶ 70; *see Augustus v. ABM Security Service, Inc.* (2016) 2 Cal.5th 257, 260.)
4 Specifically, Plaintiff will testify that employee rest breaks, when they occurred, were dependent on
5 workflow and operational demands (*i.e.*, project time constraints and cement truck flow needs).
6 (Connor Decl. ¶ 71.) In the absence of recorded rest breaks and based on narrative experiences,
7 Class Counsel applied a violation rate for Class Members' rest breaks that is 50% of the eligible
8 shifts (*i.e.*, 10,736 unique rest break violations), thus yielding a rest break maximum exposure rate
9 of \$302,863. (*Id.* at ¶ 73.) For its part, Defendant maintained that it authorized and permitted duty-
10 free rest breaks of not less than ten minutes for every major fraction of four hours worked as required
11 by Labor Code section 226.7. (Connor Decl. ¶ 72.) Defendant explained that Class Members had
12 ample opportunity to take, and did take, regular rest breaks. (*Ibid.*) As with meal breaks, Defendant
13 argued that any Class Member who failed to take a rest break, or took a short or late rest period, did
14 so voluntarily and that all applicable rest periods were still authorized and provided. (*Ibid.*)

15 Notwithstanding the divergent contentions, Class Counsel recognize that, unlike meal
16 periods, rest breaks need not be recorded and thus establishing Defendant's exertion of pressure,
17 control, and resulting violations is likely to be more difficult. (Connor Decl. ¶ 73.) In light of these
18 considerations, Class Counsel applies a fifty percent reduction from that maximum exposure as
19 warranted for a realistic recovery amount of **\$151,432**. (*Ibid.*)

20 **Wage Statement Violations.** Plaintiff alleges a cause of action under Labor Code section
21 226(a) for Defendant's failure to provide accurate itemized wage statements. (Connor Decl. ¶ 74.)
22 Failure to comply with the statute entitles employees to recover the greater of all actual damages or
23 fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars
24 (\$100) for each violation in a subsequent pay period, not exceeding an aggregate penalty of four
25 thousand dollars (\$4,000). (*See* Labor Code § 226(e).) This cause of action is derivative of the
26 foregoing causes of action because if Defendant did not provide wages for all hours worked,
27 premiums for non-compliant meal and rest breaks, and so forth, then the wage statements were
28 inevitably inaccurate. (Connor Decl. ¶ 74.) Based on the more conservative \$50 initial violation

1 penalty rate across a qualifying 2,007 pay periods, Plaintiff estimates the total maximum wage
2 statement exposure to be \$100,350. (*Id.* at ¶ 76.)

3 Defendant contended, however, that Labor Code section 226(e) penalties are not automatic.
4 Rather, the employee must show that Defendant’s non-compliance was “knowing and intentional,”
5 which it was not. (Connor Decl. ¶ 75.) Moreover, Defendant argued that meal and rest period
6 violations cannot support derivative wage statement penalties. (*Id.* at ¶ 75; *see Naranjo v. Spectrum*
7 *Security Service, Inc.* (2019) 40 Cal.App.5th 444, 474 [holding that violations of Labor Code’s meal
8 break provisions do not entitle employees to pursue the derivative wage statement penalties]; *cf.*,
9 *but review granted, Naranjo v. Spectrum Security Services, Inc.* (Cal., Jan. 02, 2020, No. S258966)
10 455 P.3d 704, 257 Cal.Rptr.3d 188.) Considering the risks of loss on the merits of the underlying
11 derivative claim(s) and/or an adverse Supreme Court ruling in *Naranjo*, Class Counsel thus applied
12 a twenty-five percent deduction to yield the realistic recovery amount of **\$75,263**. (Connor Decl. ¶
13 76.)

14 **Waiting Time Violations.** While Plaintiff did not allege a Labor Code section 203 because,
15 at the time of filing the operative Complaint, he was a current employee, for purposes of mediation,
16 Plaintiff anticipated that Defendant would want such claim encompassed within the scope of any
17 settlement release. Thus, Plaintiff evaluated the dollar value of a cause of action against Defendant
18 for failure to timely pay all wages due employees at separation. (*See* Labor Code §§ 201-203.) As
19 with other claims, Defendant vigorously disagrees that it engaged in any conduct giving rise to
20 liability or entitlement to recovery of penalties. (Connor Decl. ¶ 77.) Defendant argued that waiting
21 time penalties are not appropriate because it attempted to pay employees all final wages owed in
22 good faith upon their separation, thereby precluding a finding of willfulness necessary to obtain
23 waiting time penalties. (*Id.* at ¶ 78.) Here too, under *Naranjo, supra*, Defendant maintained that no
24 waiting time penalties were recoverable for alleged meal and rest period violations. Again, at the
25 time of mediation, *Naranjo* was still undecided. (Connor Decl. ¶ 78.) Based on the count of 50
26 former employees at the time of mediation, Class Counsel appraised the maximum value of the
27 waiting time claim as \$338,520. (*Id.* at ¶ 79.) But after the Parties discussed the above risks, Class
28 Counsel factored in a reduction of twenty-five percent—as Plaintiff believes that the combined

1 potential derivative liability makes the claim relatively recoverable—and posits **\$253,890** as a
2 realistic exposure value. (*Ibid.*)

3 **Derivative PAGA Penalties.** Plaintiff notified Defendant and the LWDA of the alleged
4 violations on August 12, 2020, and having waited the requisite administrative exhaustion timeframe,
5 Plaintiff included a representative PAGA claim in the operative Complaint. (Connor Decl. ¶ 80.)
6 The success of Plaintiff’s PAGA claim is heavily dependent upon the success of the underlying
7 claims occurring within the one-year statute of limitations applicable to the PAGA. (*Ibid.*) In
8 response, Defendant contended that, *first*, PAGA claims cannot be brought given the existence of
9 construction industry context and CBA involved, and *second*, these penalties are derived from the
10 underlying wage and hour violations discussed above, which Defendant disputes. (*Ibid.*) But even
11 assuming *arguendo* that such violations occurred, Defendant contends that it will not be treated as
12 having engaged in subsequent violations giving rise to heightened penalties. (*Id.* at ¶ 83.) In other
13 words, Defendant argues that heightened civil penalties for subsequent violations would not be
14 assessed unless it could be shown that Defendant had notice that it was violating the law, e.g., it had
15 been cited by a labor agency or adjudged by a court to have done so. (*Ibid.*; *see, e.g., Amaral v.*
16 *Cintas Corp.* (2008) 163 Cal.4th 1157, 1209.) Thus, Defendant contended that, at best, even if a
17 violation giving rise to a penalty was shown for each pay period, only the lower civil penalty
18 associated with initial violations would apply. (Connor Decl. ¶ 83.)

19 Under Labor Code section 2699(f)(2), Defendant is subject to a civil penalty of \$100 for the
20 initial violation of the underlying Labor Code violations, and \$200 for each subsequent pay period
21 where the violation occurred. Extrapolating the one-year statutory PAGA period from the date of
22 filing through mediation, Plaintiff estimated 2,007 pay periods at issue. (Connor Decl. ¶ 84.) Thus,
23 Class Counsel applied discounts for the risks in establishing manageability and possible bifurcation
24 of discovery and/or trial, the risks regarding success on the merits and establishing liability, and the
25 risks with proving the extent of penalties that are warranted and possible discretionary reduction of
26 penalties by the Court. (*Id.* at ¶ 85.) As a result, Plaintiffs used the “initial” \$100 per pay period
27 violation (as opposed to the \$200 subsequent per violation rate) to calculate a realistic estimate of
28

1 \$200,700 in potential PAGA penalty exposure—of which, by statute, only 25%, or **\$50,175**, would
2 be recoverable by aggrieved employees. (*Id.* at ¶ 86.)

3 **Summary.** The foregoing considerations not only bore heavily on the negotiations leading
4 to the Settlement, but also confirm that the Settlement is a fair, adequate, and reasonable
5 compromise in view of the risks of further litigation. Plaintiff and Class Counsel carefully vetted
6 the claims at issue and conducted a detailed analysis of Defendant’s produced data to arrive at the
7 calculated damages. Using the estimated figures for each of the claims described above, Plaintiff
8 predicted that approximately \$1,926,428 would be the maximum possible recovery in damages
9 available to Class Members and that approximately \$1,211,594 be the realistic value of Class
10 Members’ claims. (Connor Decl. ¶¶ 87-89.) In the end, it was determined that the \$325,000
11 Maximum Settlement Amount represents an approximate estimated range of **17%-29% of the**
12 ***potential maximum/realistic damages*** recoverable at trial. (*Id.* at ¶ 90.) Plaintiff presented a detailed
13 *Clark and Kullar* analysis in connection with her motion for preliminary approval (*see* MPA at pp.
14 29-39). For reasons of economy and space, Plaintiff refers the Court to her prior preliminary
15 approval filing and to the concurrently filed Declaration of Jennifer L. Connor in support thereof
16 for detailed claim valuation estimates. While the above-described risks are far from exhaustive, they
17 demonstrate that the Settlement is fair, adequate, and reasonable in light of them.

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

22 Individual settlement payments will be calculated based on the number of Qualified Pay
23 Periods worked by each Participating Class Member during the Class Period, and the Qualified
24 PAGA Pay periods worked by each PAGA Group Member during the PAGA Period. This method
25 of distribution compensates Participating Class Members and PAGA Group Members based on the
26 estimated extent of their injuries, as individuals employed for a longer period would have been
27 subject to more of the alleged wage and hour violations than those who employed for a shorter
28 period. Thus, the formulas for compensating Participating 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 in section 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. ¶¶ 10-12, 14.) 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 Int’l. 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 Supreme Court confirmed in *Laffitte* that “[t]he percentage of fund method survives in California class action cases.” (*Laffitte, supra*, 1 Cal.5th at p. 506.) Specifically, the *Laffitte* Court held:

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

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

15 The Settlement calls for the payment to Class Counsel of up to \$113,750, which is 35% of
16 the Maximum Settlement Amount. (Settlement Agreement ¶ 57(e).) Such a request is fair,
17 reasonable, and adequate to compensate Class Counsel for the commendable results achieved in a
18 wage-and-hour case with *automatic* average settlement payments of **\$1,618.42** per Participating
19 Class Member, *no objectors*, and a **100% participation rate**. (Morales Decl. ¶¶ 10-12, 14.) Class
20 Counsel’s fee request of \$113,750—constituting a thirty-five percent recovery—approximates the
21 thirty-three percent sought by class counsel in *Laffitte* and is fair and reasonable based on the
22 percentage of the recovery method. For example, “regardless whether the percentage method or the
23 lodestar method is used, fee awards in class actions average around one-third of the recovery.”
24 (*Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 fn. 11.) Here, that Class Counsel achieved
25 these results in the face of serious defense challenges (*e.g.*, collective bargaining-based arbitration
26 agreements and unique construction industry exemptions) and in the face of an uncertain legal
27 landscape (*e.g.*, the then-pending California Supreme Court’s *Naranjo* decision and the U.S.

1 Supreme Court’s *Viking River Cruises, Inc. v. Moriana* (2022) 142 S.Ct. 1906 decision) confirms
2 the strength of the results achieved. (Connor Decl. ¶ 112.)

3 The attorneys’ fees award requested is consistent with Class Counsel’s experience in similar
4 wage and hour class action matters. (Connor Decl. ¶ 113.) Further, the attorneys’ fees award
5 requested is also consistent with what courts have awarded in other class and representative action
6 cases. (See *Ammari Electronics, et al. v. Pacific Bell Directory*, Alameda County Super. Ct. Case
7 No. RG05198014 [awarded 43.8%]; *Zelada v. Majestic Terminal Services*, San Bernardino County
8 Super. Ct. Case No. CIVDS1916968 [38% fee awarded on \$1,800,000 settlement]; *In re California*
9 *Indirect Purchaser X Ray Film Antitrust Litigation*, San Francisco County Super. Ct. [citing *Abzug*
10 *v. Kerkorian*, Los Angeles County Super. Ct. Case No. CA-00981 [45%] and *Haitz v. Meyer*,
11 Alameda County Super. Ct. Case No. 5729683 [45%]]; *Banda v. Verizon California, Inc.*, Los
12 Angeles County Super. Ct. Case No. BC434587 [35% fee on \$15,000,000 settlement]; *Hall v.*
13 *Cinema 7, Inc.*, San Francisco County Super. Ct. Case No. CGC-01-409105 [53%]; *Birch v. Office*
14 *Depot*, U.S. District Court, Southern District of California Case No. 06cv1690 DMS [40% fee
15 awarded on \$16,000,000 settlement]; and *Rundberg v. Intrawest Napa Dev. Co.*, Napa County
16 Super. Ct. Case No. 26-56886 [40%].)

17 In light of the facts and circumstances surrounding the case, Class Counsel’s application for
18 attorneys’ fees is well within the range of reasonableness. In fact, courts have historically awarded
19 fees as high as fifty percent (50%) of the settlement in complex actions. (See *In re Ampicillin*
20 *Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494 [**awarding attorneys’ fees in the amount of 45%**
21 **of the \$7.3 million total settlement amount**]; *Beech Cinema, Inc. v. Twentieth- Century Fox Film*
22 *Corp.* (S.D.N.Y. 1979) 480 F.Supp. 1195 [awarding approximately **53% of the settlement as**
23 **attorneys’ fees**]; *Chavez, supra*, 162 Cal.App.4th at p. 66 fn. 11 [lower court found the range of
24 contingency fees in marketplace to be **up to 40 percent** and determined such a percentage fee was
25 appropriate]; *Van Vranken v. Atlantic Richfield Co.* (N.D.Cal. 1995) 901 F.Supp. 294, 297-298
26 [observing that “[m]ost of the cases Class Counsel have cited in which high percentages such as **30-**
27 **50 percent of the fund** were awarded involved relatively smaller funds of less than \$10 million”];
28 see also *Cicero v. DirectTV, Inc.* (C.D.Cal. July 27, 2010, No. EDCV 07-1182) 2010 WL 2991486,

1 at *7 [observing that in California, “courts usually award attorneys' fees in the **30-40% range in**
2 **wage and hour class actions...**”]; *Williams v. Costco Wholesale Corp.* (S.D.Cal. July 7, 2010, No.
3 02-cv-2003-IEG-AJB) 2010 WL 2721452, at * 6 [collecting cases where courts awarded between
4 **33.33% and 40%** in attorneys' fees in wage and hour class actions].)

5 The fee award requested here is also justified because Class Counsel achieved a significant
6 monetary recovery for Participating Class Members and PAGA Group Members in an uncertain and
7 risky case while bearing the substantial burdens of representation on a contingency basis, and the
8 fees requested are in line with the market rate. (*See Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290
9 F.3d 1043, 1048-1051 [finding that exceptional results in a contingency case, significant risk and
10 the absence of supporting precedents, are proper considerations in awarding attorneys' fees].) Class
11 Counsel negotiated a substantial recovery for the Class Members, resulting in a settlement
12 participation rate of 100%. (*See Morales Decl.* ¶ 14.) Moreover, no Class Member objected to the
13 settlement or to Class Counsel's requested fees. (*See Morales Decl.* ¶ 10.) Further, the average
14 individual settlement payment of \$1,618.42, (*see Morales Decl.* ¶ 14), far exceeds average settlement
15 payments in similar wage and hour class action settlements.⁸ Class Counsel achieved these results
16 in the face of serious defense challenges and in the face of an uncertain legal landscape. (Connor
17 Decl. ¶¶ 106, 112, 128.) Finally, the fee request is also consistent with the contingency-fee agreement
18 entered into by Plaintiff. (*Id.* at ¶ 110)

19 As discussed above, this case presented significant risks of both non-certification as well as
20 potential challenges on the merits of Plaintiff's claims. (Connor Decl., *passim*.) Accordingly, it is
21 fair and reasonable to account for these risks in compensating Class Counsel. Class Counsel should

22 ⁸ (*See, e.g., Ressler v. Federated Department Stores, Inc.* (L.A. County Super. Ct. Jan. 2, 2009) Case
23 No. BC335018 [average recovery of \$90]; *Palencia v. 99 Cents Only Stores* (Sacramento County
24 Super. Ct.) Case No. 34-2010-00079619 [average recovery of \$80]; *Lim v. Victoria's Secret Stores,*
25 *Inc.* (Orange County Super. Ct. Jan. 20, 2006) Case No. 04CC00213 [average recovery of \$35];
26 *Gomez v. Amadeus Salon, Inc.* (L.A. County Super. Ct. July 23, 2010) Case No. BC392297 [average
27 recovery of \$20]; *Sorenson v. PetSmart, Inc.* (E.D.Cal. 2008) Case No. 2:06-CV-02674-JAM-DAD
28 [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]; *Schiller v. David's Bridal, Inc.* (E.D.Cal. June 11, 2012, No. 1:10-cv-
00616-AWI-SKO) 2012 WL 2117001, at *17 [finding that average payment to class members of
less than \$200 was a “good” result].)

1 also be compensated for the risks involved in undertaking this litigation and expending considerable
2 effort, all while working on a pure contingency basis. (*Id.* at ¶ 111.) Since undertaking representation
3 of Plaintiff, Class Counsel expended costs and devoted substantial time to this litigation. (*Id.* at ¶
4 115.) Given the considerable potential for adverse outcomes in this case, including, but not limited
5 to, being unable to proceed on a class-wide basis and/or risking unfavorable adjudication on the
6 merits, the contingent risk borne by Class Counsel was great. (*Id.* at ¶¶ 116-117.)

7 Class Counsel’s previous experience litigating wage and hour class actions also supports the
8 reasonableness of the fee request. (Connor Decl. ¶¶ 92-96, 113.) Class Counsel are well-versed in
9 plaintiff-side wage and hour class and representative action litigation, with substantial experience
10 litigating claims for unpaid wages, meal and rest period violations, wage statement, waiting time,
11 and related penalties, and have been certified as class counsel in numerous other cases. (*Ibid.*) Class
12 Counsel’s experience in similar matters was integral to evaluating the strengths and weaknesses of
13 this case and the reasonableness of the settlement. (*Id.* at ¶ 114.) Practice in the narrow field of wage
14 and hour litigation requires skill and knowledge concerning the rapidly evolving substantive state
15 and federal law, as well as the procedural law of class and representative action litigation. (*Ibid.*)

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

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

21 Significantly, *Laffitte* also held that trial courts have discretion to assess reasonableness of
22 fee awards with tools such as the lodestar cross-check, though they need not do so. (*Laffitte, supra*,
23 1 Cal.5th at p. 506 [“We hold further that trial courts have discretion to conduct a lodestar cross-
24 check on a percentage fee...they also retain the discretion to forego a lodestar cross-check and use
25 other means to evaluate the reasonableness of a requested percentage fee.”].) This Court can and
26 should award attorneys’ fees and costs based on the percentage fee alone in light of the excellent
27 results achieved and for the reasons stated herein. Nevertheless, the lodestar “cross-check” here also
28 supports the requested contingency-fee percentage.

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

12 The *Serrano* factors militate strongly in favor of the requested fee award. (Connor Decl. ¶
13 121.) Chief among these are the substantial risks faced given the unique convergence of collective
14 bargaining agreements and construction industry special interest carve-outs involved. Procedural
15 uncertainty loomed ahead with the motion to compel arbitration, the anticipated motion for class
16 certification, any motions for adjudication on the merits, trial, and possible appeal. Plaintiff further
17 faced the evidentiary challenges of substantiating unrecorded time and Defendant’s failure to
18 authorize and permit breaks on a class-wide basis. (*Ibid.*) Also, class certification was by no means
19 a foregone conclusion. Defendant argued that Plaintiff would be unable to certify a class outside of
20 the settlement context because Plaintiff’s claims on the merits would require a series of
21 individualized mini-trials. (*Ibid.*) Moreover, Plaintiff would face significant hurdles to certification
22 given that Defendant raised individualized affirmative defenses. (*Ibid.*) If Plaintiff prevailed and
23 certified a class action, there is no guarantee that Defendant would not later move for and obtain
24 decertification. (*Ibid.*) If the Court either denied class certification or later decertified it, the Class
25 would recover nothing and Class Members would be forced to retain their own counsel and proceed
26 on the basis of individual claims only. (*Ibid.*)

27 The attorneys’ fees award is intended to reimburse Class Counsel for all uncompensated
28 work that they have already done and for all the work they will continue to do. To investigate,

1 litigate, and ultimately negotiate and craft the Settlement, Class Counsel expended a significant
2 amount of time on the following: (1) conducting the pre-filing investigation; (2) analyzing Plaintiff's
3 claims; conducting legal research and analysis; (3) preparing and submitting notice to the LWDA;
4 (4) drafting and filing the operative Complaint and Plaintiff's Opposition to Motion to Compel
5 Arbitration; (5) requesting and meeting and conferring over informal discovery; (6) examining pre-
6 mediation information and data (including 15% (*i.e.*, 14 out of 95 employees) sampling of time
7 records and payroll); (7) reviewing policies and procedures regarding C.L. Concrete's wage and
8 hour practices *vis-à-vis* three versions of purportedly applicable collective bargaining agreements,
9 wage statements, engaging a consultant and building a damages model; (8) reviewing Defendant's
10 certified public accounting financial records (*i.e.* balance sheets, asset lists, income statements, tax
11 projections); (9) preparing, briefing, and attending mediation; (10) negotiating, preparing, and/or
12 revising the Memorandum of Understanding, long-form Settlement Agreement, Class Notice,
13 Information Sheet, and Exclusion Form; (11) preparing the motion for preliminary approval; (12)
14 revising the long-form Settlement Agreement and submitting the Amended Stipulation, Settlement
15 Agreement, and supplemental filings; (13) overseeing the notice process; (14) responding to
16 questions from Class Members; and (15) preparing this Motion for Final Approval and supporting
17 documents, along with future anticipated case and settlement related activities. (Connor Decl. ¶
18 122.)

19 The work performed on this case was meaningful, and Class Counsel's hourly rates are
20 commensurate with their experience and the prevailing rates among defense and plaintiffs' firms
21 that regularly litigate wage and hour class and representative actions. (Connor Decl. ¶ 123.)

22 As set forth in detail in the accompanying Connor Decl., Class Counsel spent a substantial
23 amount of time during the course of its representation of Plaintiff and the prosecution of this action.
24 With an aggregated lodestar amount of \$98,130, a multiplier of only 1.16 is necessary to yield the
25 requested fees. (Connor Decl. ¶¶ 124-125 [attesting to an aggregate 144.2 hours worked by
26 CounselOne's attorneys] and **Exhibit "2"** [Attorney Task and Time Chart].) When cross-checked
27 with the requested attorneys' fees of \$113,750, the result of 1.16 is a ***modest multiplier***. (*Id.* at ¶
28

127.) This multiplier is fair and reasonable based on the contingent nature of the case, the risks and difficulties presented, and the result achieved.

The requested multiplier in this case is within even the modest multipliers that are awarded by California courts. (*See Vizcaino, supra*, 290 F.3d at pp. 1050-1051 [looking to multipliers awarded in comparable cases as evidence of reasonableness; affirming 3.65 multiplier].) Multipliers routinely range from 3 to 5, and it is not uncommon that multipliers of between 5 and 10, or higher, are applied. (*See, e.g., Wilson v. Bank of Am. Natl. Trust & Savs. Assn.* (Cal. Sup. Ct., Aug. 16, 1982) Case No. 643872 [multiplier of 10]; *Glendora Comm. Redev. Agency v. Demeter* (1984) 155 Cal.App.3d 456, 465 [affirming multiplier of 12, and expressly rejecting argument that fee was either exorbitant or unconscionable]; *Wershba, supra*, 91 Cal.App.4th at p. 255 [noting that “[m]ultipliers can range from 2 to 4 or even higher”]; *Van Vranken, supra*, 901 F.Supp. at p. 298 [multipliers of 3-4 are in the “range [of] common” multipliers for class actions]; *Holleran v. Rita Medical Systems, Inc.* (Cal. Super. Ct. Oct. 04, 2007, No. RG06302394) 2007 WL 7759253 [multiplier of 4.57]; *Gutierrez v. Wells Fargo Bank, N.A.* (N.D.Cal. May 21, 2015, No. C07-05923-WHA) 2015 WL 2438274, at *7 & 8 fn. 3 [multiplier of 4.53]; *Johnson v. Fujitsu Tech. & Bus. of Am., Inc.* (N.D.Cal. May 11, 2018, No. 16-CV-03698-NC) 2018 WL 2183253, at *7 [multiplier of 4.375]; *Buccellato v. AT & T Operations, Inc.* (N.D.Cal. Jun. 30, 2011, No. C10-00463-LHK) 2011 WL 3348055, at *2 [multiplier of 4.3]; *Chau, et al v. CVS RX Services, Inc.*, Los Angeles County Superior Court No. BC349224, Order Granting Final Approval of Class Action Settlement, Reasonable Attorneys’ Fees and Costs and Service Payments to the Class Representatives [a 3.8 multiplier was applied based primarily on contingent risk and the “excellent results [] obtained [] with relative efficiency”].)

As described above, Class Counsel performed this work in an uncertain legal landscape against a corporation represented by experienced labor law attorneys with no guarantee of recovery, and their work on this case prevented them from taking on other matters, including hourly and flat-fee work. (Connor Decl. ¶ 129.) Despite these considerations, Class Counsel zealously represented Plaintiff and Class Members and negotiated a settlement providing for significant recovery to Class Members. That Class Counsel achieved these results without engaging in a protracted legal battle,

1 and in the face of serious defense challenges and an ability to pay concern after having ceased
2 operations, confirms the strength of the results achieved. (*Ibid.*) Furthermore, not a single Class
3 Member has objected to the request for attorneys' fees. (*See* Morales Decl. ¶ 10.)

4 For the reasons stated herein, Class Counsel firmly believe that the settlement in this case
5 strongly supports the request for a 35% fee award. The settlement provides substantial relief to the
6 Class Members and is an all-in resolution where all the funds will be paid out. As with all wage and
7 hour cases, this one presented real issues as to the viability of both certification and liability, was
8 litigated in an effective manner so as to drive a fair settlement, and the result merits the requested
9 fee award. Thus, the lodestar cross-check affirms that the fee award requested does in fact fall within
10 the range of reasonableness.

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

13 Class Counsel incurred and respectfully request reimbursement of \$11,196.13 in litigation
14 costs (*see* Connor Decl. ¶¶ 130-131 and **Exhibit “3”** [Cost Breakdown]), and this amount is less
15 than the \$15,000 maximum that was agreed to in the Settlement. The cost breakdown does not
16 include Westlaw fees, copy charges, and additional fees associated with filing the final approval
17 motion. (*Id.* at ¶ 130.) Class Counsel's request is fair, adequate, and reasonable, as all these costs
18 are documented and reasonably incurred. (*Id.* at ¶¶ 130-131 and Exhibit 3.) Moreover, the costs for
19 which Plaintiff seeks reimbursement are the types of costs routinely approved by courts. (*See, e.g.,*
20 *Harris v. Marhoefer* (9th Cir. 1994) 24 F.3d 16, 19 [counsel should recover “those out-of-pocket
21 expenses that would normally be charged to a fee paying client”]; *Ashker v. Sayre* (N.D.Cal. 2011,
22 No. 05-03759-CW) 2011 WL 825713, at * 3 [“costs of reproducing pleadings, motions and exhibits
23 are typically billed by attorneys to their fee-paying clients” and are reimbursable]; *Trustees of Const.*
24 *Industry & Laborers Health and Welfare Trust v. Redland Ins. Co.* (9th Cir. 2006) 460 F.3d 1253,
25 1258-1259 [legal research costs are reimbursable]; *In re Immune Response Securities Litigation*
26 (S.D.Cal. 2007) 497 F.Supp.2d 1166, 1177-78 [mediation expenses, legal research, copies, postage,
27 filing fees, messenger and overnight delivery costs are reimbursable].) The requested
28 reimbursement of costs of up to \$15,000 was fully disclosed to Class Members and there have been

1 no objections. (*See* Morales Decl. ¶ 10.) Because the expenses by Class Counsel were reasonably
2 incurred, and no Class Member has objected to them, the Court should grant the request for
3 reimbursement of litigation costs in the amount of \$11,196.13.

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

6 Plaintiff also requests that the Court approve \$15,000 in administration costs to the
7 Settlement Administrator. (*See* Settlement Agreement ¶ 57(f) [agreeing to an amount up to
8 \$15,000]); Morales Decl. ¶ 15.) As detailed in the Morales Decl., CPT performed duties in
9 connection with this settlement that were instrumental in effectuating the settlement and the notice
10 process. Among other things, CPT calculated each Class Member’s individual settlement payment,
11 updated addresses contained in the class data supplied by Defendant (*e.g.*, NCOA and skip-traces),
12 formatted the Class Notice and Notice Packet materials for mailing, mailed the Notice Packets to
13 all Class Members and PAGA Group Members, kept the Parties informed of any communications
14 received from the Class Members and PAGA Group Members, and otherwise administered the
15 Settlement. (*See* Morales Decl., *passim*.) For these reasons, CPT’s requested costs are fair,
16 reasonable, and adequate, and should be finally approved.

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

20 A class representative must possess the same interest and suffer the same injury as the class
21 members. “To assure ‘adequate’ representation, the class representative’s personal claim must not
22 be inconsistent with the claims of other members of the class.” (*J.P. Morgan & Co., Inc. v. Sup. Ct.*
23 (*Heliotrope General, Inc.*) (2003) 113 Cal.App.4th 195, 212.) Thus, the adequacy requirement is
24 satisfied when the class representative’s interests are not antagonistic to those of the class. (*McGhee*
25 *v. Crocker-Citizens Nat. Bank* (1976) 60 Cal.App.3d 442, 451.) Here, Plaintiff has no conflicts with
26 the Class and in fact his interests are aligned with those of the Class Members. (*See* Connor Decl. ¶
27 133; Declaration of Raymond L. Smith (“Smith Decl.”), filed concurrently herewith, at ¶ 9.) Because
28 Plaintiff’s claims are the same as those that would be asserted by unnamed class members were they

1 before the Court, Plaintiff has every interest in zealously representing the unnamed class members.
2 (Smith Decl., *passim*.) Plaintiff has not shirked from this responsibility; on the contrary, Plaintiff,
3 along with his counsel, prosecuted this case with allegiance and dedication. (Smith Decl. ¶¶ 8, 15-
4 18; Connor Decl. ¶ 134.)

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, supra*, 901 F.Supp. at p. 294
9 [approving \$50,000 service payment].) Generally, the “criteria courts may consider in determining
10 whether to make an incentive award include: (1) the risk to the class representative in commencing
11 suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class
12 representative; (3) the amount of time and effort spent by the class representative; (4) the duration
13 of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representative as
14 a result of the litigation.” (*Id.* at p. 299.)

15 Here, Plaintiff requests a Class Representative Service Award in the amount of \$7,500. This
16 request is intended to recognize the significant benefits conferred upon the Class and be proportional
17 to the respective time and effort that Plaintiff expended on behalf of the Class Members and the
18 PAGA Group Members. (Connor Decl. ¶ 135.) In terms of his efforts, Plaintiff actively participated
19 in the prosecution of this matter, in particular, but not exclusively, through the following activities:
20 participating in multiple conversations with Class Counsel; describing the job activities, schedules,
21 and routines of Defendant’s workforce; identifying potential witnesses; explaining the roles,
22 interactions, and responsibilities of the Laborers International Union of North America; gathering
23 and reviewing documents, company policies, collective bargaining agreements, and pleadings;
24 answering questions about Defendant’s company structure, assets, and likely financial resources;
25 being contacted by former coworkers about the C.L. Concrete’s closure; reviewing and executing a
26 declaration in support of Plaintiff’s Opposition to Motion to Compel Arbitration; engaging in
27 lengthy discussions with my attorneys in advance of private mediation and reviewing the mediation
28 brief; making himself available for settlement negotiations on November 2, 2022; reviewing the

1 terms of the long-form Settlement Agreement, along with the Amended Stipulation and Settlement
2 Agreement of same; and staying apprised of the status of the litigation. (Smith Decl. ¶ 17; Connor
3 Decl. ¶ 136.) Plaintiff invested significant time and effort into seeing this litigation through
4 resolution. (*See* Smith Decl. ¶¶ 17-18 [detailing between 30 to 40 hours]; Connor Decl. ¶ 137.)

5 In terms of risk and notoriety, there are “plus” factors that further support the reasonableness
6 of the proposed service award: the longevity of Plaintiff’s tenured coupled by the unique retaliatory
7 and reputational response by C.L. Concrete’s owner. Before his separation and filing this lawsuit,
8 Plaintiff was a long-standing employee at C.L. Concrete, which lasted more than two decades, and
9 thus offered a uniquely valuable contribution to the prosecution of this litigation if the matter had
10 not resolved. Due to the longevity of his employment relationship, Plaintiff was positioned to
11 provide testimony and evidence that was distinct in scope because of longstanding employment
12 history. (Smith Decl. ¶ 3; Connor Decl. ¶ 138.) Additionally, Plaintiff’s reputation suffered real and
13 tangible negative effects because, upon learning of this putative class action, Defendant’s owner
14 shut down operations, sold assets, and terminated the entire workforce within months. Worse, when
15 former employees applied for new jobs, prospective employers in the industry were warned about
16 hiring these guys who brought a lawsuit. (Smith Decl. ¶¶ 13-14; Connor Decl. ¶ 139.) Such factors
17 further support the notions of adequacy and reasonableness of the proposed service award request.

18 It also bears mention that the award of \$7,500 is reasonable relative to having secured an
19 average recovery of \$1,618.42 per Participating Class Member. (Morales Decl. ¶ 14). Moreover, the
20 95 Participating Class Members, who would not be receiving anything if it were not for Plaintiff’s
21 decision to pursue these claims, have benefitted greatly from his participation. (Connor Decl. ¶ 140.)
22 Plaintiff Smith is not receiving any compensation beyond what is provided by the Settlement. (Smith
23 Decl. ¶ 20; Connor Decl. ¶ 141.) In fact, as part of the Settlement, Plaintiff entered into a general
24 release of claims which is broader than the release that applies to unnamed Class Members.
25 (Settlement Agreement ¶ 38.) Moreover, after receiving notice of the proposed amount for the Class
26 Representative Service Award, no Class Member objected. (*See* Morales Decl. ¶ 10.) Thus,
27 Plaintiff’s request for service award in the amount of \$7,500 is appropriate and justified as part of
28 the Settlement and should be finally approved.

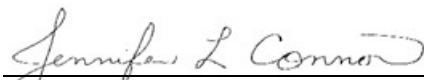
1 **V. CONCLUSION**

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 Service
5 Award and the Proposed Final Judgment, both of which are submitted concurrently herewith.

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7 Dated: January 10, 2023

Respectfully submitted,

8 COUNSELONE, PC

9 By: 

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