

1 ANTHONY J. ORSHANSKY (SBN 199364)
anthony@counselonegroup.com
2 JENNIFER L. CONNOR (SBN 241480)
jennifer@counselonegroup.com
3 JUSTIN KACHADOORIAN (SBN 260356)
justin@counselonegroup.com
4 **COUNSELONE, PC**
9301 Wilshire Boulevard, Suite 650
5 Beverly Hills, California 90210
Telephone: (310) 277-9945
6 Facsimile: (424) 277-3727

7 Attorneys for Plaintiff Antonio Delgado, on behalf of
himself and others similarly situated
8

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

12 ANTONIO DELGADO, on behalf of himself
13 and others similarly situated,

14 Plaintiff,

15 v.

16 INTENSE LIGHTING, LLC; and DOES 1
17 through 100, inclusive,

18 Defendants.
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Case No.: 30-2021-01219686-CU-OE-CXC

Assigned for all purposes to:
Hon. Randall J. Sherman, Dept. CX105

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'S ENHANCEMENT
PAYMENT; MEMORANDUM OF
POINTS AND AUTHORITIES**

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

Final Approval Hearing

Date: March 3, 2023

Time: 10:00 a.m.

Dept.: CX105

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:

PLEASE TAKE NOTICE that on March 3, 2023 at 10:00 a.m., or as soon thereafter as the matter may be heard before the Honorable Randall J. Sherman in Department CX105 of the above-entitled court located at 700 Civic Center Drive West, Santa Ana, California 92701, Plaintiff Antonio Delgado (“Plaintiff” or “Class Representative”), individually and on behalf of all others similarly situated, will and hereby does move this Court for entry of an order pursuant to Code of Civil Procedure section 382 and California Rules of Court, Rule 3.769:

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

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

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

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

5. Approving an award of \$280,000 in attorneys’ fees to Class Counsel;

6. Approving an award of \$14,846.61 in actual litigation costs reimbursement to Class Counsel;

7. Approving an award of \$17,000 to CPT Group, Inc. for its settlement administration services;

8. Approving an award of \$10,000 to Plaintiff as an enhancement payment; and

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

This motion is made on the following grounds: (1) the conditionally certified Class continues to meet the requirements for class certification for settlement purposes only under Code of Civil Procedure section 382; (2) Plaintiff and Class Counsel continue to be adequate representatives of

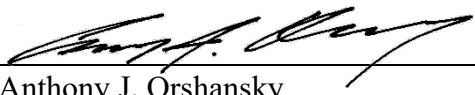
1 the Class; (3) the settlement is a fair, adequate, and reasonable compromise of disputed wage and
2 hour claims; (4) the requested awards of attorneys' fees and costs, enhancement payment, and
3 settlement administration costs are all fair, adequate, and reasonable; and (5) in light of the
4 foregoing,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

8 This motion is based on this Notice of Motion; the attached Memorandum of Points and
9 Authorities; the supporting declarations of Anthony J. Orshansky and Abel E. Morales of CPT
10 Group, Inc. and the exhibits attached thereto; the Settlement Agreement; all other pleadings and
11 papers on file in this action; and on any further oral or documentary evidence or argument presented
12 at the time of hearing.

13
14 Dated: February 7, 2023

Respectfully submitted,

COUNSELONE, PC

15
16 By: 

17 Anthony J. Orshansky
18 Jennifer L. Connor
19 Justin Kachadoorian
20 Attorneys for Plaintiff
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Other Authorities

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Antonio Delgado (“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 hourly-paid or non-exempt
6 employees who worked for Defendant Intense Lighting, LLC (“Defendant”), and/or its predecessors
7 or merged entities, within the State of California from January 11, 2017 to October 18, 2021 (the
8 “Class” or “Class Members”).

9 The Stipulation of Class and Representative Action Settlement (“Settlement Agreement,”
10 and Amendment thereto (attached to the concurrently-filed Declaration of Anthony J. Orshansky
11 (“Orshansky Decl.”) as **Exhibit “1”**) between Plaintiff and Defendant (together, the “Parties”), if
12 approved, will resolve specific claims of Plaintiff, Settlement Class Members, and PAGA Group
13 Members¹ in exchange for Defendant’s agreement to pay ***Eight Hundred Thousand Dollars***
14 ***(\$800,000)***. In this ***non-reversionary*** settlement, all Settlement Class Members will ***automatically***
15 ***receive*** payments without the need to submit a claim form, resulting in an average individual
16 settlement award payment of approximately \$1,728.03. (See Declaration of Abel E. Morales
17 Regarding Notification and Settlement Administration (“Morales Decl.”), filed concurrently
18 herewith, at ¶ 11.) This is an extremely favorable resolution of the disputed wage and hour claims
19 in this case. As of the date of filing of this motion, not a single Class Member has filed an objection
20 to the settlement after receiving notice of the proposed settlement and the projected individual
21 settlement payments, and only four Class Members have requested exclusion from the settlement,
22 resulting in a 98.33% settlement participation rate. (*Id.* at ¶¶ 9-11.)

23 The Court should grant Plaintiff’s motion because: (1) the conditionally certified Class
24 continues to meet the requirements for class certification for settlement purposes under Code of

25
26
27 ¹ The Settlement Agreement defines “PAGA Group Member(s)” as all Class Members employed by
28 Defendant within California at any time during the PAGA Period. (Settlement Agreement ¶ 22.)
“PAGA Period” means the period beginning on January 11, 2020 and ending on October 18, 2021.
(See Settlement Agreement ¶¶ 25, 39.)

Civil Procedure section 382; (2) the settlement is a fair, adequate, and reasonable compromise of the disputed claims in this case; and (3) the amounts requested for Class Counsel’s attorneys’ fees and costs, Plaintiff’s enhancement payment, and settlement administration costs are all fair, adequate, and reasonable.

II. BACKGROUND

This action seeks to recover unpaid wages and overtime, premiums for improper meal and rest breaks, restitution, liquidated damages, penalties for improper wage statements, waiting time penalties, civil penalties pursuant to the PAGA, injunctive and other equitable relief, prejudgment interest, and attorneys’ fees and costs. Defendant denied Plaintiff’s allegations of wrongdoing, but the Parties participated in a full-day mediation on August 19, 2021 with the Hon. Peter D. Lichtman (Ret.). (Orshansky Decl. ¶ 27.) Prior to the mediation, the Parties engaged in extensive discovery, informally exchanging information, documents and reviewing and analyzing extensive data made available by Defendant, all of which enabled the Parties to thoroughly evaluate Plaintiff’s claims, the claims of the putative Class Members, and the aggrieved employees’ PAGA claim, along with Defendant’s affirmative defenses, and the likely outcomes, risks, and expense of pursuing litigation. (*Id.* at ¶ 24.) Pursuant to the mediator’s proposal, the Parties came to an agreement on all material terms of the settlement. (*Id.* at ¶ 28.)

III. SUMMARY OF THE SETTLEMENT

The settlement provides a release on behalf of Plaintiff and Settlement Class Members in exchange for the creation by Defendant of a non-reversionary common fund of Eight Hundred Thousand Dollars (\$800,000). The amount available for distribution to Settlement Class Members is determined by deducting the following from the Gross Settlement Amount:

- Up to \$280,000, which is 35% of the Gross Settlement Amount, in attorneys’ fees and up to \$20,000 in litigation costs to Class Counsel (the “Attorneys’ Fees and Costs”);
- Up to \$10,000 to the Class Representative as an Enhancement Payment—as a service award and in exchange for a general release of claims;
- Up to \$80,000 allocated as a PAGA Payment—of which 75% is allocated for payment to the LWDA for civil penalties pursuant to statute and 25% is allocated to PAGA Group

Members; and

- Up to \$18,000 to the Settlement Administrator for Administration Costs to notify Class Members and administer the settlement.

The amount remaining after the foregoing deductions (called the “Net Settlement Amount”) shall be paid out *pro rata* to Settlement Class Members based on the number of workweeks each worked during the Class Period and, as to PAGA Group Members, based on the number of pay periods each worked during the PAGA period. Settlement Class Members shall automatically receive payments without the need to submit a claim form, and PAGA Group Members shall receive PAGA payments irrespective of whether they opt out. (Settlement Agreement ¶¶ 20, 44, 46(d), 50.)²

IV. NOTICE AND ADMINISTRATION

On December 15, 2022, CPT Group, Inc. (“CPT”), the Court-approved settlement administrator, mailed the Notice, as revised, to all Class Members and PAGA Group Members via first class U.S. mail. (*See* Morales Decl. ¶ 7 and Exhibit A [Notice].) CPT made reasonable efforts to obtain current mailing addresses before the mailing, and performed skip traces on and re-mailed returned Notices. (*Id.* at ¶¶ 6, 8.) Class Members had until January 30, 2023 to submit disputes, requests for exclusion, or objections. (*Id.* at ¶ 7.) Not a single Class Member has submitted a dispute as to workweeks listed on the Notice or objected to the settlement, and only four (4) Class Members opted out of the settlement; accordingly, this results in a 98.33% settlement participation rate. (*Id.* at ¶¶ 9-11.) The average individual settlement payment is \$1,728.03. (*Id.* at ¶ 11.)

V. ARGUMENT

A. This Court Should Confirm Its Conditional Certification of the Settlement Class under Code of Civil Procedure § 382

Under Code of Civil Procedure section 382, a class may be certified if: (1) it is ascertainable and its members are too numerous for joinder to be practical; (2) the representative and absent class members share a community of interest, and questions of law and fact common to the class predominate over questions unique to individual class members; (3) the representative’s claims are

² This amount is inclusive of the 25% allocation of the PAGA Payment to PAGA Group Members.

1 typical of the class's claims; and (4) the representative will fairly and adequately represent the
2 class's interests. (*See Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470.) Here, this Court
3 found that the proposed Class meets all the requirements for class certification for settlement
4 purposes when it granted preliminary approval of the Settlement Agreement on September 16, 2022.
5 (*See Orshansky Decl.* ¶¶ 78-84.) Since then, no events have cast doubt on the propriety of this
6 determination, and in fact the reaction of the Class Members has been overwhelmingly supportive
7 of the settlement, with no Class Member objecting to the settlement and only four Class Members
8 opting out of the settlement, for a 98.33% settlement participation rate. (*See Morales Decl.* ¶¶ 9-11.)
9 This Court should therefore confirm its conditional certification of the Class.

10 **B. The Court Should Finally Approve the Settlement Because It Is a Fair,**
11 **Adequate, and Reasonable Compromise of Disputed Claims**

12 California courts have a strong policy in favor of settlement. (*See, e.g., Stambaugh v.*
13 *Superior Court* (1976) 62 Cal.App.3d 231, 236.) Unlike individual settlements, class action
14 settlements involve a court-approval process that exists to prevent fraud, collusion, and unfairness
15 to class members. (*Malibu Outrigger Bd. of Governors v. Superior Court* (1980) 103 Cal.App.3d
16 573, 578-79.) This approval process consists of preliminary settlement approval, notice being given
17 to class members, and a final fairness and approval hearing being held, at which class members have
18 the opportunity to be heard with respect to the settlement. (*Ibid.*) Now that notice has been provided
19 to the Class Members, Plaintiff respectfully requests that the Court finally approve the settlement as
20 fair, adequate, and reasonable.

21 A settlement is presumptively fair where it is reached through arm's-length bargaining, it is
22 based on sufficient discovery and investigation to allow counsel and the court to act intelligently,
23 counsel is experienced in similar litigation, and the percentage of objectors to the settlement is small.
24 (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802.) In deciding whether to approve a
25 proposed settlement, a trial court has broad powers to determine if the proposed settlement is fair
26 under the circumstances of the case. (*Mallick v. Superior Court* (1979) 89 Cal.App.3d 434, 438.) In
27 exercising these powers, the overriding concern is to ensure that a proposed settlement is "fair,
28

adequate, and reasonable.” (*Dunk, supra*, 48 Cal.App.4th at p. 1801 [internal quotations omitted].)

Relevant factors for the Court to consider include, but are not limited to:

[T]he strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action 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.

(*Ibid.*) The trial court should tailor the factors to each case and give due regard to “what is otherwise a private consensual agreement between the parties.” (*Ibid.*)

1. The Strength of Plaintiff’s Case

Although Plaintiff steadfastly maintains that his claims are meritorious, he acknowledges that there were substantial risks and uncertainty in proceeding with class certification and trial. (Orshansky Decl. ¶¶ 31-72.) Defendant presented numerous defenses to Plaintiff’s claims, both on the merits and with respect to class certification. (*Ibid.*) Among other arguments, Defendant contended that it maintained compliant wage-and-hour policies; that determining the incidence and amount of off-the-clock work would be difficult and result in a series of mini-trials, especially because Class Members worked in a variety of departments with different requirements; that alleged off-the-clock work was *de minimis*; that Defendant “provided” meal and rest breaks as required under *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004 by making them available; that individualized issues arise from determining whether Class Members voluntarily waived their meal and rest breaks; and that any class or representative litigation would be unmanageable. (Orshansky Decl. ¶¶ 31-72.) Although Plaintiff was prepared to litigate such claims through class certification and, ultimately, through trial, given the substantial amount offered in settlement, it was far from certain that he would recover anything at all.

2. Risk, Expense, Complexity, and Duration of Further Litigation

Although Plaintiff investigated the claims prior to settlement, the Parties agreed to focus on exhausting early settlement efforts before launching into full-fledged and hotly contested litigation. Therefore, absent settlement, the Parties would have needed to conduct substantial additional discovery, such as the production of voluminous records and numerous depositions of experts and

1 percipient witnesses and prepare the case for class certification and trial. The Parties would have
2 had to depose a number of people such as managers, supervisors, human resource representatives,
3 and employees in order to establish liability. Discovery disputes would have been in the offing and
4 liability likely would have entailed a battle of experts. This settlement avoids the considerable time,
5 attorneys' fees and costs, and party resources associated with conducting additional discovery,
6 moving for class certification, summary judgment or adjudication, and trial, as well as the risks and
7 the accompanying burden of continued litigation on the Court. (Orshansky Decl. ¶ 34.)

8 **3. Risk of Maintaining Class Action Status**

9 Settlement was reached prior to class certification, and the result was a successful outcome
10 for the Settlement Class. Yet, class certification was by no means a foregone conclusion. For
11 example, Class Members worked in different job positions and had different managers, and as a
12 result, Defendant contended there was variation to the circumstances that could allegedly cause the
13 employees to work off the clock and/or be deprived of the opportunity to take legally compliant,
14 duty-free meal and rest periods, and this variation in circumstances raised highly individualized
15 questions of fact. Defendant disputed Plaintiff's characterization of working conditions, liability,
16 and damages, and possessed documentary and testimonial evidence rebutting Plaintiff's allegations.
17 Although Plaintiff was prepared to litigate these claims through class certification and ultimately
18 through trial, given the substantial amount offered in settlement, Class Counsel predicted that it was
19 far from certain that Plaintiff would be able to recover a greater amount at trial, particularly after
20 considering the increased litigation costs that would accrue. (Orshansky Decl. ¶¶ 35-37.)

21 **4. Amount Offered in Settlement Given Realistic Value of Claims**

22 The settlement provides a fair and reasonable monetary recovery for the Settlement Class in
23 the face of disputed claims. A settlement is not judged against what might have been recovered had
24 a plaintiff prevailed at trial, nor does the settlement have to provide 100 percent of the damages to
25 be fair and reasonable. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 246, 250.)

26 Plaintiff's estimate of the settlement recovery is a reasonable percentage of possible
27 recoverable damages at trial. Utilizing a class-wide damages study to assess the nature and
28 magnitude of the claims in question (*see Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th

1 116, 129-131), this case meets requirements establishing that the class settlement is within the
2 “ballpark” of reasonableness. Based on discovery and their investigation, Class Counsel determined
3 Defendant’s degree of liability, prepared an exposure analysis, and forecasted the expected recovery
4 for each claim. (Orshansky Decl. ¶¶ 38-72.) The aggregate realistic recovery to Class Members for
5 the alleged claims is \$2,706,767.58 in total damages and penalties. (*See id.* at ¶ 72.) The Gross
6 Settlement Amount of \$800,000 represents an approximate 30% of the potential maximum realistic
7 recovery on behalf of the Class, while avoiding the further expense and serious risk of proceeding
8 toward class certification and trial. (*Ibid.*) Taking into account the risk of non-certification, failure
9 to prevail on the merits, and the Court’s power to reduce civil penalties under PAGA, the proposed
10 settlement falls within the realm of being fair, reasonable, and adequate.

11 **5. Investigation Was Sufficient to Allow Counsel to Act Intelligently**

12 Courts review the discovery process and information received through it to assist them in
13 assessing whether the parties sufficiently developed the claims and their supporting factual basis
14 before reaching settlement. (*Kullar, supra*, 168 Cal.App.4th at pp. 129-131.) Information is
15 sufficient where it allows the parties and the court to form “an understanding of the amount that is
16 in controversy and the realistic range of outcomes of the litigation.” (*Clark v. American Residential*
17 *Services LLC* (2009) 175 Cal.App.4th 785, 801.) This requirement exists so that the parties can
18 provide the court with “a meaningful and substantiated explanation of the manner in which the
19 factual and legal issues have been evaluated.” (*Kullar, supra*, 168 Cal.App.4th at pp. 132-133.)

20 Class Counsel conducted a thorough investigation to enable them to assess the strength of
21 Plaintiff’s claims and calculate Defendant’s exposure. In advance of mediation, the Parties agreed
22 to an informal exchange of information and documents. Defendant produced information and
23 documentation concerning the alleged violations, such as Defendant’s written policies concerning
24 those claims, including Defendant’s employee handbooks, policies and procedures regarding the
25 payment of wages, the provision of meal and rest breaks, time keeping policies, such as recording
26 hours, issuance of wage statements, and providing all wages at separation, as well as composite data
27 regarding the number of Class Members and the mix of current versus former employees, total
28 number of pay periods, total number of workweeks, and the average hourly rate in effect. (Orshansky

Decl. ¶¶ 19, 24-26, 41.) Defendant produced a 25% sample of time and pay records for Class Members. (*Id.* at ¶ 24.) Courts have found that the use of similar percentage samples is 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 [same].) Class Counsel also interviewed Class Members, analyzed the documents and data produced, and spent significant time consulting with an expert, to determine Defendant’s degree of liability and potential amounts due in damages. (Orshansky Decl. ¶¶ 19-26.)

6. The Experience and Views of Counsel

Class Counsel have extensive experience litigating wage-and-hour class actions and have been appointed as class counsel in numerous cases alleging similar claims. (Orshansky Decl. ¶¶ 73-77.) Based on this experience Class Counsel believe that the settlement is fair and reasonable and serves the best interests of the Settlement Class Members and PAGA Group Members. (Orshansky Decl., *passim.*)

7. The Presence of a Governmental Participant

Plaintiff has provided notice of the settlement to the Labor and Workforce Development Agency (LWDA), the decision of which not to intervene suggests approval of the settlement. (Orshansky Decl. ¶¶ 120-125.)

8. The Reaction of the Class Members to the Proposed Settlement

As described above, no Class Members have objected to the settlement, and only four Class Member have opted out. (Morales Decl. ¶¶ 9-10.) Thus, this factor supports settlement approval.

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,*

1 91 Cal.App.4th at p. 254.) The California Supreme Court confirmed in *Laffitte* that “[t]he percentage
2 of fund method survives in California class action cases.” (*Lafitte, supra*, 1 Cal.5th at p. 506.)

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

7 (*Id.* at p. 503 [internal citation omitted]; *see also, e.g., Serrano v. Priest* (1977) 20 Cal.3d 25, 34.)

8 The settlement calls for the payment of up to 35% of the Gross Settlement Amount in
9 attorneys’ fees. (Settlement Agreement ¶ 46(a).) This request is fair, reasonable, and adequate to
10 compensate Class Counsel for the excellent results achieved with average settlement payments of
11 \$1,728.03, no objectors, and a 98.33% settlement participation rate. (*See* Morales Decl. ¶¶ 9-11;
12 Orshansky Decl. ¶ 86.) First, Class Counsel negotiated a substantial recovery for Class Members
13 resulting in a settlement participation rate of 98.33%. (Morales Decl. ¶ 11.) Second, not a single
14 Class Member objected to the settlement or to Class Counsel’s requested fees. (*Id.* at ¶ 9.) That Class
15 Counsel achieved these results in the face of serious defense challenges (*e.g.*, purported voluntary
16 waiver of meal and rest periods, defenses relating to certification and manageability) and in the face
17 of an uncertain legal landscape (*e.g.*, the then-pending California Supreme Court’s *Naranjo* decision,
18 and manageability opinions in *Wesson v. Staples* and *Estrada v. Royalty Carpet Mills*) confirms the
19 strength of the results achieved. (Orshansky Decl. ¶ 92.)

20 The attorneys’ fees award requested is also consistent with Class Counsel’s experience in
21 similar wage and hour class action matters, with the contingency-fee agreement entered into by
22 Plaintiff, and with the fees awarded in other class and representative action cases. (Orshansky Decl.
23 ¶¶ 88-90; *see Ammari Electronics, et al. v. Pacific Bell Directory*, Alameda County Super. Ct. Case
24 No. RG05198014 [awarded 43.8%]; *Zelada v. Majestic Terminal Services*, San Bernardino County
25 Super. Ct. Case No. CIVDS1916968 [38% fee awarded on \$1,800,000 settlement]; *In re California*
26 *Indirect Purchaser X Ray Film Antitrust Litigation*, San Francisco County Super. Ct. [citing *Abzug*
27 *v. Kerkorian*, Los Angeles County Super. Ct. Case No. CA-00981 [45%] and *Haitz v. Meyer*,
28 Alameda County Super. Ct. Case No. 5729683 [45%]]; *Banda v. Verizon California, Inc.*, Los

1 Angeles County Super. Ct. Case No. BC434587 [35% fee on \$15,000,000 settlement]; *Hall v.*
2 *Cinema 7, Inc.*, San Francisco County Super. Ct., Case No. CGC-01-409105 [53%]; *Birch v. Office*
3 *Depot*, U.S. District Court, Southern District of California Case No. 06-cv-1690-DMS [40% fee
4 awarded on \$16,000,000 settlement]; *Rundberg v. Intrawest Napa Dev. Co.*, Napa County Super.
5 Ct. Case No. 26-56886 [40%]; *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 fn.11 [40% of
6 fund was appropriate].)

7 The fee award requested here is also justified because Class Counsel achieved a significant
8 monetary recovery for Settlement Class Members and PAGA Group Members in an uncertain and
9 risky case while bearing the substantial burdens of representation on a contingency basis, and the
10 fees requested are in line with the market rate. (*See Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290
11 F.3d 1043, 1048-1051 [finding that exceptional results in a contingency case, significant risk and
12 the absence of supporting precedents, are proper considerations in awarding attorneys' fees];
13 Orshansky Decl. ¶ 91.) Class Counsel negotiated a substantial recovery for the Settlement Class
14 Members, resulting in a settlement participation rate of 98.33%. (*See Morales Decl.* ¶ 11; Orshansky
15 Decl. ¶ 91.) Moreover, no Class Member objected to the settlement or to Class Counsel's requested
16 fees. (*See Morales Decl.* ¶ 9.) Further, the average individual settlement payment of \$1,728.03 far
17 exceeds average settlement payments in similar wage and hour class action settlements.³ (Orshansky
18 Decl. ¶¶ 86, 91.)

19 Class Counsel achieved these results in the face of serious defense challenges and in the face
20 of an uncertain legal landscape. (Orshansky Decl. ¶ 92.) As discussed, this case presented significant
21 risks of both non-certification as well as potential challenges on the merits of Plaintiff's claims.

22
23 ³ (*See, e.g., Ressler v. Federated Department Stores, Inc.* (L.A. County Super. Ct. Jan. 2, 2009) Case
24 No. BC335018 [average recovery of \$90]; *Palencia v. 99 Cents Only Stores* (Sacramento County
25 Super. Ct.) Case No. 34-2010-00079619 [average recovery of \$80]; *Lim v. Victoria's Secret Stores,*
26 *Inc.* (Orange County Super. Ct. Jan. 20, 2006) Case No. 04CC00213 [average recovery of \$35];
27 *Gomez v. Amadeus Salon, Inc.* (L.A. County Super. Ct. July 23, 2010) Case No. BC392297 [average
28 recovery of \$20]; *Sorenson v. PetSmart, Inc.* (E.D.Cal. 2008) Case No. 2:06-CV-02674-JAM-DAD
[wage and hour class action settlement approved where average class member recovery was
approximately \$60]; *Williams v. Centerplate, Inc.* (S.D.Cal. 2013) 2013 WL 4525428, at *4
[granting final approval of class action settlement where average recovery for each class member
was approximately \$108]; *Schiller v. David's Bridal, Inc.* (E.D.Cal. June 11, 2012, Case No. 1:10-
cv-00616-AWI-SKO) 2012 WL 2117001 at *17 [finding that average payment to class members of
less than \$200 was a "good" result]; Orshansky Decl. ¶ 91.)

(Orshansky Decl., *passim*.) Accordingly, it is fair and reasonable to account for these risks in compensating Class Counsel. Class Counsel should also be compensated for the risks involved in undertaking this litigation and expending considerable effort, all while working on a pure contingency basis. (*Id.* at ¶¶ 95-98, 101-109.) Since undertaking representation of Plaintiff, Class Counsel expended costs and devoted substantial time to this litigation. (*See id.* at ¶¶ 102-104 and Exhibit 3.) Given the considerable potential for adverse outcomes in this case, including, but not limited to, being unable to proceed on a class-wide basis and/or risking unfavorable adjudication on the merits, the contingent risk borne by Class Counsel was great. (*Id.* at ¶ 98.)

Class Counsel’s previous experience litigating wage and hour class actions also supports the reasonableness of the fee request. (Orshansky Decl. ¶ 93.) Class Counsel are well-versed in plaintiff-side wage and hour class and representative action litigation, with substantial experience litigating claims for unpaid wages, meal and rest period violations, and related penalties, and have been certified as class counsel in numerous other cases. (*Id.* at ¶¶ 73-77.) Class Counsel’s experience in similar matters was integral to evaluating the strengths and weaknesses of this case and the reasonableness of the settlement. (*Id.* at ¶ 93.) Practice in the narrow field of wage and hour litigation requires skill and knowledge concerning the rapidly evolving substantive state and federal law, as well as the procedural law of class and representative action litigation. (*Id.* at ¶ 94.) Because it is reasonable to compensate Class Counsel commensurate with their skill, reputation, and experience, the requested fee award is fair and reasonable, in accord with the principles outlined by the California Supreme Court in *Laffitte*, and should therefore be approved.

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

Trial courts have discretion to assess reasonableness of fee awards with tools such as the lodestar cross-check, though they are not required to do so. (*Laffitte, supra*, 1 Cal.5th at p. 506.) A lodestar cross-check analysis typically happens in three steps. First, a trial court must determine a baseline guide or “lodestar” figure based on the time spent and reasonable hourly compensation for each attorney involved in the case. (*Serrano, supra*, 20 Cal.3d at p. 48.) The court then sets a reasonable hourly fee to apply to the time expended, with reference to the prevailing rates in the

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

8 The lodestar “cross-check” supports the fee request here. First, as set forth in detail in the
9 accompanying Declaration of Anthony J. Orshansky at ¶¶ 102-103 and Exh. 4, Class Counsel have
10 spent 283.8 hours on this case and reasonably expect to spend an additional eight hours overseeing
11 this case through completion. (Orshansky Decl. ¶¶ 102-107.) Next, Class Counsel’s hourly rates are
12 commensurate with the prevailing market rates in California for attorneys of comparable experience
13 and skill handling complex litigation, and their rates have been approved by state and federal courts
14 in California. (*Id.* at ¶¶ 102-104.) The reasonableness of Class Counsel’s hourly rate is further
15 confirmed in light of the hourly rates identified based on years of experience in the Laffey Matrix,
16 submitted concurrently herewith. (*Id.* at ¶ 106 and Exhibit 3 [Laffey Matrix].)

17 Class Counsel’s lodestar amount is \$210,275. (Orshansky Decl. ¶¶ 103, 108 and Exhibit 4
18 [Attorney Task and Time Chart].) Therefore, Class Counsel respectfully request a multiplier of
19 approximately 1.33. (*Id.* at ¶¶ 108-112.) This multiplier is fair and reasonable based on the
20 contingent nature of the case, the risks and difficulties presented, and the result achieved. Defendant
21 argued that Plaintiff would be unable to certify a class outside of the settlement context because
22 Plaintiff’s claims on the merits would require a series of individualized mini-trials. There were
23 factual risks and evidentiary challenges of substantiating Defendant’s failure to authorize and permit
24 breaks on a class-wide basis. Additionally, Plaintiff would face significant hurdles to certification
25 given that Defendant raised individualized issues regarding whether meal and rest breaks were
26 “provided” under *Brinker, supra*, 53 Cal.4th at p. 10, whether employees voluntarily waived their
27 meal and rest breaks, the occurrence of off-the-clock work in light of what Defendant contended
28 were legally compliant policies, and disputes over the manageability of prosecuting Plaintiff’s class

1 and representative claims in light of recent California appellate opinions. If Plaintiff prevailed and
2 certified a class action, there is no guarantee that Defendant would not later move for and obtain
3 decertification. If the Court either denied class certification or later decertified it, the Settlement
4 Class would recover nothing and Settlement Class Members would be forced to retain their own
5 counsel and proceed on the basis of individual claims only.

6 Since July 2020, Class Counsel have invested a significant amount of time in this case and
7 advanced all costs incurred by Plaintiff to date. Class Counsel performed this work in an uncertain
8 legal landscape against a corporation represented by experienced employment attorneys with no
9 guarantee of recovery, and their work on this case prevented them from taking on other matters,
10 including hourly and flat-fee work. Despite these considerations Class Counsel zealously
11 represented Plaintiff and Class Members and negotiated a settlement providing for significant
12 recovery to Class Members. That Class Counsel achieved these results without engaging in a
13 protracted legal battle, in the face of serious defense challenges and an uncertain legal landscape,
14 confirms the strength of the results achieved. Furthermore, not a single Class Member has objected
15 to the request for attorneys' fees. (Orshansky Decl. ¶ 109.)

16 Therefore, the requested multiplier of 1.33 is appropriate in this case. California courts
17 commonly adjust basic lodestar rates to reflect the fair market value of the attorney's services. (*See*
18 *Vizcaino, supra*, 290 F.3d at pp. 1050-1051 [looking to multipliers awarded in comparable cases as
19 evidence of reasonableness; affirming 3.65 multiplier].) Multipliers routinely range from 3 to 5, and
20 it is not uncommon that multipliers of between 5 and 10, or higher, are applied. (*See, e.g., Wilson v.*
21 *Bank of Am. Natl. Trust & Savs. Assn.* (Cal. Sup. Ct., Aug. 16, 1982) Case No. 643872 [multiplier
22 of 10]; *Glendora Comm. Redev. Agency v. Demeter* (1984) 155 Cal.App.3d 456, 465 [affirming
23 multiplier of 12, and expressly rejecting argument that fee was either exorbitant or unconscionable];
24 *Wershba, supra*, 91 Cal.App.4th at p. 255 [noting that "[m]ultipliers can range from 2 to 4 or even
25 higher"]; *Van Vranken v. Atlantic Richfield Co.* (N.D.Cal. 1995) 901 F.Supp. 294, 298 [multipliers
26 of 3-4 are in the "range [of] common" multipliers for class actions]; *Holleran v. Rita Medical*
27 *Systems, Inc.* (Cal. Super. Oct. 04, 2007, No. RG06302394) 2007 WL 7759253 [multiplier of 4.57];
28 *Gutierrez v. Wells Fargo Bank, N.A.* (N.D.Cal. May 21, 2015, No. C 07-05923 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”].)

The requested multiplier of 1.33 is less than those higher multipliers that have been approved under California law. Thus, the lodestar cross-check confirms that the fee award requested falls within the range of reasonableness.

E. The Court Should Approve the Requested Reimbursement for Litigation Costs

The Settlement Agreement provides for reimbursement of up to \$20,000 to Class Counsel in litigation costs. (Settlement Agreement ¶ 46(a).) Class Counsel incurred and respectfully request reimbursement of \$14,846.61 in litigation costs. (Orshansky Decl. ¶¶ 113-114 and Exhibit 5.) The costs for which Plaintiff seeks reimbursement are the types of costs routinely approved by courts. (*See, e.g., Harris v. Marhoefer* (9th Cir. 1994) 24 F.3d 16, 19 [counsel should recover “those out-of-pocket expenses that would normally be charged to a fee paying client”].)

F. The Court Should Approve the Requested Settlement Administrator Expenses

Plaintiff also requests that the Court approve \$17,000 in administration costs to CPT Group, Inc. (“CPT”) as the Settlement Administrator. (Settlement Agreement ¶ 47(b) [agreeing to an amount up to \$18,000]); Morales Decl. ¶ 12.) CPT performed and will continue to perform all duties required under the Settlement Agreement. (Morales Decl. ¶ 12.) The administration costs are fair, reasonable, and adequate, and should be finally approved.

G. The Court Should Approve the Requested Enhancement Payment to the Class Representative

Courts routinely approve enhancement payments to compensate named plaintiffs for the services they provide and the risks they incur during class action litigation. (*See, e.g., Bell v. Farmers Ins. Exchange* (2004) 115 Cal.App.4th 715, 726.) Plaintiff’s request for an enhancement

1 payment is reasonable given his efforts in initiating the action, the time and effort involved, the
2 substantial benefits conferred on the Settlement Class Members and PAGA Group Members, and
3 the risks assumed by him, and the fact that Plaintiff agreed to a general release of all claims subject
4 to a waiver of Civil Code section 1542. (Orshansky Decl. ¶ 116.) Plaintiff actively participated in
5 the prosecution of this matter, in particular but not exclusively through his discussions with Class
6 Counsel, identifying potential witnesses, providing factual information to Class Counsel about
7 Defendant's business, policies, practices, and procedures, monitoring the progress of the case,
8 evaluating the terms of the settlement, and reviewing and signing the Settlement Agreement. (See
9 Orshansky Decl. ¶¶ 115-119 and Exhibit 6 [Declaration of Antonio Delgado (hereafter, "Delgado
10 Decl.")] at ¶¶ 11-13.) Plaintiff invested significant time and effort into seeing this litigation through
11 resolution. (*Ibid.*)

12 Plaintiff has diligently, adequately, and fairly represented Class Members, is a member of
13 the Settlement Class, has no conflicts as outlined above, and has not placed his interests above those
14 of any member of the Settlement Class. (Orshansky Decl. ¶ 117; Delgado Decl., *passim.*)
15 Furthermore, the requested Enhancement Payment was fully disclosed to Class Members in the
16 Notice and no objections have been made. (See Morales Decl. ¶ 9.) Thus, Plaintiff's request for an
17 enhancement payment is appropriate and justified as part of the settlement and should be finally
18 approved.

19 **H. Posting of Final Order and Judgment upon Final Approval**

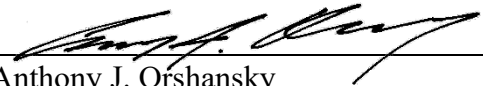
20 The Court's Final Approval Order and Judgment will be posted on the Settlement
21 Administrator's website pursuant to California Rules of Court, Rule 3.771(b).

22 **VI. CONCLUSION**

23 Plaintiff respectfully requests that this Court grant Plaintiff's Motion for Final Approval.

24 Dated: February 7, 2023

Respectfully submitted,
COUNSELONE, P.C.

25
26 By: 

Anthony J. Orshansky
Jennifer L. Connor
Justin Kachadoorian
Attorneys for Plaintiff