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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SACRAMENTO

ANDREW D. TAPPIN, DONYEISHA
MISH, DARNELL LEE, LUIS ROBLES,
XOCHITL VELASCO, and VICTOR
GONZALEZ, individually and on behalf of
all others similarly situated, and on behalf of
the general public as private attorney general,

Plaintiffs,

vs.

TFORCE FREIGHT, INC., a Virginia
Corporation; and DOES 1 through 50,
inclusive,

Defendants.

CASE NO. 34-2022-00314820-CU-OE-GDS

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR FINAL
APPROVAL CLASS AND
REPRESENTATIVE ACTION
SETTLEMENT**

*[Filed concurrently with supporting
declarations and [Proposed] Order and
Judgment]*

Date: February 14, 2025

Time: 9:00 a.m.

Department: 23

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VICTOR GONZALEZ.

1 PLEASE TAKE NOTICE that on February 14, 2025 at 9:00 a.m., or as soon thereafter as
2 the matter may be heard in Department 23 of the above-entitled court. Plaintiffs Andrew D. Tappin,
3 Donyeisha Mish, Darnell Lee, Luis Robles, Xochitl Velasco, and Victor Gonzalez (“Plaintiffs”)
4 will and hereby do move this Court for: (1) an order determining the good faith of and granting
5 final approval of the proposed class action and PAGA settlement; (2) entry of the proposed Order
6 of Final Approval and Judgment; (3) an order awarding costs to the claims administrator; and (4)
7 an order awarding attorneys’ fees and costs and a class representative enhancement awards to Class
8 Counsel and the Plaintiffs, respectively.

9 This Motion is brought pursuant to California *Rules of Court*, Rule 3.769, on the grounds
10 that the Class and Representative Action Settlement and Release (“Settlement Agreement”)
11 between Plaintiffs Andrew D. Tappin, Donyeisha Mish, Darnell Lee, Luis Robles, Xochitl Velasco,
12 and Victor Gonzalez (“Plaintiffs”) and Defendant TForce, formerly known as UPS Ground Freight,
13 a subsidiary of TFI International (“Defendant”), (Defendant and Plaintiffs collectively “Parties”)
14 is fair, reasonable, and adequate, achieved as the result of informed, arms-length negotiations, and
15 deserving of approval for the benefit of the Settlement Class members to whom it pertains.

16 This Motion is based on this Notice and Motion, the declarations of Samuel Almon, James
17 Hawkins, Kyle Nodrehaug, and William Argueta on behalf of CPT Group, Inc., the other papers on
18 file in this action, and such other and further oral and documentary evidence as may be submitted
19 at or before the hearing on the Motion.

20 Pursuant to Local Rule 1.06 (A), the court will make a tentative ruling on the merits of this
21 matter by 2:00 p.m., the court day before the hearing. The complete text of the tentative rulings for
22 the department may be downloaded off the court’s website. If the party does not have online access,
23 they may call the dedicated phone number for the department as referenced in the local telephone
24 directory between the hours of 2:00 p.m. and 4:00 p.m. on the court day before the hearing and
25 receive the tentative ruling. If you do not call the court and the opposing party by 4:00 p.m. the
26 court day before the hearing, no hearing will be held.

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28 //

1 Dated: January 22, 2025

MAKAREM & ASSOCIATES, APLC

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By: *Daniel Bass*
Daniel Bass
Attorneys for Plaintiffs

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1 **I. INTRODUCTION**

2 Pursuant to California Rules of Court, Rule 3.769(g), Plaintiffs Andrew D. Tappin,
3 Donyeisha Mish, Darnell Lee, Luis Robles, Xochitl Velasco, and Victor Gonzalez (“Plaintiffs”),
4 as Class Representatives—of the “Settlement Class” or “Settlement Class Members” of all current
5 and former California non-exempt employees of Defendant who have worked at least one Eligible
6 Workweek during the Class Settlement Period of September 13, 2016, through October 7, 2023.
7 (Declaration of Samuel Almon [“Almon Decl.”], Exhs. C-E)

8 The Settlement will resolve all of Plaintiffs’ class claims against Defendant. As set forth in
9 Plaintiff’s Motion for Preliminary Approval, which was granted by this Court on August 30, 2024,
10 this Court should approve as fair and reasonable the class-wide, non-reversionary Stipulation of
11 Class and Representative Action Settlement and Release (“Settlement Agreement”) as modified by
12 Amendment to Stipulation of Class and Representative Action Settlement and Release
13 (“Amendment”). (Almon Decl., Exhs. C-E). The amount of \$8,250,000.00, inclusive of all fees and
14 costs shall be paid for settlement of the claims of the Settlement Class. (Almon Decl., ¶ 15).

15 Only 3 Settlement Class members have opted out and it is anticipated that the remaining
16 3,875 Settlement Class Members will part of this Settlement. (Declaration of William Argueta
17 with Respect to Settlement Administration and Class Notice. [“CPT Decl.”], ¶¶ 12-14).
18 Moreover, as no one has objected to the Settlement, this reflects that the Settlement was well-
19 received by all class members. *See* CPT Decl., ¶ 11; *see also, Anderson v. Nextel Retail Stores,*
20 *LLC*, 2010 U.S. Dist. LEXIS 43377 at *49 (C.D. Cal. 2010) (holding that a relatively high
21 participation rate and extremely low objection rate weighed in favor of approving the settlement).
22 Similarly, only 9 workweek disputes were submitted and these have been resolved. (CPT Decl., ¶
23 11). This nearly unanimous participation rate “supports the fairness, reasonableness, and
24 adequacy of the settlement.” *Williams v. Costco Wholesale Corp.*, 2010 U.S. Dist. LEXIS 67731
25 at *13 (S.D. Cal. 2010).

26 Moreover, the Court should grant Plaintiffs’ their requested Enhancement Payments of
27 \$10,000 (Almon Decl., ¶ 17), Plaintiff’s request for attorneys’ fees of \$2,750,000 (Almon Decl., ¶
28 16), litigation costs of \$29,364.62 (*Id.*), and settlement administration costs of \$26,000 (CPT

Decl., ¶ 18), because each payment is reasonable and based on diligent work performed or costs incurred for the benefit of all Class Members.

Accordingly, the Settlement, and all of its terms, satisfies California Rules of Court, Rule 3.769, and other applicable laws, such that this Court should grant final approval.

II. STATUS OF THE LITIGATION

A. Defendant and Plaintiffs

Defendant TForce, formerly known as UPS Ground Freight, a subsidiary of TFI International, is a renowned freight carrying corporation founded in 1935. It employs thousands of employees and owns and operates over 20 package and delivery locations throughout California. (Almon Decl., ¶ 2). Plaintiffs were employed by Defendant as a non-exempt, hourly employees during the Class Settlement Period. (*Id.* at ¶ 3).

B. Commencement of the Action and Pleadings

Plaintiffs collectively allege a number of wage and hour violations by Defendant, as set forth completely in the settlement agreement. First, they allege TForce of failing to pay all wages due, including minimum and overtime wages for hours worked off the clock and while subject to employer the control, including time spend donning and doffing uniforms and undergoing security checks, time spent working after having meal periods interrupted, and time deducted by TForce for a so-called “grace period” prior to the scheduled start of a shift even though the class members were clocked in for work, beginning their work duties, and under the control of Defendant. Next, Plaintiffs alleged TForce failed to provide timely and uninterrupted duty-free meal and rest periods. Plaintiffs argued that, in addition to maintaining non-compliant written meal and rest break policies, Plaintiffs’ review of the time and payroll data provided by Defendant suggests significant de facto break violations for late, short, or missed meal breaks and further that second meal breaks were practically non-existent on shifts of 10+ hours. Plaintiffs also allege they were required to use their personal cell phones for work purposes, and incurred other expenses, without any reimbursement. Plaintiffs also alleged TForce did not maintain accurate records and failed to pay all sick pay wages, including COVID-19 supplemental sick

1 pay. Finally, Plaintiffs allege derivative violations for failing to provide accurate itemized wage
2 statements and failing to timely pay wages upon separation of employment. (*Id.* at ¶ 4).

3 Based on these allegations, Plaintiffs filed several cases against TForce. On March 10,
4 2021, Plaintiff Donyeisha Mish filed a putative class action in Alameda County Superior Court
5 entitled *Mish v. UPS Ground Freight, Inc.*, Case No. RG21091722. Defendant removed the *Mish*
6 Class Action to the United States District Court for the Northern District of California, where it is
7 currently pending under Case No. 3:21-cv-04094-EMC. Plaintiffs Darnell Lee, Luis Robles, and
8 Xochtil Velasco later were added as party-plaintiffs and proposed class representatives. On July
9 14, 2021, Plaintiff Mish filed her putative representative action under PAGA in Alameda Superior
10 Court in an action entitled *Mish v. UPS Ground Freight, Inc.*, Alameda Superior Court Case No.
11 RG21105108. (*Id.* at ¶ 5).

12 On November 21, 2021, Plaintiff Victor Gonzalez filed his putative class action in
13 Riverside County Superior Court entitled *Gonzalez v. TForce Freight, Inc.*, Case No.
14 CVRI2105223. The *Gonzalez* Class Action was subsequently removed, transferred, and
15 consolidated with the *Mish* Class Action in the Northern District of California under Case No.
16 3:22-cv-01177. Also on November 21, 2021, Plaintiff Gonzalez filed his putative representative
17 action under PAGA in Riverside Superior Court, in an action entitled *Gonzalez v. TForce*
18 *Freight, Inc.*, Riverside County Superior Case No. CVRI2105225. (Almon Decl. at ¶ 6.)

19 On November 24, 2021, Plaintiff Andrew Tappin filed a putative class action in
20 Sacramento Superior Court in an action entitled *Tappin v. TForce Freight, Inc.*, Case No. 34-
21 2021-00311727. The *Tappin* Class Action was subsequently removed, transferred, and
22 consolidated with the *Mish* Class Action in the Northern District of California under 2:22-cv-
23 00322. On January 31, 2022, Plaintiff Tappin filed his putative representative action under PAGA
24 in Sacramento Superior Court, in an action entitled *Tappin v. TForce Freight, Inc.*, Sacramento
25 County Superior Court Case No. 34-2022-00314820 (*Id.* at ¶ 7).

26 TForce has at all times denied Plaintiffs' collective allegations and maintained its meal
27 break and payroll policies and procedures comply with California law, that it provided its
28 employees with required meal and rest breaks, that it properly tracked employee time and paid

1 Plaintiffs and all other employees all wages due, and that any use of personal cell phones was for
2 the employee convenience and not reimbursable as a necessary business expense, that it
3 maintained accurate records, and that it properly paid all sick pay, including COVID-19
4 supplemental sick pay. Additionally, Defendant strongly contends the case cannot be maintained
5 as any kind of class or representative action, arguing that to the extent class members missed meal
6 breaks, that such breaks were non-compliant, or that any unpaid “off the clock” work occurred, it
7 was intermittent and infrequent, against company policy, and done without the company’s
8 knowledge. Thus, per TForce, evidence of such violations would be purely anecdotal and
9 therefore individualized issues predominate and trial would be unmanageable. (*Id.* at ¶ 8).

10 **C. Investigation**

11 Before filing the lawsuit, Class Counsel investigated and researched the facts and
12 circumstances underlying the pertinent issues and the laws applicable thereto. This required
13 thorough discussions between Class Counsel and the Plaintiffs, as well as preliminary research into
14 the various legal issues and employment practices involved in the case. After conducting their initial
15 investigation, Class Counsel determined that Plaintiffs’ claims were well-suited for class action
16 adjudication owing to what appeared to be a common set of policies and procedures that impacted
17 Plaintiffs and other putative class members in a similar fashion. (*Id.* at ¶ 9).

18 Since Plaintiffs filed their complaints, the Parties engaged in formal discovery, both
19 propounding and responding to written discovery, and Plaintiffs deposed six of TForce’s managers.
20 After agreeing to mediation, the Parties also undertook additional informal discovery to facilitate an
21 exchange of information necessary to engage in a meaningful mediation. Consequently, Plaintiffs’
22 counsel reviewed payroll records, personnel policies/handbooks, meal and rest break policies,
23 personnel files, and a random sampling of paystubs and time records produced by TForce for about
24 20 % of the class. Defendant also provided documents and information reflecting the estimated total
25 amount of workweeks and pay periods the class members worked, and average hourly pay rates,
26 among other relevant data. Plaintiff had that data reviewed and analyzed by Berger Consulting
27 Group to assist with determining potential break violation rates, amount of underpaid rest and
28 recovery time and unproductive time, etc., and preparing a damages model. (*Id.* at ¶ 10).

1 **D. Mediation and Settlement**

2 The Parties then engaged Michael Young, Esq., a highly respected mediator with extensive
3 wage and hour class action experience and, in May 2022, participated in a full-day mediation with
4 Mr. Young. Throughout the day, the arms-length negotiations were hard-fought and adversarial as
5 the Parties exchanged extensive information on their legal and factual positions, and made
6 numerous offers and counter-offers. The Parties were not able to reach a settlement at the
7 mediation. Over the following several months, however, they continued to negotiate with Mr.
8 Young’s assistance, and he ultimately issued a mediator’s proposal that was accepted by all Parties
9 in December 2022. The Parties then collaboratively drafted the Stipulation of Class and PAGA
10 Representative Action Settlement (“Settlement Agreement”) setting forth the full and final
11 settlement terms. In order to fully effectuate the Parties’ agreement to resolve all pending cases on a
12 global basis and allow one court to preside over the approval process, they also agreed to stipulate
13 to the filing of an amended complaint in the *Tappin* PAGA Action to assert both class and PAGA
14 claims, and including the plaintiffs from all matters as proposed class representatives. On January 5,
15 2024, the Parties filed a stipulation and proposed order to allow the filing of the First Amended
16 Complaint, along with a copy of the proposed First Amended Complaint. (*Id.* at ¶¶ 11-13, Exhs. C-
17 D). After Preliminary Approval was granted, the Settlement Administrator confirmed for the
18 Parties that the records provided by Defendant showed that there were 3,878 potential Class
19 Members. (CPT Decl. ¶ 4).

20 **III. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS**

21 **A. Settlement Class**

22 Class Member(s)” or “Settlement Class” means all current and former California non-exempt
23 employees of Defendant who have worked at least one Eligible Workweek during the Class
24 Settlement Period of September 13, 2016, through October 7, 2023. There were 3,878 class members
25 who received notice of the settlement, three of which submitted valid “Opt Outs” for a total of 3,875
26 participating class members. (Almon Decl., ¶ 14). Only 3 Settlement Class members have opted out
27 and it is anticipated that the remaining 3,875 Settlement Class Members will part of this Settlement.
28 (CPT Decl., ¶¶ 13-14). Moreover, as no one has objected to the Settlement, this reflects that the

1 Settlement was well-received by all class members. See CPT Decl., ¶ 12. Similarly, only 9 potential
2 disputes were submitted and all these have been resolved. (CPT Decl., ¶ 11).

3 **B. Settlement Consideration**

4 Under the terms of the proposed agreement, the parties have agreed that all claims brought
5 on behalf of the Class shall be fully and finally resolved for a “Gross Settlement Amount” of
6 \$8,250,000.00. (Almon Decl. ¶ 15). The Gross Settlement Amount is non-reversionary and no
7 portion of the Settlement Amount will be returned to the Defendants. (*Id.*). The following amounts
8 will be deducted from the Gross Settlement Amount, with the amount remaining after these
9 deductions constituting the Net Settlement Amount (*Id.* at ¶¶ 15-21; CPT Decl. ¶ 15):

- 10 • **Attorneys’ Fees and Costs:** Up to 1/3 of the Gross Settlement Amount or \$2,750,000.00
11 plus up to \$50,000 in actual costs and expenses, though Plaintiffs’ costs have been limited
12 to \$29,369.62;
- 13 • **Enhancement Payments:** Up to \$10,000 to each of the named Plaintiffs as a class
14 representative for a total of \$70,000;
- 15 • **Settlement Administration Costs:** \$26,000 from the Gross Settlement Amount for the
16 costs associated with administration of the Settlement, up from \$21,000 due to the required
CAFA notice (CPT Decl. ¶ 18);
- 17 • **PAGA Payment:** Up to \$165,000 of the Gross Settlement Amount will be allocated to the
18 PAGA Payment, 75%, or \$123,750.00, will be paid to the California Labor & Workforce
19 Development Agency as the LWDA PAGA Payment, and 25%, or \$41,250,000, will be
20 paid to the PAGA Members as their Individual PAGA Payments.

21 Thus, the net Settlement amount was estimated to be around \$5,199,000.00 (CPT Decl., ¶ 15),
22 though this number will increase by at least \$20,630.38 in authorized but unspent litigation costs
23 (Almon Decl., ¶¶ 15-21). Each Participating Class Member shall be eligible to receive an Individual
24 Settlement Payment, which is a share of the Net Settlement Amount based on the pro rata number
25 of weeks worked by the Participating Class Members during the Class Settlement Period as a
26 proportion of all weeks worked by all Participating Class Members. (Almon Decl., ¶ 21). Based on
27 estimated settlement calculations, prior to increasing the Net Settlement Amount for any unused
28 costs, the average gross payment to each Settlement Class Member is \$1,341.68 the highest is
\$4,127.55, and the lowest is \$11.18. (CPT Decl., ¶ 16).

29 **C. Claims and Settlement Fund Distribution Procedure**

30 According to the Settlement Agreement “Effective Date” means the date on which the
31 Judgment becomes a Final Judgment. For purposes of this Settlement Agreement, the final
32 judgment “becomes final” only after the Court grants the motion for final approval of the

1 settlement and upon the latter of (i) the period for filing any appeal, writ, or other appellate
2 proceeding challenging or opposing the Settlement has elapsed without any appeal, writ, or other
3 appellate proceeding having been filed; (ii) any appeal, writ or other appellate proceeding
4 challenging or opposing the Settlement has been dismissed finally and conclusively with no right
5 to pursue further remedies or relief; or (iii) any appeal, writ or other appellate proceeding has
6 upheld the Court's final order with no right to pursue further remedies or relief. In this regard, it
7 is the intention of the Parties that the Settlement shall not become effective, and Defendant will
8 not be obligated to fund this Settlement, until the Court's order approving the Settlement is
9 completely final, and there is no further recourse by an appellant, objector, or intervenor who
10 seeks to contest the Settlement. (Almon Decl., ¶ 23, Exh. C at 1.9). Within fifteen (15) calendar
11 days after the Effective Date, Defendant shall pay the Gross Settlement Amount by wire transfer
12 into the Qualified Settlement Fund set up, held, and controlled by the Settlement Administrator.
13 (*Id.*, Exh. C at 4.9.1) Within fifteen (15) calendar days after Defendant funds the Qualified
14 Settlement Fund, the Settlement Administrator shall issue Individual Settlement Payments to
15 Participating Class Members, Individual PAGA Payments to the PAGA Members, the LWDA
16 PAGA Payment to the LWDA, the Court-approved attorneys' fees and costs to Class Counsel,
17 and the court-approved Enhancement Awards to the Class Representatives. (*Id.*, Exh. C at 4.9.2)

18 According to the Agreement, after one hundred and eighty (180) calendar days of
19 issuance, funds from undeposited Individual Settlement Payment and Individual PAGA Payment
20 checks will be held by the Settlement Administrator. Thereafter, the Settlement Administrator
21 will transmit the amount of that uncashed settlement payment to the State of California, to be held
22 by the Controller in accordance with California's Unclaimed Property Law for the benefit of
23 those Participating Class Members and PAGA Members who did not cash their checks until such
24 time that they claim their property. (Almon Decl., ¶ 23, Exh. C at 4.10).

25 **IV. FAIRNESS ANALYSIS**

26 **A. Standard for Final Approval**

27 The trial court has broad discretion to determine whether a proposed class action
28 settlement is fair. See *Rebney v. Wells Fargo Bank* (1990) 220 Cal.App.3d 1117, 1138. There is a

1 presumption of fairness of a class action settlement when: (1) the settlement is reached as the
2 result of arm's length negotiations; (2) there has been sufficient investigation and discovery; (3)
3 counsel is experienced in similar litigation; and (4) the percentage of objections is low. See *Dunk*
4 *v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802. Before approving a class action settlement,
5 a trial court must have an understanding "of the amount that is in controversy and the realistic
6 range of outcomes of the litigation." *Kullar v. Footlocker Retail, Inc.* (2008) 168 Cal.App.4th
7 116, 120. However, the parties need not provide an explicit statement of the maximum amount
8 plaintiffs could have potentially recovered. See *Munoz v. BCI Coca Cola Bottling Co. of Los*
9 *Angeles* (2010) 186 Cal.App.4th 399, 409.

10 Further, "voluntary conciliation and settlement are the preferred means of dispute
11 resolution. This is especially true in complex class action litigation...." *7-Eleven Owners for Fair*
12 *Franchising v. The Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151 (quoting *Officers for*
13 *Justice v. Civil Service Comm. of the City and County of San Francisco*, 688 F.2d 615, 625 (9th
14 Cir. 1982)). A class action may not be dismissed, compromised, or settled without the approval of
15 the Court. See Cal. Rules of Court, Rules 3.769 and 3.770. The decision to approve or reject a
16 class action settlement may only be reversed upon a strong showing of "clear abuse of
17 discretion." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998); *Class Plaintiffs v.*
18 *City of Seattle*, 955 F.2d 1268 (9th Cir. 1992) (in the context of a class action settlement, an
19 appellate court cannot "substitute [its] notion of fairness for those of the [trial] judge and the
20 parties to the agreement," and will reverse only upon a strong showing of abuse of discretion.)

21 To make this fairness determination, the court must consider several relevant factors,
22 including "the strength of plaintiff's case, the risk, expense, complexity and likely duration of
23 further litigation, the risk of maintaining class action status throughout trial, the amount offered in
24 settlement, the extent of discovery completed and the state of the proceedings, [and] the experience
25 and views of counsel..." *Dunk v. Ford Motor Co.*, *supra*, 48 Cal.App.4th at 1801; *Wershba v. Apple*
26 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 244-245; *7-Eleven Owners for Fair Franchising v. The*
27 *Southland Corp.*, *supra*, 85 Cal.App.4th at 1146. "The list of factors is not exclusive and the court
28 is free to engage in a balancing and weighing of factors depending on the circumstances of each

1 case.” *Wershba*, 91 Cal.App.4th at 245. Furthermore, courts must give:

2 [p]roper deference to the private consensual decision of the parties, [since] the court’s
3 intrusion upon what is otherwise a private consensual agreement negotiated between the
4 parties ... must be limited to the extent necessary to reach a reasoned judgment that the
agreement is not the product of fraud or overreaching by, or collusion between, the
negotiating parties, and the settlement, taken as a whole, is fair, reasonable and adequate ...

5 (*Hanlon*, 150 F.3d at 1027.)

6 **B. The Strength of Plaintiff’s Case and Complexities of Further Litigation**

7 Plaintiffs believe that the Class claims in this action are legally meritorious and present a
8 reasonable probability of a favorable determination on behalf of the Class. At the same time, there
9 is undeniably significant litigation risk avoided by the proposed Settlement, both at class
10 certification proceedings, at trial, and potentially in the appellate courts. (Bass Decl., ¶ 30).

11 Liability remains highly contested by Defendant, which denies that it engaged in any
12 violations of the law, and it further denies any liability or engagement in wrongdoing of any kind
13 associated with the claims alleged in the Action by the Plaintiffs or any Class Member. Defendant
14 contends that at all times it complied with all wage-and-hour laws in connection with the
15 employment and/or retention of services of Plaintiffs and the Class Members. (*Id.*, ¶ 31)

16 Plaintiffs’ counsel understood and appreciated the defenses and position of Defendant but
17 believed that Plaintiffs would ultimately succeed in the action. In light of the strongly divergent
18 views, the parties were able to negotiate a fair settlement, considering the costs and risks of
19 continued litigation. The negotiations were at all times conducted professionally and at arm’s
20 length and have produced a result that the Parties believe to be in their respective best interests.
21 (*Id.*, ¶ 32)

22 The Parties have also considered the uncertainty and risk of the outcome of further
23 litigation, and the difficulties and delays inherent in such litigation. Plaintiffs are also aware of the
24 burdens of proof necessary to establish liability for the claims asserted in the action, the defenses
25 thereto, and the difficulties in establishing damages. In evaluating the settlement, the Court will
26 seek a reasonable estimate of the nature and amount of recovery that each class member could have
27 obtained if the Plaintiffs had prevailed in the litigation. Numerous decisions summarize a trial
28 court’s task when considering whether to approve the settlement of a putative class action. (*Id.*, ¶

1 31). As Division Five of this Court stated:

2 The trial court has broad discretion to determine whether the settlement is fair. [Citation.]
3 It should consider relevant factors, such as the strength of Plaintiff's case, the risk, expense,
4 complexity and likely duration of further litigation, the risk of maintaining class action
5 status through trial, the amount 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.

6 *Cellphone Fee Termination Cases* (2009) 180 Cal.App.4th 1110, 1117-18 (citations omitted). The
7 court's consideration of relevant factors, however, does not transform the settlement approval
8 "into a trial or rehearsal for trial on the merits." *7-Eleven Owners for Fair Franchising*, 85
9 Cal.App.4th at 1145 (internal citation omitted). The record need only provide the trial court with
10 an understanding of the amount that is in controversy and the realistic range of outcomes of the
11 litigation. Because settlements are inherently a compromise, once the parties have provided it
12 with the requisite "basic information," the trial court must only "satisfy itself that the class
13 settlement is within the 'ballpark' of reasonableness." *Tech-Bilt, Inc. v. Woodward-Clyde &*
14 *Assoc.* (1985) 38 Cal.3d 488, 499-500.

15 Here, in preparation for mediation, Plaintiffs' counsel calculated Defendants' liability to
16 Class Members to be in excess of the settlement amount. Plaintiffs' valuation assumed that
17 Plaintiffs: (1) prevailed in certifying the case; (2) prevailed in establishing liability on the merits;
18 and (3) was awarded the full amount of all discretionary penalties. (Almon Decl., ¶ 34). The
19 realistic range of outcomes for this litigation took into account the present state of the law
20 regarding meal and rest break claims and the other claims brought in the Action, Defendant's
21 defenses for each claim, and the likelihood of prevailing on a class certification motion as well as
22 trial and any appeals (*Id.*, ¶ 35). Where both sides face significant uncertainty, the attendant risks
23 favor settlement. *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011,1026.

24 ***Kullar v. Footlocker Analysis***

25 To allow this Court to make an informed assessment pursuant to *Kullar v. Foot Locker*
26 *Retail, Inc.* (2008) 18 Cal.App.4th 116, Plaintiffs' Counsel provides the following assessment of
27 the case and settlement. Plaintiffs' Counsel believes that the settlement is a very good one for the
28 Class Members. In this case, Plaintiffs sought unpaid wages and statutory penalties as well as

1 equitable remedies of declaratory relief, disgorgement, accounting, and restitution. (Almon Decl.,
2 ¶ 36). As stated in Plaintiffs’ Motion for Preliminary Approval and supplemental briefing Plaintiffs
3 ran various calculations and estimated TForce’s likely maximum exposure on the class claims at
4 approximately \$79.26 million, including \$10.1 million on the off-the-clock unpaid minimum wage
5 and overtime claims, \$28 million on the meal break claims, \$36.1 million on the rest break claims,
6 \$8.82 million on the wage statement claims, \$13.71 million on the waiting time penalty claims, and
7 \$1.91 million on the unreimbursed expenses claims. As such, the settlement represents
8 approximately 10.4% of Defendants’ exposure based on Plaintiffs’ analysis before PAGA
9 penalties. This in a reasonable recovery, particularly given that these figures are aggressive, and in
10 ongoing litigation such awards would be subject to the full panoply of Defendant’s liability
11 defenses in addition to the Court’s discretion to reduce such awards. (Almon Decl., ¶ 37).

12 Courts have determined that settlements are, of course, reasonable even where Plaintiffs
13 recover only a portion of their actual losses. *See Behrens v. Wometco Enters., Inc.* (S.D. Fla. 1988)
14 118 F.R.D. 534, 542, *aff’d*, (11th Cir. 1990) 899 F.2d 21 (“[T]he fact that a proposed settlement
15 amounts to only a fraction of the potential recovery does not mean the settlement is unfair or
16 inadequate.”). Indeed, “[a] settlement can be satisfying even if it amounts to a hundredth or even -
17 a thousandth of a single percent of the potential recovery.” *Id.*; *see also City of Detroit v. Grinnell*
18 *Corp.* (S.D.N.Y. 1972) 356 F.Supp. 1380, 1386 [a recovery of 3.2% to 3.7% of the amount sought
19 is “well within the ball park”], *aff’d in part, rev’d on other grounds*, (2d Cir. 1974) 495 F.2d 448;
20 *Martel v. Valderamma* (C.D. Cal. 2015) 2015 U.S. Dist. LEXIS 49830 * 17 (approving a settlement
21 of \$75,000 when potential damages were \$1.2 million); *In re Toys R US FACTA Litig.* (C.D. Cal.
22 2014) 295 F.R.D. 438, 453 (approving settlement with vouchers (not cash) potentially worth a
23 maximum of three percent (3%) if all possible claims were actually made, or \$391.5 million
24 aggregate voucher potential where the class could have recovered \$13.05 billion); 4 William B.
25 Rubenstein et al., *Newberg on Class Actions* (5th ed. 2016) § 13:15 (the range of reasonableness
26 percentage could be as low as 1/100th or 1/1000th of 1%); *Ma v. Covidien Holding, Inc.*, (C.D. Cal.
27 Jan. 31, 2014, No. SACV 12-02161-DOC) 2014 WL 360196, at *5 (finding a settlement worth
28 9.1% of the total value of the action “within the range of reasonableness”); *Balderas v. Massage*

1 *Envy Franchising, LLC*, (N.D. Cal. July 21, 2014, No. 12-CV-06327 NC) 2014 WL 3610945, at
2 *5 (granting preliminary approval of a net settlement amount representing 5% of the projected
3 maximum recovery at trial); *Glass v. UBS Fin. Servs., Inc.* (N.D. Cal. Jan. 26, 2007, No. C-06-4068
4 MMC) 2007 WL 221862, at *9, *aff'd*, 331 Fed. Appx. 452 (9th Cir. 2009) (approving a settlement
5 of an action claiming unpaid overtime wages where the settlement amount constituted
6 approximately 25% to 35% of the estimated actual loss to the class).

7 Below, Plaintiff details the issues that necessitated deductions from the maximum potential
8 value of this case to arrive at the reasonable Gross Settlement Amount in this action. Here the class
9 was estimated at 3,210 persons working approximately 423,211 workweeks extrapolated through
10 April 14, 2023. (Almon Decl. ¶ 38).

11 **Off-the-Clock Unpaid Minimum Wage & Overtime:**

12 Plaintiffs identified four separate sources of off-the-clock claims: Grace Period off-the-
13 clock work at the beginning shifts (deducted from class members' work time despite their being
14 clocked in, when they clocked prior to the start of their scheduled shifts); Donning and Doffing
15 time (estimated at 20 minutes per shift); Security Checks (estimated at 5 minutes per shift); and
16 work during Meal Periods (estimated at 30 minutes per shift, on 25% of recorded meal breaks.
17 Extrapolated to the 3,210 class members, Plaintiffs' experts concluded that there were
18 approximately 67,015.3 extrapolated hours of Grace Period OTC work (at 2.7 minutes per shift in
19 the relevant time period). Plaintiffs' experts further determined that the average rate of pay was
20 \$24.98, overall. In addition, based on analysis of the appropriate ratio of regular, overtime, and
21 double-time pay using the 117,896 shifts in the data where Grace Period OTC wages were
22 unpaid, a blended hourly rate of \$36.79/hr was the appropriate extrapolated wage rate. At \$36.79
23 per hour, with 67,015.3 hours of unpaid Grace Period OTC work, the *Grace Period subtotal is:*
24 *\$2,465,377.* Applying a similar analysis, the data indicated that there were 19,310.6 hours of
25 Donning and Doffing OTC work, 56,538.7 hours of Security Checks OTC work, and 146,981.3
26 hours of Meal Break OTC work extrapolated across the relevant time period. For these categories
27 of OTC work, the data indicated a slightly lower average hourly rate of \$34.56 (i.e. 76.7%
28 overtime), was appropriate. At \$34.56 per hour, with 19,310.6 hours of Donning and Doffing

1 OTC work, the *Donning and Doffing* subtotal is \$667,369. At \$34.56 per hour, with 56,538.7
2 hours of Security Checks OTC work, the *Security Check* subtotal is \$1,953,969. And at \$34.56
3 per hour, with 146,981.3 hours of Meal Break OTC work, the *Meal Break* subtotal is \$5,079,647.
4 Thus, the total off-the-clock exposure calculation is about \$10.1 million. (Almon Decl. ¶ 39).

5 **Meal Break Claims:** Based on the data analyzed, nearly 15% (14.9%) of shifts greater
6 than five hours had no meal break recorded at all, and a high percentage of shifts with meal
7 breaks recorded indicated other deficiencies (late, short, etc.). Nearly 100% (99.4%) of all shifts
8 between 10-12 hours – 81,316 shifts in total, in the data – did not have a second meal break
9 recorded, and 97.6% of shifts greater than 12 hours – 21,840 shifts – also did not have a second
10 meal break recorded. Overall, the data reflected 197,631 unique meal break violations, or an
11 overall violation rate of 76.3%. Extrapolating to the class, Plaintiffs experts calculated that there
12 would be 1,112,958 unique violations across the relevant time period, totaling \$28,019,031 after
13 an offset for the \$132,390 in meal premium payment that Defendant made from 9/13/2016 to
14 5/17/2022. (Almon Decl. ¶ 40).

15 **Rest Break Claims:** Assuming a violation rate of 100%, Plaintiffs' experts analyzed
16 shifts greater than 3.5 hours over the six years in the data set, finding 45,410 violations in 2017;
17 55,867 violations in 2018; 52,968 violations in 2019; 46,502 violations in 2020; 42,232 violations
18 in 2021; and 11,008 violations through mid-May of 2022 – a total of 253,987 violations within
19 the data. Extrapolated to the entire class, Plaintiffs' experts calculated that there would be
20 approximately 1,448,319 violations in total across the relevant time period, for the entire putative
21 class. Using the extrapolated hourly average pay rate of \$24.98 per hour, *1,448,319 violations*
22 *multiplied by \$24.98 yields total rest break exposure of \$36,179,016.* (Almon Decl. ¶ 41).

23 **Wage Statement Claims:** Plaintiffs' experts calculated that there were 166,742 pay
24 periods for 2,205 employees within the applicable wage statement penalty statute of limitations,
25 reaching back to September 13, 2019. Plaintiffs' experts then assumed that each of these
26 employees would reach the statutory \$4,000 cap for wage statement penalties. Multiplying
27 \$4,000 by 2,205 yields **total Wage Statement Exposure of \$8,820,000.** (Almon Decl. ¶ 42).

28 **Waiting Time Penalty Claims:** Within the applicable time period, going back to

1 September 13, 2017, there were 1,906 terminated employees. Plaintiffs' experts further
2 calculated that an average daily wage for the putative class of \$239.85, using 9.1 hours per day
3 (the extrapolated average shift length) and \$24.98 as the base wage rate. *Multiplying 1,906 by*
4 *\$239.85 per day, by 30 days yields total waiting time penalty exposure of \$13,714,623.*
5 (Almon Decl. ¶ 43).

6 **Unreimbursed Business Expenses:** Using the same data set, Plaintiffs' experts assumed
7 \$20 per month, per class member. Within the data, that assumption indicated \$58,080 in
8 unreimbursed expenses in 2017; \$71,940 in 2018; \$69,200 in 2019; \$61,700 in 2020; \$56,860 in
9 2021; and \$17,500 in the first portion of 2022 – a total of \$335,280 based on the data. The data
10 indicated that, when *extrapolated to the entire putative class across the relevant time period,*
11 *controlling for number of workweeks, total unreimbursed business expenses of \$1,911,880.*
12 (Almon Decl. ¶ 44).

13 **Civil and PAGA Penalties:** In addition to the \$13.7 million in waiting time penalties
14 discussed above, Plaintiffs' experts calculated that, if Plaintiffs were to prevail on all claims, the
15 total exposure on the PAGA penalties would come to approximately \$144 million with the PAGA
16 period reaching back to November 14, 2019. Plaintiffs' experts determined that there were
17 approximately 156,161 PAGA pay periods for aggrieved employees, and calculated the following
18 totals amounts based on the statutory penalty scheme, imposing \$100 for the initial violation and
19 \$200 for each subsequent violation for all penalties except wage statement penalties (which were
20 assessed at \$250 per violation). (Almon Decl. ¶ 45).

21 Plaintiffs, in agreeing to the settlement had to take into account the difficulties in
22 certifying a class and maintaining any such certification. These concerns weighed into Plaintiff's
23 analysis to eventually agree to a settlement that is less than Defendant's total projected liability
24 even if Plaintiff eventually won every aspect of this case including an appeal. A settlement now
25 guarantees that class members will 1) obtain a recovery and 2) that they will get the recovery in a
26 time period that is shorter than one if the case went through a full trial and appeal process.
27 (Almon Decl. ¶ 46).

1 **Certification in General:** The great discretion afforded trial courts in electing to grant or
2 deny class certification, and the resultant possibility that this Court would deny certification of
3 any of the claims, resulting in no recovery whatsoever for those unnamed class members further
4 weighed in favor of settlement. Indeed, going into settlement discussions and during the course of
5 constructing the settlement, Class Counsel bore in mind similar meal and rest break cases wherein
6 class certification was denied. *See e.g. In re Lamps Plus Overtime Cases* (2012) 209 Cal.App.4th
7 35; *Washington v. Joe's Crab Shack* (N.D. Cal. 2010) 271 F.R.D. 629 (“individualized inquiry
8 will be required to determine whether any single employee failed to take a meal break because
9 he/she was too busy, and also to determine whether a particular employee signed a waiver based
10 on a decision not to take meal breaks”). *Hernandez v. Chipotle Mexican Grill, Inc.* (2012) 146
11 Cal.Rptr.3d 424, 2012 WL 3579567, *10.

12 **Trial and Manageability Issues:** While Plaintiffs are confident in the strength of their
13 claims, as is always the case with a trial, Plaintiffs needed to accept that there was a possibility that
14 they would not prevail at trial. Compromise is inherent and necessary in the settlement process.
15 Thus, even if “the relief afforded by the proposed settlement is substantially narrower than it would
16 be if the suits were to be successfully litigated,” this is no bar to a class settlement because “the
17 public interest may indeed be served by a voluntary settlement in which each side gives ground in
18 the interest of avoiding litigation.” *Id.* at 250 (quoting *Air Line Stewards, Loc. 550 v. American*
19 *Airlines, Inc.*, (7th Cir.1972) 455 F.2d 101, 109. The Ninth Circuit observed “the very essence of
20 a settlement is compromise, ‘a yielding of absolutes and an abandoning of highest hopes.’” *Officers*
21 *for Justice v. Civil Serv. Commission* (9th Cir.1982) 688 F.2d 615, 624 (citation omitted). Thus,
22 when analyzing the amount offered in settlement, the Court should examine “the complete package
23 taken as a whole,” and the amount is “not to be judged against a hypothetical or speculative measure
24 of what might have been achieved by the negotiators.” *Id.* at 625, 628.

25 Given the difficulties Plaintiffs and the Settlement Class faced, both in terms of certification
26 and in adjudicating their claims on the merits, the litigation discounts afforded by Plaintiffs are
27 appropriate and the settlement is fair, reasonable, and adequate. In the present case, it is clear that
28 the settlement before this Court is the best course of action as it ensures a fair and adequate recovery

1 for the members of the class. Thus, it was clearly reasonable for Plaintiffs to negotiate a smaller
2 certain award rather than seek the full recovery but risk recovering nothing.

3 Plaintiffs, in agreeing to the settlement had to take into account the difficulties in certifying
4 a class and maintaining any such certification. What's more, Plaintiffs had to take into account the
5 Defendant's positions and legal determinations. For example, the Court might decline to award *any*
6 "derivative" PAGA penalties for wage statements if it already awarded the \$8.82 million in "direct"
7 civil penalties for wage statements. These concerns weighed into Plaintiffs' analysis to eventually
8 agree to a settlement that is less than Defendant's total projected liability even if Plaintiffs
9 eventually won every aspect of this case including an appeal. A settlement now guarantees that
10 class members will 1) obtain a recovery and 2) that they will get the recovery in a time period that
11 is shorter than one if the case went through a full trial and appeal process. (Almon Decl., ¶ 46).

12 The settlement amount was a negotiated compromise, factoring in the risks related to
13 certification, liability, and damages. Taking into account all of the circumstances of the action and
14 the significant factual and legal defenses raised by Defendant against certification, liability, and
15 damages, Class Counsel believe that the settlement is fair and reasonable. Each Class Member's
16 individual share of the settlement amount is tailored to the number of workweeks worked by each
17 Class Member during the class period so the distribution is weighted in favor of those Class
18 Members who were potentially most affected by the alleged violations. Moreover, because the
19 class consists of several employees, it was unlikely that the potential monetary claims of individual
20 Class Members would have proved viable without the class-action mechanism. (Almon Decl., ¶
21 47).

22 **C. The Experience and Views of Counsel**

23 This "Parties represented by competent counsel are better positioned than courts to
24 produce a settlement that fairly reflects each party's expected outcome in litigation." *In re Pacific*
25 *Enterprises Security Litigation*, 47 F.3d 373, 378 (9th Cir. 1995). Here, Plaintiffs are represented
26 by competent and experienced counsel who possess extensive experience litigating wage and
27 hour class actions and have been appointed as class counsel in numerous cases alleging similar
28 claims. (Almon Decl., ¶¶ 48-59; Nordrehaug Decl., ¶¶ 3-5; Hawkins Decl., ¶¶ 3-5).

1 There is an initial presumption that a proposed settlement is fair and reasonable if it is the
2 result of arms-length negotiations. See *Williams v. Vukovich*, 720 F.2d 909, 922-923 (6th Cir,
3 1983) (“The court should defer to the judgment of experienced counsel who have competently
4 evaluated the strengths of his proofs.”); *In re Excess Value Ins. Coverage Litig.*, No. M-21-84
5 (RMB) 2004 WL 1724980, at *10 (S.D.N.Y. July 30, 2004) (“Where ‘the court finds the
6 settlement is the product of arm’s length negotiations conducted by experienced counsel
7 knowledgeable in complex class litigation, the settlement will enjoy a presumption of fairness.”);
8 *In re Inter-Op Hip Prosthesis Liab. Litig.*, 204 F.R.D. 330, 351 (N.D. Ohio 2001) (granting
9 preliminary approval of settlement “where the settlement is the result of extensive negotiations by
10 experienced counsel...”); see also 2 Hebert Newberg & Alba Conte, *Newberg on Class Actions*,
11 §11.41 at 90 (4th Ed. 2001).

12 Counsel for Plaintiffs have extensive experience in employment law, particularly wage
13 and hour class action litigation. (Almon Decl., ¶¶ 48-59; Nordrehaug Decl., ¶¶ 3-5; Hawkins
14 Decl., ¶¶ 3-5). Counsel for Plaintiffs and Defendant each zealously negotiated on behalf of their
15 respective clients’ best interests, and the Settlement was reach after lengthy negotiations. As a
16 result, the Settlement is presumed to be fair and reasonable, and was not the product of collusion.

17 **D. No Class Members Objected to the Settlement**

18 As part of CPT’s preparation for mailing, all 3,878 names and addresses contained in the
19 Class List were processed against the National Change of Address (“NCOA”) database,
20 maintained by the United States Postal Service (“USPS”), for purposes of updating and
21 confirming the mailing addresses of the Settlement Class Members before mailing of the Notice
22 Packet. (See CPT Decl., ¶ 5). On October 14, 2024, the Notices were mailed by U.S. first class
23 mail to the Settlement Class Members. The deadline to submit requests for exclusion or objection
24 is December 2, 2024. (*Id.*, ¶ 6). 240 Notice Packets were returned, all of which were skipped
25 traced and 215 were mailed again to the newly discovered addresses. (*Id.*, ¶¶ 9-10). Ultimately,
26 34 Notice Packets were undeliverable with no forwarding address, where no new address could
27 be found through skip trace. (*Id.*, ¶ 10).

1 The Administrator has received 3 requests for exclusion from the Settlement, 9 disputes
2 (which were resolved) and 0 objections. (*Id.*, ¶¶ 11-13). A 99.92% participation rate is
3 anticipated. (*Id.*, ¶ 14). Accordingly, all factors typically used by California courts to determine
4 the appropriateness of final approval of a class action settlement weigh in favor of finding that
5 this Settlement is a fair and reasonable result after well-represented parties who engaged in arms-
6 length negotiations over hotly-contested and unclear issues of California's wage and hour laws,
7 culminating in a settlement that provides a substantial benefit to all Class Members. In other
8 words, the Settlement as proposed by the parties should be finally approved.

9 **V. CLASS COUNSELS' FEES AND COSTS**

10 **A. Attorneys' Fees and Costs Provided in the Settlement are Fair and Reasonable**

11 In the Settlement, Defendant agreed, subject to Court approval, to pay Class Counsel an
12 award of reasonable attorneys' \$2,750,000.00 in attorney's fees, and actual litigation costs and
13 expenses not to exceed \$50,000 (Almon Decl., Exh., C), for work performed for the benefit of the
14 Class. To date, Class Counsel has incurred only \$29,369.62 in litigation costs. (Almon Decl., ¶
15 67, Exh. D; Nordrehaug Decl., ¶ 14, Exhs. 1-3; Hawkins Decl., ¶ 7, Exh. 1). In terms of their
16 actual time spent on the matter, Class Counsel will have collectively spent more than 1,590.55
17 hours. (Almon Decl., ¶ 63; Nordrehaug Decl., ¶¶ 12; Hawkins Decl., ¶¶ 3-5) Multiplying the
18 hours by their hourly rates, Class Counsel's incurred fees exceeds \$1,229,949.50. (Almon Decl.,
19 ¶¶ 63-65; Nordrehaug Decl., ¶¶ 12-13; Hawkins Decl., ¶ 6). Class Counsel anticipate spending
20 additional time attending the final approval hearing and working with the Settlement
21 Administrator through the disbursement and accounting process, that will likely exceed 30 hours.
22 (Almon Decl., ¶ 65).

23 Though there are two methods for determining the appropriateness of a fee award, the
24 starting point for determining a fees' appropriateness is to assess the amount of time spent by the
25 attorneys working for the class. In *Lealao v. Beneficial California*, the court held that:

26 The starting point of every fee award, once it is recognized that the court's role in equity is
27 to provide just compensation for the attorney, must be a calculation of the attorney's
28 services in terms of the time he has expended on the case. Anchoring the analysis to this
concept is the only way of approaching the problem that can claim objectivity, a claim
which is obviously vital to the prestige of the bar and the courts. [citation omitted]

1 *Lealao*, 82 Cal.App.4th 19, 26-27. As stated above, Class Counsel’s fees incurred litigating this
2 case already exceeds \$1,229,949.50. (Almon Decl., ¶¶ 63-65; Nordrehaug Decl., ¶¶ 12-13;
3 Hawkins Decl., ¶ 6). Beyond a simple review of Class Counsel’s hours worked, the fee award
4 presently requested comports with attorneys’ fee awards issued by other courts under both the
5 “common fund” and “lodestar” methodologies.

6 Because the requested award is well within those typically provided a multiplier when
7 approved by California courts, and because it is fully supported by the factors that California
8 courts consider in determining the reasonableness of attorney fee awards in class action cases,
9 Class Counsel respectfully submit that their request for \$2,750,000 in fees is appropriate.

10 **B. The Trial Court has Wide Discretion Over the Amount of the Fee Award**

11 California appellate courts have long recognized that trial courts are ideally situated to
12 assess the quality and effectiveness of Class Counsel’s efforts, and have, thus, conferred
13 considerable equitable discretion upon trial courts to determine an appropriate fee award. *See*
14 *Serrano*, 20 Cal.3d at 49; *accord, Glendora Community Redev. Agency v. Demeter* (1984) 155
15 Cal.App.3d 465, 474 (holding that “[t]he rule with respect to attorney[s]’ fees is that the amount
16 to be awarded as attorney[s]’ fees is left to the sound discretion of the trial court. The trial judge is
17 in the best position to evaluate the services rendered by an attorney in his courtroom; his
18 judgment will not be disturbed unless it is clearly wrong.”).

19 California courts recognize two standard methods for calculating attorneys’ fee awards in
20 common fund class actions. The more prevalent “percentage of the fund” (also known as the
21 “common fund” or “common benefit”) method calculates attorneys’ fees based on a percentage of
22 the common benefit bestowed upon the class. The “lodestar-plus-multiplier” method uses Class
23 Counsel’s “lodestar” as a basis - determined by multiplying the hours counsel expended by their
24 hourly rates - which the Court may then enhance by a multiplier. The “lodestar-plus-multiplier”
25 method is often a cross-check of the propriety of the “common fund” award.

26 **1. The “Common Fund” Doctrine**

27 The California Supreme Court has held it is advisable for trial courts to employ the
28 “common fund” doctrine to award attorneys’ fees and costs to Class Counsel in class actions,

1 where litigants proceeding in a representative capacity have secured a monetary settlement or
2 judgment on behalf of the class. *Serrano*, 20 Cal.3d at 35-40. The United States Supreme Court
3 has specifically endorsed the use of the percentage of the fund method in paradigmatic common
4 fund cases such as this one. *Blum v. Stenson*, 465 U.S. 886, 900 fn. 16 (1984) [“... under the
5 ‘common fund doctrine,’ ... a reasonable fee is based on a percentage of the fund bestowed on the
6 class...”]; see also, *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Vincent v. Hughes Air*
7 *West, Inc.*, 557 F.2d 759, 769 (9th Cir.1977).

8 Class Counsel commenced this action with the goal of, inter alia, recovering unpaid
9 wages, premium wages for meal and rest break violations, reimbursement for expenses, penalties
10 for inaccurate wage statements, and waiting time penalties. This Settlement constitutes the
11 achievement of that goal. As such, Class Counsel should be paid their attorneys' fees based on the
12 common benefit they have achieved for the class. *Lealao*, 82 Cal.App.4th at 28-36, 50-51 (noting
13 that percentage of the fund awards are appropriate in cases where the common benefit to the class
14 can be quantified); *Serrano*, 20 Cal.3d at 35-40.

15 Various federal courts have made similar attorneys' fee awards of a similar or greater
16 percentage to that requested in this case. (See, e.g., *In re Pacific Enters. Sec. Litig.* (9th Cir. 1995)
17 47 F.3d 373, 379 (affirming an award equal to 33% of the common fund); *In re Activision Sec.*
18 *Litig.* (N.D. Cal. 1989) 723 F. Supp. 1373, 1375 (awarding plaintiffs' counsel 32.8% of the
19 common fund created to settle the litigation); *In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526
20 F. Supp. 494, 500-503 (awarding 45% of \$7.3 million settlement fund); *Beech Cinema, Inc. v.*
21 *Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F. Supp. 1195, 1197-1199
22 (approximately 53% of the settlement fund awarded); *Van Gemert v. Boeing Co.* (S.D.N.Y. 1981)
23 516 F. Supp. 412, 420 (awarding 36% of settlement fund); *Parker v. City of Los Angeles* (1974)
24 44 Cal.App.3d 556, 557-68 (affirming fee award to counsel of one-third of recovery achieved).)

25 In fact, fees amounting to 1/3 or more of the settlement fund are often awarded. In
26 *Crandall v. U-Haul* (Los Angeles County Super. Ct., Case No. BC178775), the Honorable Steven
27 Czuleger awarded a 40% attorney fee request in an overtime-exemption class action; in *Bushnell*
28 *v. Cremar, Inc.* (Orange County Super. Ct., Case No. 657778), the Honorable Donald E.

1 Smallwood awarded attorneys' fees in the amount of 38%; in *Abzug v. Kerkorian* (CA000981,
2 Los Angeles County Super. Ct., November 1990), the Honorable R. William Schoettler awarded
3 a 45% fee; in *Haitz v. Meyer, et al.* (Alameda County Super. Court, 8-20-1990 No. 572968-3), the
4 court awarded a 40% fee; in *Elliott v. Clothestime* (Orange County Super. Ct., Case No. 01-
5 CC00333), the Honorable Jonathan Cannon awarded a 40% fee in a wage-and-hour class action
6 which had not yet proceeded to the class certification stage; and in both *Rippee v. Boston Market*
7 *Corporation* (C.D. Cal. Case No.: 05 CV 1359 BTM (JMA)) and *Barile v. Boston Market*
8 *Corporation* (C.D. Cal. Case No.: 05 CV 1360 BTM (JMA)), the Honorable Judge Barry T.
9 Moskowitz awarded a 40% fee to plaintiffs' counsel in wage and-hour class actions that had not
10 proceeded to the class-certification stage.

11 In this case, 1/3 of the Settlement in attorney's fees is fair and reasonable in light of the
12 time spent by Class Counsel litigating this case and the substantial benefit received by class
13 members. Moreover, the award is approved by the class representatives and Defendant, and to
14 date no class members have objected to the requested attorney's fees. Accordingly, the fee
15 request here is warranted and should be granted.

16 2. The Lodestar Approach Demonstrates the Fee Request is Justified

17 Some California courts also use a lodestar approach, with a multiplier, in awarding
18 attorneys' fees and costs. The lodestar method is often used to cross-check the propriety of the
19 common fund award. *Lealao, supra*, 82 Cal.App.4th at 49; *Salton Bay Marina, Inc. v. Imperial*
20 *Irrigation Dist.* (1985) 172 Cal.App.3d 914, 954. The issue here is not why the court should
21 award a fee commensurate with 35% of the fund, but why the court should not award such a fee.

22 The lodestar method requires that a trial court first determine a "lodestar" figure based on
23 a "careful compilation of the time spent in reasonable hourly compensation for each attorney
24 involved in the presentation of the case." *Serrano*, 20 Cal.3d at 48. Presently, the "lodestar"
25 figure exceeds \$1,229,949.50. (Almon Decl., ¶¶ 63-65; Nordrehaug Decl., ¶¶ 12-13; Hawkins
26 Decl., ¶ 6). The lodestar figure may then be increased by the application of a "multiplier." *Id.*
27 This settlement comes after protracted litigation, and Class Counsel has provided this Court with
28 both a summary of their hourly rates and hours billed in this matter that attest to their diligent

1 efforts. To summarize the lodestar, Class Counsel’s time summaries show that they worked over
2 1,590.55 hours on this case, not even including all the hours spent on this motion, for the final
3 approval hearing, and through the distribution and accounting process thereafter. (Almon Decl.,
4 ¶¶ 63-65; Nordrehaug Decl., ¶¶ 12-13; Hawkins Decl., ¶ 6). Based on their hourly rates, the
5 lodestar calculation produces over \$1,229,949.50 requiring a small multiplier of less than 2.24.
6 (Almon Decl., ¶¶ 63-65; Nordrehaug Decl., ¶¶ 12-13; Hawkins Decl., ¶ 6)

7 **3. Application of a Positive Multiplier Is Appropriate.**

8 The lodestar amount may be increased by applying a multiplier. *See Serrano*, 20 Cal.3d at
9 49; *Beasley v. Wells Fargo Bank* (1991) 235 Cal.App.3d 1407. In California, “[m]ultipliers can
10 range from two to four or even higher” and are routinely applied in the range requested by Class
11 Counsel. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 254; *see also Chavez v.*
12 *Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 (upholding 2.5 multiplier); *Glendora Community*
13 *Redevelopment Agency v. Demeter* (1984) 155 Cal.App.3d 465 (affirming a fee award that
14 included a 12.0 multiplier); *Craft v. County of San Bernardino* (C.D. Cal. 2008) 624 F.Supp.2d
15 1113, 1125 (awarding a common fund fee which amounted to a 5.2 multiplier); *Vizcaino v.*
16 *Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051 (approving a 3.65 multiplier); *Van Vranken*
17 *v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 298-299 (approving multiplier of
18 3.6). Some of the factors a trial court considers when determining whether to apply a multiplier
19 are: “(1) the novelty and difficulty of the questions involved, (2) the skill displayed in presenting
20 them, (3) the extent to which the nature of the litigation precluded other employment by the
21 attorneys, (4) the contingent nature of the fee award.” *See Ketchum v. Moses* (2001) 24 Cal.4th
22 1122, 1132 (citations omitted). The ultimate goal is “to entice competent counsel to undertake
23 difficult public interest cases.” *San Bernardino Valley Audubon Soc. v. County of San*
24 *Bernardino* (1985) 155 Cal.App.3d 738, 755. Fee awards that are too small “chill the private
25 enforcement essential to the vindication of many rights....” *Lealao v. Beneficial California, Inc.*
26 (2000) 82 Cal.App.4th 19, 53. In the Los Angeles Superior Court the Honorable Amy D. Hogue
27 approved a multiplier of 3.25 based on similar factors in *Sofia Lopez v. Citrus Valley Health*
28 *Partners, Inc.*, Los Angeles Superior Court case number BC544139 (Final approval granted

1 November 19, 2015) and in the Alameda Superior Court, the Honorable Paul D. Herbet Awarded
2 Makarem & Associates a fee award with a multiplier over 2.5 in *Porter et al. v. Equinox*
3 *Holdings, Inc.*, Alameda Superior Court case number RG19009052 (judgment entered September
4 26, 2023).

5 In *Ketchum*, the California Supreme Court held that fee enhancement in contingency cases
6 is necessary to (1) fully compensate counsel for the “loan” of legal services in light of the
7 inherent high risk of “default” posed by losing the case, and (2) encourage competent counsel to
8 take on fee award cases. *Ketchum*, 24 Cal.4th at 1132-1133. As the court noted, “A lawyer who
9 both bears the risk of not being paid and provides legal services is not receiving the fair market
10 value of his work if he is paid only for the second of these functions. If he is paid no more,
11 competent counsel will be reluctant to accept fee award cases.” *Id.* at 1133 (citations omitted).
12 Similarly, in *Greene v. Dillingham Construction N.A., Inc.* (2002) 101 Cal.App.4th 418, 426, the
13 Court of Appeal held that the trial court erred by refusing to consider contingent risk as a factor in
14 the decision to apply a multiplier. The court recognized that “[t]he adjustment to the lodestar
15 figure, e.g., to provide a fee enhancement reflecting the risk that the attorney will not receive
16 payment if the suit does not succeed, constitutes earned compensation; unlike a windfall, it is
17 neither unexpected nor fortuitous. Rather, it is intended to approximate market-level
18 compensation for such services, which typically includes a premium for the risk of nonpayment
19 or delay in payment of attorney fees.” *Id.* (citations omitted).

20 Application of a multiplier would be appropriate but is unnecessary if the common fund
21 approach is utilized. Having filed Plaintiffs’ initial case on March 10, 2021, Class Counsel will
22 have been litigating this case for 4 years before receiving any reimbursement, expending
23 significant time and resources which could have been directed towards other cases. Class
24 Counsel agreed to litigate this case on a contingent fee basis, and in the process assumed
25 considerable risk given the uncertain proposition these types of cases entail. (Almon Decl., ¶¶ 60,
26 66). As the results in other cases demonstrate, the risk presented in this case was significant.
27 Courts frequently dismiss class and representative allegations and compel arbitration in similar
28 cases. Class Counsel takes multiple risks while trying to vindicate the rights of workers and serve

1 to illustrate the recognition by the California Supreme Court in *Ketchum* that, if multipliers are
2 not awarded to class counsel in the cases that are successfully settled, counsel's fees are
3 essentially being cut because the lodestar in and of itself would not account for contingent risk.
4 Thus, application of a multiplier would be appropriate given the contingent risk incurred by Class
5 Counsel, the difficulty of the questions involved, the substantial benefit conferred on the Class
6 and State as a result of the Settlement, and the skill displayed by Class Counsel. Plaintiffs
7 respectfully requests that the Court award Class Counsel the requested fees of \$2,750,000, under
8 the common fund theory with a lodestar cross-check with a multiplier.

9 **C. Class Counsel's Costs Are Reasonable and Were Incurred for the Class**

10 In the course of this litigation, Class Counsel have incurred costs totaling \$29,369.62 and
11 will incur additional expenses in filing this motion and through the completion of the
12 disbursement and accounting process (including, but not limited to, filing this Motion and
13 appearance at the hearing, and other appearances and communications regarding final
14 accounting). Such litigation-related costs are reimbursable in class action cases. *In re United*
15 *Energy Corp. Sec. Litig.*, 1989 U.S. Dist. LEXIS 19146 at *16 (C.D. Cal. 1989) [quoting
16 Newberg, Attorney Fee Awards § 2:19 (1987)].

17 As one commentator has noted, "the prevailing view is that expenses are awarded in
18 addition to the fee percentage." Conte, Attorney Fee Awards, § 2:08 at 50-51 (2d ed. 1977); *In re*
19 *GNC Shareholder Litig.*, 668 F.Supp. 450, 452 (W.D. Pa. 1987). As such, the costs incurred by
20 Plaintiff's Counsel in this litigation are reasonable and appropriate as they served the class.

21 **D. The Proposed Enhancement Awards to the Plaintiffs Are Reasonable**

22 The parties have agreed to a service award of no more than \$10,000.00 to each of the
23 Plaintiffs (AlmonDecl., Exh. C). The Enhancement Awards are proper for several reasons. First,
24 service awards "are not uncommon and can serve an important function in promoting class action
25 settlements." *Sheppard v. Consolidated Edison Co. of New York, Inc.*, 2002 WL 2003206, * 5
26 (E.D.N.Y. 2002); see also *Petrovic v. Amoco Oil Co.*, 200 F.3d 1140 (8th Cir. 1999) (noting that
27 class representatives frequently receive substantial incentive payments); *In re Southern Ohio*
28 *Correctional Facility*, 175 F.R.D. 270, 272 (S.D. Ohio 1997) ("[c]ourts routinely approve

1 incentive awards to compensate named plaintiffs for the services they provided and the risks they
2 incurred during the course of the class action litigation”).

3 Second, the awards are proper considering that Plaintiffs spent a substantial amount of
4 their own time to ensure that the class claims could proceed and to ensure that class members
5 received a benefit in this case. (Almon Decl., ¶¶ 69-70). Plaintiffs worked with counsel to assist
6 in this case. Plaintiffs fully participated in this action throughout the pendency of the litigation,
7 including through the very contentious pleadings stages in Federal Court. Plaintiffs were kept
8 well informed of the nature and extent of settlement discussions and approved the same. As such,
9 the Service Awards of \$10,000 each sought for Plaintiffs are reasonable and represents a small
10 percentage of the Net Settlement Amount. Absent the actions taken by Plaintiffs as a group, none
11 of the Class Members would have reaped the rewards of this action. It is estimated that over the
12 course of the lawsuit, Plaintiff Mish has spent over 20 hours working on the case for the benefit
13 of both herself and the other members of the class. (Almon Decl., Exh. H at ¶ 7) It is estimated
14 that over the course of the lawsuit, Plaintiff Lee has spent over 20-25 hours working on the case
15 for the benefit of both himself and the other members of the class. (Almon Decl., Exh. I at ¶ 8). It
16 is estimated that over the course of the lawsuit, Plaintiff Robles has spent over 20 or 25 hours
17 working on the case for the benefit of both himself and the other members of the class. (Almon
18 Decl., Exh. J at ¶ 7). It is estimated that over the course of the lawsuit, Plaintiff Velasco has spent
19 over 25 hours working on the case for the benefit of both herself and the other members of the
20 class. (Almon Decl., Exh. K at ¶ 7). It is estimated that over the course of the lawsuit, Plaintiff
21 Gonzalez has spent over 40-50 hours working on the case for the benefit of both himself and the
22 other members of the class. (Nordrehaug Decl., Exh. 5 at ¶ 12). It is estimated that over the
23 course of the lawsuit, Plaintiff Tappin has spent over 30-35 hours working on the case for the
24 benefit of both himself and the other members of the class. (Hawkins Decl., Exh. 2 at ¶ 7).

25 Third, the parties - who conducted arms-length settlement negotiations – have agreed that
26 the incentive is fair and reasonable in light of: (i) Class Representative’s efforts as plaintiff in the
27 Litigation and (ii) her execution of a full, general release.

1 Fourth, notice was provided to the class that the service award would be paid, and no class
2 member has objected as of the filing of this motion. The other class members, who undertook
3 none of the risks which Plaintiffs did, stand to substantially benefit from the Plaintiffs'
4 willingness to come forward.

5 Lastly, courts have frequently approved substantial incentive payments to class members
6 for their participation in class action lawsuits. See *In re Southern Ohio Correctional Facility*,
7 *supra*, 175 F.R.D. at 272 (recognizing that “[c]ourts routinely approve incentive awards to
8 compensate named plaintiffs for the services they provided and the risks they incurred during the
9 course of the class action litigation.”); *Ingram v. The Coca-Cola Co.*, 200 F.R.D. 685, 694 (N.D.
10 Ga. 2001) (\$300,000 incentive award to each named plaintiff); *Enterprise Energy Corp. v.*
11 *Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 250-251 (S.D. Ohio 1991) (incentive
12 payments of \$50,000 to each class representative); *In re Dunn & Bradstreet Credit Services*
13 *Consumer Litigation*, 130 F.R.D. 366, 373-374 (S.D. Ohio 1990) (incentive payments amounting
14 to \$35,000 to \$55,000 for each class representative); see also, *Van Vranken v. Atlantic Richfield*
15 *Co.*, 901 F.Supp. 294, 299-300 (N.D. Cal. 1995) (approving \$50,000 participation award); *Lo Re*
16 *v. Chase Manhattan Corp.*, 1979 U.S. Dist. LEXIS 12210, *16-17 (S.D.N.Y. 1979) (payment of
17 \$229,000 out of \$1,579,000 settlement fund to settle named plaintiffs claims did not cause the
18 settlement to be unreasonable).

19 In sum, the named Plaintiffs took risks, bore hardships, and made sacrifices that absent
20 class members did not. Rewarding their efforts is a proper incentive for individuals who come
21 forward to challenge employment practices on a class-wide level, thus fulfilling the policies and
22 purposes underlying the Labor Code.

23 **E. Submission to the LWDA and Review by Defendants**

24 Concurrently with this submission to the Court, Plaintiffs' Counsel uploaded this motion,
25 supportive declarations, Proposed Order and Judgment to the LWDA's website. (Almon Decl., ¶
26 72, Exh. H). In accordance with the Settlement Agreement, a draft of Plaintiffs' Motion and
27 Proposed Order and Judgment was provided to counsel for Defendant before they were filed.
28 (Almon Decl., ¶ 73) Defendant did not raise any issues with the form or content of the Motion

1 and therefore it is my understanding that final approval will not be contested by the Defendant.
2 (*Id.*)

3 **VI. CONCLUSION**

4 For the foregoing reasons, Plaintiffs respectfully request that the Court grant final
5 approval the proposed settlement, certifying the Settlement Class, and entering the Proposed
6 Order and Judgment submitted concurrently herewith.

7
8 Dated: January 22, 2025

MAKAREM & ASSOCIATES, APLC

9
10 By: *Daniel Bass*

11 Daniel Bass
12 Attorney for Plaintiffs
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