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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF LOS ANGELES**
12

13 ANTONIO CAMACHO, on behalf of himself
14 and others similarly situated,

15 Plaintiff,

16 v.
17

18 BEL-AIR COUNTRY CLUB, a California
19 corporation; and DOES 1 through 100, inclusive,

20 Defendants.
21
22

Case No. 21STCV07052

Assigned for all purposes to:
Hon. Elihu M. Berle, Dept. 6

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

[Declarations of Anthony J. Orshansky and
Abel E. Morales, Proposed Order, Proposed
Judgment, and Proof of Service submitted
concurrently herewith]

Final Approval Hearing

Date: December 07, 2022
Time: 9:00 a.m.
Dept.: 6

Complaint filed: February 23, 2021
Amended complaint filed: March 10, 2021
Trial Date: None set

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:

PLEASE TAKE NOTICE that on December 7, 2022 at 9:00 a.m., or as soon thereafter as the matter may be heard before the Honorable Elihu M. Berle in Department 6 of the Superior Court of California, County of Los Angeles, located at 312 N. Spring Street, Los Angeles, California 90012, plaintiff Antonio Camacho (“Plaintiff” or “Class Representative”), individually and on behalf of all others similarly situated, will and hereby does move this Court pursuant to California Code of Civil Procedure section 382 and California Rules of Court, Rule 3.769 for entry of an order:

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

2. Confirming the appointment of Plaintiff Antonio Camacho 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’ Stipulation of Class and Representative Action Settlement (“Settlement Agreement”);

5. Approving an award of \$276,500 in attorneys’ fees to Class Counsel;

6. Approving an award of \$16,198.24 in litigation costs reimbursement to Class Counsel;

7. Approving an award of \$13,500 in costs to CPT Group, Inc. for its settlement administration services;

8. Approving an enhancement payment in the amount of \$10,000 to Plaintiff;

9. Approving an award of \$80,000 for PAGA penalties, \$60,000 of which will be paid to the California Labor & Workforce Development Agency (“LWDA”); and

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

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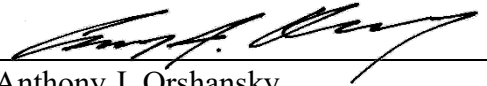
1 This motion is made on the following grounds: (1) the conditionally certified Class continues
2 to meet the requirements for class certification for settlement purposes only under Code of Civil
3 Procedure section 382; (2) Plaintiff and Class Counsel continue to be adequate representatives of
4 the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

11 This motion is based on this Notice of Motion; the attached Memorandum of Points and
12 Authorities; the supporting declarations of Anthony J. Orshansky and Abel E. Morales, and the
13 exhibits attached thereto; the Settlement Agreement; the anticipated supporting declarations to be
14 filed after the close of the opt-out/objection/response deadline; all other pleadings and papers on file
15 in this action; and on any further oral or documentary evidence or argument presented at the time of
16 hearing. Finally, given the multiplicity of issues addressed in this motion, Plaintiff believes that
17 there is good cause to exceed the 20-page limit set forth in California Rules of Court, Rule
18 3.764(c)(2), and respectfully request that the Court consider Plaintiff's Memorandum of Points and
19 Authorities, which is 29 pages in length.

20
21 Dated: October 7, 2022

Respectfully submitted,

22 COUNSELONE, P.C.

23 By: 

24 Anthony J. Orshansky

25 Jennifer L. Connor

26 Justin Kachadoorian

27 Attorneys for Plaintiff, Settlement Class

28 Members, and PAGA Group Members

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Antonio Camacho (“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 Bel-Air Country Club (“Defendant”) in the State of California
7 at any time from January 4, 2017 to February 22, 2022 (the “Class” or “Class Members”).¹

8 The Stipulation of Class and Representative Action Settlement (“Settlement Agreement”)
9 between Plaintiff and Defendant (together, the “Parties”), if approved, will resolve specific claims
10 of Plaintiff, Settlement Class Members,² and PAGA Group Members³ in exchange for Defendant’s
11 agreement to pay *Seven Hundred and Ninety-Thousand Dollars (\$790,000) into a non-*
12 *reversionary common settlement fund*. In this non-reversionary settlement, all Settlement Class
13 Members will *automatically receive* payments without the need to submit a claim form, resulting
14 in an average individual settlement award payment of approximately \$1,518.51. (See Declaration of
15 Abel E. Morales Regarding Notification and Settlement Administration (“Morales Decl.”), filed
16 concurrently herewith, ¶ 11.) This is a very favorable resolution of the disputed wage and hour
17 claims in this case. As of the date of filing of this motion, CPT reports that it has neither received
18 any objections to the settlement, nor any requests for exclusion.

19 As explained below, the Court should grant Plaintiff’s motion because: (1) the conditionally
20 certified Class continues to meet the requirements for class certification for settlement purposes
21 under Code of Civil Procedure section 382; (2) the settlement is a fair, adequate, and reasonable
22 compromise of the disputed claims in this case; and (3) the amounts requested for Class Counsel’s
23 attorneys’ fees and costs, Plaintiff’s enhancement payment, and settlement administration costs are

24
25 ¹ “Class Period” is defined as the period from January 4, 2017 and ending on February 22, 2022.
(Settlement Agreement ¶ 7.)

26 ² “Settlement Class” or “Settlement Class Members” are Class Members who have not submitted a
timely and valid request for exclusion from the settlement. (Settlement Agreement ¶ 36.)

27 ³ “PAGA Group Members” are defined as all Class Members, whether or not they submit a request
28 for exclusion from the Settlement Class, employed by Defendant during the PAGA Period (which
is January 4, 2020 through February 22, 2022). (Settlement Agreement ¶¶ 23, 25.)

1 all fair, adequate, and reasonable. In light of the foregoing, this Court should enter the Proposed
2 Judgment and the Proposed Order Granting Plaintiff's Motion for Final Approval of Class and
3 Representative Action Settlement, Attorneys' Fees and Costs, and Class Representative's
4 Enhancement Payment, submitted concurrently herewith.

5 **II. FACTUAL AND PROCEDURAL BACKGROUND**

6 On January 4, 2021, Class Counsel submitted a seven-page pre-filing letter pursuant to
7 California Labor Code section 2699 to the California Labor and Workforce Development Agency
8 ("LWDA") outlining the factual and legal bases for Plaintiff's allegations of wrongdoing on behalf
9 of himself and aggrieved employees, along with mailing a certified copy to Defendant. (Declaration
10 of Anthony J. Orshansky in Support of Plaintiff's Motion for Final Approval of Class and
11 Representative Action Settlement ("Orshansky Decl."), filed concurrently herewith, ¶ 25.)

12 On February 23, 2021, Plaintiff filed a Class and Representative Action Complaint for
13 Damages (the "Complaint") asserting the following claims: (1) failure to pay minimum wages
14 pursuant to Labor Code §§ 1194, 1197, and 1197.1 and the Industrial Welfare Commission ("IWC")
15 Wage Orders; (2) failure to pay overtime wages pursuant to Labor Code §§ 510 and 1198 and the
16 IWC Wage Orders; (3) failure to provide compliant meal periods and/or pay premiums owed thereon
17 in violation of Labor Code §§ 226.7 and 512(a) and the IWC Wage Orders; (4) failure to provide
18 compliant rest breaks and/or pay premiums owed thereon in violation of Labor Code § 226.7 and
19 the IWC Wage Orders; (5) failure to provide accurate and compliant itemized wage statements in
20 violation of Labor Code § 226(a) and the IWC Wage Orders; (6) failure to pay all wages owed
21 timely during employment and upon separation in violation of Labor Code §§ 201-204 and the IWC
22 Wage Orders; (7) failure to maintain requisite payroll records in violation of Labor Code § 1174(d)
23 and the IWC Wage Orders; (8) violations of California Business and Professions Code §§ 17200, *et*
24 *seq.*; and (9) violation of the Private Attorneys General Act of 2004 ("PAGA"), codified in Labor
25 Code §§ 2698, *et seq.* (Orshansky Decl. ¶ 26.)

26 On March 10, 2021, Plaintiff filed his First Amended Complaint that perfected his PAGA
27 claim to allege exhaustion of his administrative agency obligations after awaiting the requisite sixty-
28 five (65) days' notice period. (Orshansky Decl. ¶ 27.) Plaintiff's lawsuit thus sought to recover

1 unpaid wages, premiums for improper meal and rest breaks, penalties for improper wage statements,
2 restitution, liquidated damages, waiting time penalties, civil penalties pursuant to the PAGA,
3 injunctive and other equitable relief, prejudgment interest, and attorneys' fees and costs. (*Id.* at ¶
4 28.) Defendant filed its Answer, pleading general denial of wrongdoing and asserting sixty-two
5 affirmative defenses. (*Id.* at ¶ 29.)

6 Defendant denies Plaintiff's allegations of wrongdoing. (Settlement Agreement ¶¶ 44, 46;
7 Orshansky Decl. ¶ 30.) Defendant does not believe that any liability to Plaintiff or other Class
8 Members exists, or that Plaintiff or Class Members are entitled to any recovery. (*Ibid.*) In settling,
9 Defendant does not admit liability with respect to the alleged claims made by Plaintiff and makes
10 no admission regarding any facts or law related to the action. (Settlement Agreement ¶¶ 44, 46;
11 Orshansky Decl. ¶ 31.)

12 **A. Discovery and Investigation**

13 Here, the Parties engaged in extensive informal discovery, exchanging information and
14 documents, and analyzing extensive data made available by Defendant which enabled the Parties to
15 thoroughly evaluate Plaintiff's claims, the claims of the putative class members, and the aggrieved
16 employees' PAGA claim, along with Defendant's affirmative defenses, and the likely outcomes,
17 risks, and expense of pursuing litigation.

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

25 Class Counsel analyzed information and documentation concerning the alleged violations,
26 such as Defendant's written policies concerning those claims, including Defendant's employee
27 handbooks, policies and procedures regarding the payment of wages, the provision of meal and rest
28 breaks, time keeping policies, such as recording hours, issuance of wage statements, and providing

1 all wages at separation, as well as composite data regarding the number of Class Members and the
2 mix of current versus former employees, total number of pay periods, total number of workweeks,
3 and the average hourly rate in effect. (Orshansky Decl. ¶ 32.) Defendant also produced a random
4 and representative sample of 25% of the time and pay records for Class Members.⁴ (*Ibid.*) Counsel
5 met and conferred at length regarding the information and documents produced. (*Ibid.*)

6 To ensure that the sample was randomized and representative of the entire Class, the entire
7 hourly paid or non-exempt employee workforce employed by Defendant in California during the
8 Class Period—not limited by department or title—was listed by alphabetized last name and every
9 fourth employee selected. (Orshansky Decl. ¶ 33.) There were no noticeable disproportionalities in
10 the data culled (*i.e.*, small number of employees comprising a majority of workweeks, etc.). (*Ibid.*)
11 The payroll data likewise corresponded with the time records so that Class Counsel could compare
12 and analyze for violations. (*Ibid.*) Class Counsel also conducted interviews of Plaintiff and Class
13 Members to verify what was evidenced on the time and payroll records, along with quantifying off-
14 the-clock work. (*Ibid.*) These interviews allowed Class Counsel to confirm the estimated violation
15 rates obtained from the sample. (*Ibid.*)

16 Class Counsel interviewed Class Members, analyzed the documents and data produced, and
17 spent significant time consulting with an expert to determine Defendant’s degree of liability and
18 potential amounts due in damages. (Orshansky Decl. ¶ 34.)

19 **B. Mediation and Settlement**

20 Thereafter, the Parties participated in a full-day mediation with Steven J. Rottman, Esq.,
21 where they debated and discussed their respective positions. (Orshansky Decl. ¶ 35.) Mr. Rottman
22 is experienced in mediating complex general litigation, labor and employment claims, class actions,
23 and PAGA cases, among others. (*Ibid.*) During the mediation, the Parties exchanged further
24 information and discussed all aspects of the case, including the risks and delays of litigation and the
25 risk to both Parties for proceeding with a motion for class certification, liability under the claims

26 ⁴ Courts have found that the use of similar percentage samples is appropriate. (*See e.g., Brum v.*
27 *MarketSource, Inc.* (E.D.Cal. 2018) 2018 WL 3861558, at *5 [10% sample]; *Talavera v. Sun Maid*
28 *Growers of California* (E.D.Cal. 2017) 2017 WL 495635, at *4 [10% sample]; *Kaminske v. JP*
Morgan Chase Bank N.A. (C.D.Cal. 2010) 2010 WL 5782995, at *5 [10% sample].)

1 asserted, and the implications of a PAGA representative action. (*Ibid.*) These were contentious issues
2 because of the factual and legal complexity of the case. (*Ibid.*)

3 The case did not settle at mediation. (Orshansky Decl. ¶ 36.) However, the Parties continued
4 to negotiate with the assistance of Mr. Rottman, and after several weeks, accepted the mediator's
5 proposal. (*See* Settlement Agreement ¶ 42; Orshansky Decl. ¶ 36.) Thereafter, the Parties engaged
6 in extensive negotiations to draft the long-form Settlement Agreement, along with the Notice of
7 Pendency of Class and Representative Action Settlement. (Orshansky Decl. ¶ 36.) The settlement
8 negotiations were hard fought and conducted in good faith and at arm's length between attorneys
9 with substantial experience litigating class actions, representative actions, and wage and hour cases.
10 The settlement was the product of a non-collusive settlement process in which the Parties were
11 forced to make significant compromises in the interest of reaching a full and complete settlement of
12 the action. (*Id.* at ¶ 37.)

13 From Class Counsel's review of the facts, strengths, and weaknesses of the case, the risks
14 and delays posed by further litigation, and Class Counsel's own prior litigation experience, Class
15 Counsel believe that the recovery being made available to Class Members and PAGA Group
16 Members is fair, reasonable, and adequate taking into consideration the amounts received in other
17 wage and hour class and representative actions, the risks inherent in litigation of this genre, and the
18 reasonable tailoring of each Class Member's and PAGA Group Member's claim to the settlement
19 award he or she will receive. (Orshansky Decl. ¶ 38.) Class Counsel believe that the settlement serves
20 the best interests of Class Members and PAGA Group Members. (*Ibid.*) The Parties have concluded
21 that it is in their best interests to compromise, settle, and accept the terms of the Settlement
22 Agreement. (Settlement Agreement ¶¶ 43-45.)

23 The Parties engaged in extensive negotiations to finalize the long-form Settlement
24 Agreement, along with the Notice of Pendency of Class and Representative Action Settlement.
25 (Orshansky Decl. ¶ 36.) On August 03, 2022, after the Motion for Preliminary Approval was filed,
26 and the hearing was continued and then held, the Court issued its Amended Order Granting
27 Preliminary Approval of Class and Representative Action Settlement.

28 ///

On September 12, 2022, after performing a National Change of Address (“NCOA”) search to update and verify addresses for Class Members, the Settlement Administrator, CPT Group, Inc. (“CPT”) mailed via U.S. first class mail the Notice of Pendency of Class and Representative Action Settlement (“Class Notice”) to all Class Members and PAGA Group Members. (*See* Morales Decl. ¶¶ 5-7; Exhibit A [Class Notice].) The finalized 5-page Class Notice was printed in both English and Spanish. (Morales Decl. ¶ 4.) Class Members have until November 12, 2022 to submit disputes, requests for exclusion, or objections (“Response Deadline”). (*Id.* at ¶ 7.) As of the date of this filing, CPT has received *no objections* and *no requests for exclusion* rendering an overall *settlement participation rate of 100%*. (*Id.* at ¶¶ 9-11.) In advance of the Response Deadline, assuming 100% participation rate and the current estimated deductions from the Gross Settlement Amount, the average gross individual settlement payment is approximately \$1,518.52. (*Id.* at ¶ 11.) Plaintiff now respectfully submits the settlement for this Court’s final approval.

III. SUMMARY OF THE SETTLEMENT AND NOTICE PROCESS

A. The Class Definition

For settlement purposes only, the Class to be confirmed for certification is as follows: all current and former hourly-paid or non-exempt employees who worked for Defendant Bel-Air Country Club, and/or its predecessors or merged entities, within the State of California from January 4, 2017 through February 22, 2022. (Settlement Agreement ¶¶ 4, 7.)

B. Monetary Terms

Defendant has agreed to pay a *non-reversionary settlement amount* (“Gross Settlement Amount”) of *Seven Hundred and Ninety-Thousand Dollars (\$790,000)*, exclusive of employer-side payroll taxes which shall be paid separately. (Settlement Agreement ¶¶ 16, 50; Orshansky Decl. ¶ 5.) The Gross Settlement Amount shall be inclusive of all individual settlement payments to Settlement Class Members, the enhancement payment to the Class Representative, the costs to the Settlement Administrator, the attorneys’ fees and litigation costs to Class Counsel, and the PAGA Payment, including payment to PAGA Group Members and to the LWDA for civil penalties pursuant to statute. (Orshansky Decl. ¶ 6.) The Net Settlement Amount is the amount remaining from the Gross Settlement Amount after deducting Court-approved amounts for attorneys’ fees (*i.e.*,

1 \$276,500), actual litigation costs reimbursement (*i.e.*, \$16,198.24 [which is less than the agreed
2 upon \$20,000]), Class Representative’s Enhancement Payment (*i.e.*, \$10,000), PAGA Payment (*i.e.*,
3 \$80,000—of which 75% is allocated for payment to the LWDA for civil penalties pursuant to statute
4 and 25% is to be distributed on a *pro rata* pay periods basis to all PAGA Group Members), and
5 actual settlement administration expenses (*i.e.*, \$13,500 [which is less than the agreed upon
6 \$15,000]). (Settlement Agreement ¶ 50(a)-(d); Orshansky Decl. ¶ 7.) Based on these figures, the
7 Net Settlement Amount is approximately \$393,801.76.⁵ (Orshansky Decl. ¶ 7.) The average
8 individual settlement payment is estimated at \$1,518.52. (Morales Decl. ¶ 11.)

9 The entire Net Settlement Amount will be paid out to Settlement Class Members. Settlement
10 Class Members will automatically receive payments without the need to submit claim forms, and
11 PAGA Group Members will receive individual PAGA payments irrespective of whether they opt
12 out. (Settlement Agreement ¶¶ 47, 50.)

13 The Net Settlement Amount will be the amount that is available for distribution to Settlement
14 Class Members on a *pro rata* basis based on workweeks during the Class Period. (Settlement
15 Agreement ¶¶ 20, 50(e).) Each Individual Settlement Share shall be calculated as follows: The Net
16 Settlement Amount shall be divided by the total of all Workweeks of Settlement Class Members
17 during the Class Period in order to yield the “Workweek Value.” (*Ibid.*) The Individual Settlement
18 Share to each Settlement Class Member shall be calculated by multiplying his or her individual
19 Workweeks by the Workweek Value. (*Ibid.*)

20 In addition, each PAGA Group Member will receive a proportional share of the 25% of the
21 PAGA Payment based on his or her pay periods during the PAGA Period. (Settlement Agreement
22 ¶¶ 26, 50(d).) Specifically, 25% of the PAGA Payment (or \$20,000) shall be divided by the total of
23 all Pay Periods worked by PAGA Group Members during the PAGA Period in order to establish the
24 value of each Pay Period. (*Ibid.*) The individual PAGA payment to be made to each PAGA Group
25

26 ⁵ The Parties originally estimated the Net Settlement Amount at \$388,500. However, the actual Net
27 Settlement Amount is \$393,801.76 because Class Counsel’s actual litigation costs are \$16,198.24
28 (*see* Orshansky Decl. ¶ 117), which is less than the allocated costs amount of \$20,000, and the
Settlement Administrator’s actual expenses are \$13,500, which is less than the allocated expenses
of \$15,000 (*see* Morales Decl. ¶ 12).

1 Member shall be calculated by multiplying the value of a Pay Period by the number of Pay Periods
2 worked by the PAGA Group Member during the PAGA Period, irrespective of whether he or she is
3 a Settlement Class Member. (*Ibid.*)

4 After reduction for the employee's share of taxes on the wage portion, the net payment to
5 each Settlement Class Member will be the sum of his or Individual Settlement Share plus, if
6 applicable, the individual PAGA payment (collectively, "Individual Settlement Payment").
7 (Settlement Agreement ¶¶ 17, 50(f); Orshansky Decl. ¶ 10.) As a result of the distribution formulas,
8 the consideration paid to each Settlement Class Member and PAGA Group Member is tailored to
9 the impact of Defendant's alleged violations as well as to the claims he or she is releasing.
10 (Orshansky Decl. ¶ 10.)

11 Payments to the Settlement Class Members will be classified as twenty percent (20%) wages
12 to be reported on an IRS Form W-2, and eighty percent (80%) penalties and interest to be reported
13 on an IRS Form 1099. (Settlement Agreement ¶ 52(a).)

14 C. Summary of Notice Process

15 On August 26, 2022, counsel for Defendant provided CPT Group, Inc. ("CPT"), the Court-
16 approved Settlement Administrator, with a list of Class Members containing the full names, last
17 known mailing addresses, Social Security numbers, and number of workweeks during the Class
18 Period and number of pay periods during the PAGA Period for each Class Member. (Morales Decl.
19 ¶ 5.) The final Class List contained 270 Class Members. (*Ibid.*) After performing a NCOA search to
20 update and verify addresses, CPT mailed via U.S. first class mail the Class Notice to all Class
21 Members and PAGA Group Members. (*Id.* at ¶¶ 6-7.) As a result of either a skip trace, request from
22 counsel or the Class Member, a total of seven (7) Class Notices have been re-mailed. (*Id.* at ¶ 8.) As
23 of the date of this filing, only two (2) Class Notices remain undeliverable. (*Ibid.*) Class Members
24 have until November 12, 2022 to submit disputes, requests for exclusion, or objections. (*Id.* at ¶ 7.)
25 As of the date of this filing, not a single Class Member has objected to the settlement, nor has any
26 Class Member opted out of the settlement; accordingly, the current status is a **100% settlement**
27 **participation rate**. (*Id.* at ¶¶ 9-11.) The average individual settlement payment is estimated to be
28 \$1,518.52. (*Id.* at ¶ 11.)

1 **D. Timing of Payments and Uncashed Checks**

2 The settlement calls for the Gross Settlement Amount along with Defendant’s share of the
3 payroll and employment taxes to be funded within ten (10) calendar days of the Effective Date.
4 (Settlement Agreement ¶ 60(a).) The Settlement Administrator shall distribute settlement payments
5 within ten (10) calendar days after Defendant funds the settlement. (*Id.* at ¶ 60(c).)

6 In the event any settlement checks are not cashed, deposited, or negotiated within one
7 hundred eighty (180) calendar days from the date of issuance, then the uncashed check(s) shall be
8 sent to the California State Controller’s Unclaimed Property Fund in the name of the individual(s)
9 who did not negotiate his or her check during the negotiation period. (Settlement Agreement ¶ 60(d);
10 Morales Decl. Exh. A [Class Notice] ¶ IV.)

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

12 The Court’s Final Approval Order and Judgment will be posted on the Settlement
13 Administrator’s website pursuant to California Rules of Court, Rule 3.771(b). (Settlement
14 Agreement ¶ 61(c).)

15 **IV. ARGUMENT**

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

19 Under Code of Civil Procedure section 382, a class may be certified if: (1) it is ascertainable
20 and its members are too numerous for joinder to be practical; (2) the representative and absent class
21 members share a community of interest, and questions of law and fact common to the class
22 predominate over questions unique to individual class members; (3) the representative’s claims are
23 typical of the class’s claims; and (4) the representative will fairly and adequately represent the
24 class’s interests. (*See Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470.) Here, this Court
25 found that the proposed Class meets all the requirements for class certification for settlement
26 purposes when it granted preliminary approval of Settlement Agreement on August 10, 2022. (*See*
27 *Orshansky Decl. Exhibit 2 [Amended Order Granting Preliminary Approval].*) Since then, no events
28 have cast doubt on the propriety of this determination, and in fact, the reaction of the Class Members

1 has thus far been overwhelmingly supportive of the settlement, with no Class Member objecting to
2 the settlement and no Class Member opting out of the settlement to date; thus, at present, a 100%
3 settlement participation rate. (*See* Morales Decl. ¶¶ 9-11.)⁶ This Court should therefore confirm its
4 conditional certification of the Class.

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

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

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

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

27 ⁶ Plaintiff will file supplemental declaration(s) with the participation rate, opt-out(s), objection(s),
28 and/or other indicia of the Class Members' responses after the close of the Response Deadline and
in advance of the Final Approval hearing.

exercising these powers, the overriding concern is to ensure that a proposed settlement is “fair, 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.*) These factors require balancing, are non-exhaustive and, as such, trial courts should tailor the factors to each case and give due regard to “what is otherwise a private consensual agreement between the parties.” (*Ibid.*)

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

Here, the settlement resulted from extensive arm’s-length settlement negotiations between qualified and experienced counsel with the assistance of a well-respected mediator. (*See* Orshansky Decl. ¶¶ 35-37.) While Plaintiff maintains that his claims are meritorious, Plaintiff acknowledges the substantial risks and uncertainty in proceeding with class certification and eventually trial, which justify a downward departure from the maximum exposure that Plaintiff calculated that each claim carried. (*Id.* at ¶ 41.) For the reasons discussed herein, Class Counsel posit that the settlement is fair, adequate, and reasonable for all Class Members and PAGA Group Members.

As detailed in Plaintiff’s Motion for Preliminary Approval (“Plaintiff’s MPA”) and filings in support thereof previously submitted, Defendant argued that Plaintiff would be unable to certify a class outside of the settlement context for a variety of reasons. For example, Class Members worked in different job positions and had different managers, and, as a result, there was variation to

1 the circumstances that could allegedly cause employees to be deprived of the opportunity to take
2 legally compliant, duty-free meal and rest breaks, and this variation in circumstances raised highly
3 individualized questions of fact. (Orshansky Decl. ¶¶ 41, 43.) Even if Plaintiff prevailed and certified
4 a class action, there is no guarantee Defendant would not later move for and obtain decertification.
5 (*Id.* at ¶ 44.) If the Court either denied class certification or later decertified it, the Settlement Class
6 would recover nothing and Settlement Class Members would be forced to retain their own counsel
7 and proceed on the basis of individual claims only. (*Ibid.*)

8 Looking at the merits of Plaintiff's claims, Defendant contended that there is substantial
9 uncertainty due to the factual and legal complexity of the case (*e.g.*, factual variance and evidentiary
10 difficulty of proving off-the-clock claims and legal complexity as to waiver of meal and rest breaks,
11 the legality of on-premises rest breaks absent other indicia of control, and/or unpaid meal and rest
12 break premiums as predicate for wage statement and waiting time penalties). (Orshansky Decl. ¶
13 41.) For example, Defendant defended against the minimum and overtime wage claims by relying
14 on policies that prohibited Class Members from engaging in off-the-clock work. (*Ibid.*) Defendant
15 also contended that it had practices, policies, and procedures to provide meal and rest breaks every
16 workday to its employees that fully complied with California law. (*Ibid.*) Finally, Defendant disputed
17 Plaintiff's characterization of working conditions, liability, and damages, and possessed
18 documentary and testimonial evidence rebutting Plaintiff's allegations. (*Ibid.*)

19 Applying the *Clark* and *Kullar* analysis, Class Counsel's valuation is that the Gross
20 Settlement Amount recovery reflects an estimated 28.4% of the potential damages recoverable at
21 trial. (Orshansky Decl. ¶ 46.) Specifically, the Parties posited as follows:

22 **Minimum and Overtime Wage Claims.** Plaintiff, along with other hourly non-exempt
23 employees, performed pre- and post-shift off-the-clock work to minimize the incidence of overtime.
24 (Orshansky Decl. ¶ 48.) Based on the narratives of Class Members, Plaintiff estimated that
25 Defendant is liable for an aggregate of approximately twenty (20) minutes of unpaid straight and
26 overtime pay per workweek. (*Id.* at ¶¶ 49-50.) Further, Plaintiff determined that 68.9% of Class
27 Members' shifts qualified for overtime rate of pay. (*Id.* at ¶ 50.) However, Defendant contended that
28 Plaintiff's claim for off-the-clock work is not amenable to class treatment, because employees

1 worked in a variety of departments with different requirements, and it would require an
2 unmanageable series of mini-trials to determine how much time was spent without pay. (*Id.* at ¶ 51.)
3 Further, in terms of merit defenses, Defendant vigorously disagreed with Plaintiff’s theories
4 regarding how much off-the-clock work occurred in reality and the credibility of those claimed
5 hours given Defendant’s express written policies to the contrary. (*Id.* at ¶ 52.) Defendant also
6 responded that such off-the-clock time is unauthorized and *de minimis*. (*Id.* at ¶ 54.) Plaintiff
7 countered that such defense lacks viability in light of *Troester v. Starbucks Corp.* (2018) 5 Cal.5th
8 829 given that the California Supreme Court refused to allow the *de minimis* defense. (Orshansky
9 Decl. ¶ 54.) What is not clear, however, is to what extent the *de minimis* defense would apply where
10 uncaptured hours were associated with occasionally – rather than regularly – recurring activities.
11 (*Ibid.*) Plaintiff recognizes that off-the-clock claims are inherently difficult to prove in the absence
12 of recordkeeping. (*Id.* at ¶ 53.) In light of these arguments, Plaintiff applied appropriate discounts
13 for the risk of non-certification and being unsuccessful on the merits. (*Id.* at ¶ 55.)

14 **Meal and Rest Period Violations.** Plaintiff asserted that there are compliance issues *vis-à-*
15 *vis* meal breaks—some are late, missed, short, or interrupted. (Orshansky Decl. ¶ 56.) Specifically,
16 based upon the analysis of Class Members’ time and payroll records, Plaintiff’s consultant found a
17 30.9% unique meal break violation rate for shifts greater than five (5) hours analyzed in the data
18 sample. (Orshansky Decl. ¶ 58.) On February 25, 2021, in *Donohue v. AMN Services, LLC* (2021)
19 11 Cal.5th 58, the California Supreme Court reversed the Fourth Appellate District and set forth two
20 clear rules: (1) employers are not permitted to round time records when determining if employees
21 are entitled to meal premium pay, and (2) it is the employer’s burden to show that compliant meal
22 periods were provided to employees if the time records show otherwise. Significantly, there is no
23 indication that Defendant made any meal period premium payments for “missed,” “short,” or “late”
24 meal periods to employees. (Orshansky Decl. ¶ 57; *c.f.* Wage Order 5-2001, § 11(b).)

25 Defendant, however, contended that it had practices, policies, and procedures to provide
26 meal and rest breaks every workday to its employees that fully complied with the law. (Orshansky
27 Decl. ¶ 59.) Defendant vehemently argued that it complied with the requirements articulated by the
28 California Supreme Court in *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004.

(Orshansky Decl. ¶ 59.) Specifically, Defendant maintained that it “provides” employees with a reasonable opportunity to take timely meal periods of at least 30 minutes, relieves employees of all duties during meal periods, and relinquishes control over employees’ activities, including the ability to leave the premises during meal periods. (*Ibid.*) Thus, Defendant argued, the failure of an employee to take a full meal period cannot be the fault of company policy.

Like most employers facing meal period litigation, Defendant argued that employees were apprised of their right to take meal periods and provided compliant meal periods, but some may have voluntarily waived them. (Orshansky Decl. ¶ 60.) Defendant contended that the issue of voluntary waiver would necessarily devolve into a series of individualized mini-trials, precluding class certification. (*Ibid.*; see *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 25 [holding that the defendant must be provided an opportunity to litigate affirmative defenses, even when they turn on individual questions].) To account for the above-described certification and liability risks, Plaintiff applied a downward departure from the maximum meal break exposure as warranted. (Orshansky Decl. ¶ 61.)

Plaintiff also alleged that Class Members did not receive authorized rest breaks as required whereby employers “relinquish control over how employees spend their time and relieve employees of all duties.” (*Augustus v. ABM Security Service, Inc.* (2016) 2 Cal.5th 257, 260; Orshansky Decl. ¶ 62.) Due to Defendant’s work demands and inadequate staffing, Plaintiff and Class Members did not receive timely rest breaks, nor did Defendant relinquish control over how employees spent their 10-minute rest breaks. (Orshansky Decl. ¶ 62.) Plaintiff did not receive rest break premium payments for non-compliant rest breaks, nor is there evidence that Defendant made rest break premium payments to Class Members. (*Ibid.*)

Defendant again disputed liability and damages. (Orshansky Decl. ¶ 63.) Defendant maintained that it authorized and permitted duty-free rest breaks of not less than ten minutes for every major fraction of four hours worked. (*Ibid.*) Defendant explained that Class Members had ample opportunity to take, and did take, regular rest breaks. (*Ibid.*) Defendant argued that any Class Member who failed to take a rest break, or took a short or late rest break, did so voluntarily and that all applicable rest breaks were still authorized and provided. (*Ibid.*) Defendant also attempted to

1 distinguish *Augustus, supra*, which involved security guards who were required to monitor a pager,
2 phone, or other device as having an added constraint that is not present in the matter *sub judice*.
3 (*Ibid.*)

4 Unlike meal periods, rest breaks need not be recorded and thus establishing Defendant's
5 exertion of pressure, control, and resulting violations is likely to be more difficult. (Orshansky Decl.
6 ¶ 64.) Class Counsel applied a 20% violation rate based on the narratives of Plaintiff and other Class
7 Members. (*Ibid.*) For settlement purposes, however, Class Counsel applied appropriate discounts to
8 account for the difficulties of certifying and proving unrecorded rest break violations. (*Ibid.*)

9 **Wage Statement Violations.** Plaintiff alleged a cause of action under Labor Code section
10 226(a) for Defendant's failure to provide accurate itemized wage statements. (Orshansky Decl. ¶
11 65.) This cause of action is derivative of the foregoing causes of action because if Defendant did not
12 provide wages for all hours worked, meal and rest breaks, and so forth, then the wage statements
13 were inevitably inaccurate. (*Ibid.*) Failure to comply with the statute entitles employees to recover
14 the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
15 occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding
16 an aggregate penalty of four thousand dollars (\$4,000). (Labor Code § 226(e).) Defendant
17 contended, however, that Labor Code section 226(e) penalties are not automatic; rather, the
18 employee must show that Defendant's noncompliance was "knowing and intentional." (Orshansky
19 Decl. ¶ 66.) Defendant suggested that any noncompliance was not knowing and intentional. (*Ibid.*)
20 Moreover, Defendant argued that meal and rest period violations cannot support derivative wage
21 statement penalties. (*Ibid.*; see *Naranjo v. Spectrum Security Service, Inc.* (2019) 40 Cal.App.5th
22 444, 474 [holding that violations of Labor Code's meal break provisions do not entitle employees
23 to pursue the derivative wage statement penalties]; *c.f.*, but *review granted*, *Naranjo v. Spectrum*
24 *Security Services, Inc.* (Cal., Jan. 02, 2020, No. S258966) 455 P.3d 704, 257 Cal.Rptr.3d 188.) It
25 was not until after this case settled that, on May 23, 2022, the California Supreme Court ruled that
26 premium pay for missed meal and rest breaks constitutes "wages" that must be reported on wage
27 statements and paid within the statutory deadlines for when an employee leaves the job, thereby
28 overturning the decision of the Court of Appeal.

1 Because the damages for this cause of action are penalties, the statute of limitations is only
2 one year prior to the filing of the original complaint. (Code Civ. Proc. § 340.) The Parties discussed
3 these issues, and in light of these considerations, Class Counsel factored in a reduction of liability
4 and damages to estimate the wage statement violation exposure. (Orshansky Decl. ¶ 67.)

5 **Derivative Waiting Time and UCL Claims.** Plaintiff further asserted causes of action
6 against Defendant for failure to timely pay all wages due employees at separation and for engaging
7 in unfair, unlawful, and fraudulent business practices. (Orshansky Decl. ¶ 68; *see* Labor Code §
8 203 and Bus. & Prof. Code §§ 17200, *et seq.*) As with other claims, Defendant vigorously
9 disagreed that it engaged in any conduct giving rise to liability or entitlement to recovery of
10 penalties or equitable relief. (Orshansky Decl. ¶ 68.) For example, Defendant argued that waiting
11 time penalties are not appropriate because it attempted to pay employees all final wages owed in
12 good faith upon their separation, thereby precluding a finding of willfulness necessary to obtain
13 waiting time penalties. (*Id.* at ¶ 69.) Moreover, Defendant maintained that no waiting time
14 penalties are recoverable from alleged meal or rest period violations. (*Ibid.*) Defendant raised the
15 Second Appellate District’s decision in *Naranjo*, *supra*, 40 Cal.App.5th 444, to argue that meal
16 and rest break violations trigger neither wage statement nor waiting time penalties. (Orshansky
17 Decl. ¶ 69.) Again, at that time, the *Naranjo* decision was still pending before the California
18 Supreme Court, and though a decision has since issued (on May 23, 2022) the uncertainty and risk
19 of an adverse decision added additional weight to the Defendant’s defense. (Orshansky Decl. ¶
20 69.) Finally, Defendant argued that adequate remedies at law exist to render the action unsuitable
21 for equitable remedies, and again contended that the allegations underlying the unfair competition
22 claim lacked merit. (*Ibid.*) To account for the uncertainty of proving the underlying claims, Class
23 Counsel made a realistic allowance with the agreed upon settlement dollar figure. (*Id.* at ¶ 70.)

24 **PAGA Penalties.** The success of Plaintiff’s PAGA claim is wholly dependent upon the
25 success of his underlying claims occurring within the one-year statute of limitations applicable to
26 the PAGA. (Orshansky Decl. ¶ 71.) Defendant maintained and continues to maintain that it had
27 legally compliant employment policies and practices throughout the statutory period. (*Id.* at ¶ 72.)
28 Defendant denied and continues to deny that it ever violated any provision of the California Labor

1 Code and argued that, even assuming such violations occurred, Defendant will not be treated as
2 having engaged in subsequent violations giving rise to heightened penalties. (*Ibid.*) In other words,
3 Defendant argued that heightened civil penalties for subsequent violations would not be assessed
4 unless it could be shown that Defendant had notice that it was violating the law, *e.g.*, it had been
5 cited by a labor agency or adjudged by a court to have done so. (*Ibid.*; *see, e.g., Amaral v. Cintas*
6 *Corp.* (2008) 163 Cal.4th 1157, 1209.) Thus, Defendant contended that, at best, even if a violation
7 giving rise to a penalty was shown for each pay period, only the lower civil penalty associated with
8 initial violations would apply. (Orshansky Decl. ¶ 72.)

9 Moreover, Defendant asserted that, before a PAGA claim could be tried, under existing law,
10 the court of law would have to be satisfied that the adjudication of the PAGA claim, based on a
11 theory of uniform wage and hour practices relating to a large group of aggrieved employees, is
12 sufficiently “manageable” so as not to interfere with Defendant’s right to due process. (Orshansky
13 Decl. ¶ 73.) Defendant reiterated how employees’ job duties and work hours varied. Defendant
14 contended that there was variation as to the circumstances that could allegedly cause employees to
15 work off the clock or to be deprived of the opportunity to take legally compliant, duty-free meal and
16 rest periods. (*Id.* at ¶ 74.) Defendant further opined that these issues presented challenges not only
17 to liability but also challenges to Plaintiff’s ability to show that a PAGA claim could be efficiently
18 and manageably adjudicated without abridging Defendant’s due process rights. (*Ibid.*)

19 Defendant maintained that the Court has discretion to reduce any award of PAGA penalties
20 where it views them as duplicative. (Orshansky Decl. ¶ 75; *see* Labor Code § 2699e(2) [the Court
21 may “award a lesser amount than the maximum civil penalty amount [authorized by PAGA] if, based
22 on the facts and circumstances of the particular case, to do otherwise would result in an award that
23 is unjust, arbitrary and oppressive, or confiscatory.”].)

24 Class Counsel applied discounts for the risks in establishing manageability and possible
25 bifurcation of discovery and/or trial, the risks regarding success on the merits and establishing
26 liability, and the risks with proving the extent of penalties that are warranted and possible
27 discretionary reduction of penalties by the Court. (Orshansky Decl. ¶ 76.)

28 ///

1 **Summary.** The foregoing considerations not only bore heavily on the negotiations leading
2 to the settlement, but also confirm that the settlement is a fair, adequate, and reasonable compromise
3 in view of the risks of further litigation. Plaintiff and Class Counsel carefully vetted the claims at
4 issue and conducted a detailed analysis of Defendant’s produced data to arrive at the calculated
5 damages. In the end, it was determined that the \$790,000 Gross Settlement Amount represents an
6 approximate 28.4% of the possible damages recoverable at trial. (Orshansky Decl. ¶ 77.) Plaintiff
7 presented a detailed *Clark* and *Kullar* analysis in connection with his motion for preliminary
8 approval, which has not changed in the interim. Thus, for reasons of economy and space, Plaintiff
9 refers the Court to his prior preliminary approval filing and to the concurrently filed Orshansky Decl.
10 ¶¶ 46-77, for detailed claim valuation estimates. While the above-described risks are far from
11 exhaustive, they demonstrate that the settlement is fair, adequate, and reasonable in light of them.

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

16 Individual settlement payments will be calculated based on (1) the number of workweeks
17 worked by each Settlement Class Member during the Class Period, and (2) the number of pay periods
18 worked by each PAGA Group Member during the PAGA Period. This method of distribution
19 compensates Settlement Class Members and PAGA Group Members based on the estimated extent
20 of their injuries, as individuals employed for a longer period would have been subject to more of the
21 alleged wage and hour violations than those employed for a shorter period. Thus, the formulas for
22 compensating Settlement Class Members and PAGA Group Members are fair, adequate, and
23 reasonable, as they are tethered to the damages and penalties that could be recovered by them. (*See*
24 *Discussion III.B, supra.*)

25 **3. The Class Response and Participation Rate Information Will Be**
26 **Provided to the Court after the Close of the Response Period**

27 The Class Members’ response to the settlement is relevant in evaluating whether it merits
28 final approval. (*Dunk, supra*, 48 Cal.App.4th at p. 1801.) Further, the absence of objections and

1 requests for exclusion support a fairness presumption. (*See 7-Eleven Owners for Fair Franchising*
2 *v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1152-53 [finding 9 objections and 80 opt-outs
3 showed a “particularly impressive” response from class members].) Here, the Court ordered
4 Plaintiff’s final approval motion to be filed in advance of the Class Member Response Deadline.
5 Thus, Plaintiff will file supplemental declaration(s) with the participation rate, opt-out(s),
6 objection(s), and/or other indicia of the Class Members’ responses after the close of the Response
7 Deadline and in advance of the Final Approval hearing.

8 **C. The Requested Award of Attorneys’ Fees Is Reasonable as a Percentage of the**
9 **Common Fund**

10 A percentage method may be used to calculate a reasonable fee in a common fund case such
11 as this. (*Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th 480, 503.) A fee award is justified where
12 the legal action has produced its benefits by way of a voluntary settlement. (*See, e.g., Maria P. v.*
13 *Riles* (1987) 43 Cal.3d 1281, 1290-91; *Westside Community for Independent Living, Inc. v. Obledo*
14 (1983) 33 Cal.3d 348, 352-53.) When a settlement results in a common fund for the benefit of a
15 class, class counsel may be awarded fees as a percentage of the common fund. (*See Wershba, supra,*
16 91 Cal.App.4th at p. 254 [recognizing the “percentage of recovery” method].) The California
17 Supreme Court confirmed in *Laffitte v. Robert Half Int’l, Inc.* that “[t]he percentage of fund method
18 survives in California class action cases.” (*Lafitte, supra*, 1 Cal.5th at p. 506.) Specifically, the
19 *Laffitte* court held:

20 The recognized advantages of the percentage method - including relative ease of
21 calculation, alignment of incentives between counsel and the class, a better
22 approximation of market conditions in a contingency case, and the encouragement it
23 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.

24 (*Id.* at p. 503 [internal citation omitted]; *see also, e.g., Serrano v. Priest* (1977) 20 Cal.3d 25, 34
25 [“when a number of persons are entitled in common to a specific fund, and an action brought by a
26 plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund, such
27 plaintiff or plaintiffs may be awarded attorney’s fees out of the fund.”]; *Serrano v. Unruh* (1982) 32
28 Cal.3d 621, 627 [in awarding a fee from the common fund obtained for the benefit of all parties, the

1 trial court acts within its equitable power to prevent the other parties’ unjust enrichment]; *Rawlings*
2 *v. Prudential-Bache Properties, Inc.* (6th Cir. 1993) 9 F.3d 513, 516 [the percentage of the fund
3 method for calculating attorneys’ fees more accurately reflects the results achieved for the putative
4 class than the lodestar method and “establishes reasonable expectations on the part of plaintiffs’
5 attorneys as to their expected recovery; and it encourages early settlement, which avoids protracted
6 litigation.”]; *In re Rite Aid Corp. Securities Litigation* (3d Cir. 2005) 396 F.3d 294, 300 [“The
7 percentage-of-recovery method is generally favored in common fund cases because it allows courts
8 to award fees from the fund ‘in a manner that rewards counsel for success and penalizes it for
9 failure.”].)

10 The settlement calls for the payment of up to 35% of the Gross Settlement Amount for
11 attorneys’ fees. (Settlement Agreement ¶ 50(a).) This request is fair, reasonable, and adequate to
12 compensate Class Counsel for the excellent results achieved with estimated average settlement
13 payments of \$1,518.52, and reporting at present, no objectors, and thus, a 100% settlement
14 participation rate. (See Morales Decl. ¶¶ 9-11) That Class Counsel achieved these results in the face
15 of serious defense challenges (*e.g.*, evidentiary challenges of off-the-clock work and waiver of meal
16 and rest break arguments), and in the face of an uncertain legal landscape (*e.g.*, potential
17 distinguishability of *Augustus* as to on-premises rest breaks and the then-pending California
18 Supreme Court’s *Naranjo* decision) confirms the strength of the results achieved. (Orshansky Decl.
19 ¶ 91.)

20 The attorneys’ fees requested is also consistent with Class Counsel’s experience in similar
21 wage and hour class action matters. (Orshansky Decl. ¶ 93.) Additionally, the fee request is
22 consistent with the contingency-fee agreement entered into by Plaintiff. (*Id.* at ¶ 96.) In fact,
23 numerous courts have awarded attorneys’ fees in excess of 35% of the common fund. (See *Ammari*
24 *Electronics, et al. v. Pacific Bell Directory*, Alameda County Sup. Ct., Case No. RG05198014
25 [awarded 43.8%]; *Zelada v. Majestic Terminal Services*, San Bernardino Super. Ct., Case No.
26 CIVDS1916968 [38% fee awarded on \$1,800,000 settlement]; *In re California Indirect Purchaser*
27 *X-Ray Film Antitrust Litigation*, San Francisco Super. Ct. [citing *Abzug v. Kerkorian*, Los Angeles
28 Super. Ct., Case No. CA-00981 [45%] and *Haitz v. Meyer*, Alameda County Sup. Ct., Case No.

1 5729683 [45%]]; *Banda v. Verizon California, Inc.*, Los Angeles Super. Ct., Case No. BC434587
2 [35% fee on \$15,000,000 settlement]; *Hall v. Cinema 7, Inc.*, San Francisco Super. Ct., Case No.
3 CGC-01-409105 [53%]; *Birch v. Office Depot*, United States District Court for the Southern District
4 of California, Case No. 06-cv-1690-DMS [40% fee awarded on \$16,000,000 settlement]; and
5 *Rundberg v. Intrawest Napa Dev. Co.*, Napa County Super. Ct., Case No. 26-56886 [40%].)

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

22 The fee award requested here is also justified because Class Counsel achieved a significant
23 monetary recovery for the Class in an uncertain, complex, and risky case while bearing the
24 substantial burdens of representation on a contingency basis, and the fees requested are in line with
25 the market rate. (*See Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1048-1051 [finding
26 that exceptional results in a contingency case, significant risk and the absence of supporting
27 precedents, are proper considerations in awarding attorneys' fees]; Orshansky Decl. ¶ 97.) Class
28 Counsel negotiated a substantial recovery for the Class, and to date, not a single Class Member

1 objected to the settlement, nor to Class Counsel’s requested fees. (*See* Morales Decl. ¶ 9.) Further,
2 the average individual settlement payment of approximately \$1,518.52 exceeds average settlement
3 payments in similar wage and hour class action settlements.⁷ (*Id.* at ¶ 11.) Class Counsel achieved
4 these results in the face of serious defense challenges (*e.g.*, evidentiary challenges of off-the-clock
5 work and waiver of meal and rest break arguments), and in the face of an uncertain legal landscape
6 (*e.g.*, potential distinguishability of *Augustus* as to on-premises rest breaks and the then-pending
7 California Supreme Court’s *Naranjo* decision). (Orshansky Decl. ¶ 98.)

8 As discussed above, this case presented significant risks of both non-certification as well as
9 potential challenges on the merits of Plaintiff’s claims. Accordingly, it is fair and reasonable to
10 account for these risks in compensating Class Counsel. Class Counsel should also be compensated
11 for the risks involved in undertaking this litigation and expending considerable effort, all while
12 working on a pure contingency basis. (Orshansky Decl. ¶¶ 101-104.) Since undertaking
13 representation of Plaintiff, Class Counsel expended costs and devoted substantial time to this
14 litigation. (*Id.* at ¶ 116.) Given the considerable potential for adverse outcomes in this case,
15 including, but not limited to, being unable to proceed on a class-wide basis and/or risking
16 unfavorable adjudication on the merits, the contingent risk borne by Class Counsel was great. (*Id.*
17 at ¶ 104.)

18 Class Counsel’s previous experience litigating wage and hour class actions also supports the
19 reasonableness of the fee request. Class Counsel are well-versed in plaintiff-side wage and hour
20 class and representative action litigation, with substantial experience litigating claims for unpaid
21 wages, meal and rest period violations, and related penalties, and have been certified as class counsel
22

23 ⁷ (*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]; and *Schiller v. David’s Bridal, Inc.* (E.D.Cal. 2012) 2012 WL 2117001,
at *17 [finding that average payment to class members of less than \$200 was a “good” result].)

1 in numerous other cases. (Orshansky Decl. ¶¶ 78-82.) Class Counsel’s experience in similar matters
2 was integral to evaluating the strengths and weaknesses of this case and the reasonableness of the
3 settlement. (*Id.* at ¶ 100.) Practice in the narrow field of wage and hour litigation requires skill and
4 knowledge concerning the rapidly evolving substantive state and federal law, as well as the
5 procedural law of class and representative action litigation. (*Ibid.*)

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

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

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

19 Notably, “regardless of whether the percentage method or the lodestar method is used, fee
20 awards in class actions average around one-third of the recovery.” (*Chavez v. Netflix, Inc.* (2008)
21 162 Cal.App.4th 43, 66 fn.11; *see also, e.g., Cicero v. DirectTV, Inc.* (C.D.Cal. July 27, 2010; No.
22 EDCV07-1182) 2010 WL 2991486, at *7 [(observing that “30-50% [is] commonly awarded in cases
23 in which the common fund is relatively small” and that in California, “courts usually award
24 attorneys’ fees in the 30-40% range in wage and hour class actions...”); *Williams v. Costco*
25 *Wholesale Corp.* (S.D.Cal. July 7, 2010; No. 02-cv-2003 IEG (AJB)) 2010 WL 2721452, at *6
26 [collecting cases where courts awarded between 33.33% and 40% in attorneys’ fees in wage and
27 hour class actions].) This is also consistent with Class Counsel’s experience in similar wage and
28 hour class action matters. (*See* Orshansky Decl. ¶ 93.)

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

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

25 The attorneys’ fees award is intended to reimburse Class Counsel for all uncompensated
26 work that they have already done and for all the work they will continue to do. To investigate,
27 litigate, and ultimately negotiate and craft the settlement, Class Counsel expended a significant
28 amount of time on the following: (1) regular discussions with Plaintiff; (2) thorough pre-litigation

1 investigation of facts with a focus on class certification elements; (3) investigation of Defendant's
2 organizational and corporate structure, and executive reporting structure as it relates to the
3 employment and management of employees; (4) comparative analysis and cross-checking of all
4 available job postings by Defendant in order to determine any variation and identify job duties and
5 responsibilities that would be susceptible to being performed off the clock or during meal or rest
6 breaks; (5) research and investigation re: staffing models and staffing levels; (6) drafting the PAGA
7 notice to the LWDA and pleadings; (7) legal research and analysis into substantive law; (8)
8 developing and executing settlement and litigation strategies; (9) conducting informal discovery;
9 (10) ongoing meet and confer efforts with defense counsel; (11) interviewing Class Members; (12)
10 reviewing policies and procedures regarding Defendant's payment of wages, provision and tracking
11 of meal and rest breaks, and timekeeping protocol, including recording hours, issuance of wage
12 statements, and providing all wages at separation; (13) research and investigation re: various
13 software programs Defendant uses to conduct everyday business, including timekeeping software,
14 with a focus on what documents are created in the normal course of business relating to overtime
15 worked, off-the-clock time worked pre-/post-shift, and time worked during meal periods; (14)
16 examining Class Members' time records and wage statements in conjunction with Class Member
17 interviews to determine Defendant's degree of liability; (15) consulting with a damages expert; (16)
18 building a comprehensive damages model; (17) preparing a mediation brief; (18) preparing for and
19 attending mediation; (19) negotiating and preparing the long-form Settlement Agreement and
20 related documents; (20) preparing the motion for preliminary approval and supporting documents;
21 (21) overseeing the class notice process; (22) responding to questions from Class Members; and
22 (23) preparing the motion for final approval and supporting documents. (Orshansky Decl. ¶ 108.)

23 The work CounselOne did was meaningful, and their hourly rates are commensurate with
24 experience and the prevailing rates among defense and plaintiffs' firms that regularly litigate wage-
25 and-hour class actions (Orshansky Decl. ¶ 109.) Class Counsel's rates are commensurate with the
26 prevailing market rates in California for attorneys of comparable experience and skill handling
27 complex litigation. (*Id.* at ¶¶ 109, 112.) Class Counsel's rates are based on prevailing fees in this
28 geographical area and have been approved in California and Ninth Circuit courts. (*Ibid.*) The

1 reasonableness of Class Counsel’s hourly rates is further confirmed in light of the hourly rates
2 identified based on years of experience in the Laffey Matrix, submitted concurrently herewith. (See
3 Orshansky Decl. ¶ 113 and Exhibit 5 [Laffey Matrix].)

4 As set forth in detail in the accompanying Declaration of Anthony J. Orshansky, Class
5 Counsel spent a substantial amount of time during the course of its representation of Plaintiff and
6 the prosecution of this action, for a total aggregated lodestar figure of \$161,750. (Orshansky Decl.
7 ¶¶ 109-111 and Exhibit 4 [Attorney Task and Time Chart].) With this amount, a multiplier of only
8 1.7 is necessary to yield the requested fees. (*Id.* at ¶ 114.) The requested multiplier in this case is
9 within even the modest multipliers that are awarded by California courts. (See *Vizcaino v. Microsoft*
10 *Corp.* (9th Cir. 2002) 290 F.3d 1043, 1050-1051 [looking to multipliers awarded in comparable
11 cases as evidence of reasonableness; **affirming 3.65 multiplier**].) **Multipliers routinely range**
12 **from 3 to 5**, and it is not uncommon that **multipliers of between 5 and 10**, or higher, are applied.
13 (See, e.g., *Wilson v. Bank of Am. Natl. Trust & Savs. Assn.* (Cal. Sup. Ct., Aug. 16, 1982) Case No.
14 643872 [**multiplier of 10**]; *Glendora Comm. Redev. Agency v. Demeter* (1984) 155 Cal.App.3d 456,
15 465 [affirming **multiplier of 12**, and expressly rejecting argument that fee was either exorbitant or
16 unconscionable]; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 255 [noting that
17 “[m]ultipliers can range from 2 to 4 or even higher”]; *Van Vranken v. Atlantic Richfield Co.*
18 (N.D.Cal. 1995) 901 F.Supp. 294, 298 [**multipliers of 3-4** are in the “range [of] common”
19 multipliers for class actions]; *Holleran v. Rita Medical Systems, Inc.* (Cal. Super. Oct. 4, 2007; No.
20 RG06302394) 2007 WL 7759253 [**multiplier of 4.57**]; *Gutierrez v. Wells Fargo Bank, N.A.*
21 (N.D.Cal. May 21, 2015; No. C 07-05923 WHA) 2015 WL 2438274, at *7 & 8 fn. 3 [**multiplier of**
22 **4.53**]; *Johnson v. Fujitsu Tech. & Bus. of Am., Inc.* (N.D.Cal. May 11, 2018; No. 16-CV-03698-
23 NC) 2018 WL 2183253, at *7 [**multiplier of 4.375**]; *Buccellato v. AT & T Operations, Inc.*
24 (N.D.Cal. Jun. 30, 2011; No. C10-00463-LHK) 2011 WL 3348055, at *2 [**multiplier of 4.3**]; *Chau,*
25 *et al v. CVS RX Services, Inc.*, Los Angeles County Superior Court No. BC349224, Order Granting
26 Final Approval of Class Action Settlement, Reasonable Attorneys’ Fees and Costs and Service
27 Payments to the Class Representatives [a **3.8 multiplier** was applied based primarily on contingent
28 risk and the “excellent results [] obtained [] with relative efficiency”].)

Hence, the lodestar cross-check affirms that the fee award requested does in fact fall within the range of reasonableness. (Orshansky Decl. ¶ 115.)

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

Class Counsel incurred and respectfully request reimbursement of \$16,198.24—which is less than the Settlement Agreement’s allocation of up to \$20,000—in litigation costs. (Orshansky Decl. ¶ 117 and Exhibit 6 [Itemized Costs Spreadsheet].) Class Counsel’s request is fair, adequate, and reasonable, as all of these costs are documented and reasonably incurred. Moreover, the costs for which Plaintiff seeks reimbursement are all 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”]; *Ashker v. Sayre* (N.D.Cal. 2011; No. 05-03759-CW) 2011 WL 825713, at * 3 [“costs of reproducing pleadings, motions and exhibits are typically billed by attorneys to their fee-paying clients” and are reimbursable]; *Trustees of Const. Industry & Laborers Health and Welfare Trust v. Redland Ins. Co.* (9th Cir. 2006) 460 F.3d 1253, 1258-1259 [legal research costs are reimbursable]; *In re Immune Response Securities Litigation* (S.D.Cal. 2007) 497 F.Supp.2d 1166, 1177-78 [mediation expenses, legal research, copies, postage, filing fees, messenger and overnight delivery costs are reimbursable].) The requested reimbursement of costs of up to \$20,000 was fully disclosed to Class Members in the Class Notice and, to date, there have been no objections to same. (*See Morales Decl. ¶ 9*; Orshansky Decl. ¶¶ 118-119.) Because the expenses by Class Counsel were reasonably incurred, assuming no Class Member objects to them, the Court should grant the request for reimbursement of \$16,198.24 for litigation costs.

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

Plaintiff also requests that the Court approve \$13,500 in administration costs to the Settlement Administrator. (*See Settlement Agreement ¶ 50(b)* [agreeing to an amount up to \$15,000]); *Morales Decl. ¶ 12*.) As detailed in the declaration Abel E. Morales submitted concurrently with this Motion, CPT performed duties in connection with this settlement that were

instrumental in effectuating the settlement and the notice process. Among other things, CPT calculated each Class Member's individual settlement payment, updated addresses contained in the class data supplied by Defendant (*e.g.*, NCOA and skip-traces), formatted the Class Notices for mailing, translated the Class Notice to Spanish, mailed Class Notices to all Class Members and PAGA Group Members, kept the Parties informed of any communications received from the Class Members and PAGA Group Members, and otherwise administered the settlement. (*See Morales Decl., passim.*) For these reasons, CPT's requested costs are fair, reasonable, and adequate, and should be finally approved.

G. The Court Should Finally Approve Plaintiff's Requested Class Representative's Enhancement Payment Because the Amount Is Fair, Adequate, and Reasonable in Light of Plaintiff's Efforts and Risks Assumed on Behalf of the Class

A class representative must possess the same interest and suffer the same injury as the class members. "To assure 'adequate' representation, the class representative's personal claim must not be inconsistent with the claims of other members of the class." (*J.P. Morgan & Co., Inc. v. Sup. Ct. (Heliotrope General, Inc.)* (2003) 113 Cal.App.4th 195, 212.) Thus, the adequacy requirement is satisfied when the class representative's interests are not antagonistic to those of the class. (*McGhee v. Crocker-Citizens Nat. Bank* (1976) 60 Cal.App.3d 442, 451.) Plaintiff has no conflicts with the Settlement Class and in fact his interests are aligned with those of the Class. (*See Orshansky Decl. ¶¶ 120, 122 and Exhibit 7 [Declaration of Antonio Camacho filed in support of Plaintiff's Motion for Preliminary Approval (hereafter, "Camacho Decl.")]* ¶ 9.) Because Plaintiff's claims are the same as those that would be asserted by unnamed class members were they before the Court, Plaintiff has every interest in zealously representing the unnamed class members. (*See Camacho Decl., passim.*) Plaintiff has not shirked from his responsibility; on the contrary, Plaintiff, along with his counsel, prosecuted this case with allegiance and dedication. (*Id.* at ¶ 5, 7-9, 13-14; Orshansky Decl. ¶ 120.)

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 [upholding "service payments" to named

1 plaintiffs for their efforts in bringing the case]; *Van Vranken v. Atlantic Richfield Co.* (N.D.Cal.
2 1995) 901 F.Supp. 294 [approving \$50,000 service payment].

3 Here, Plaintiff seeks an enhancement payment in the amount of \$10,000, and believes that
4 this request is reasonable given his time and effort in this case, the risks he undertook on behalf of
5 Class Members, the potential of being assessed Defendant's costs of suit, and prosecuting the action
6 during economically uncertain times engendered by a public health crisis. (Settlement Agreement
7 ¶¶ 48, 50(c); Orshansky Decl. ¶¶ 120-124; Camacho Decl. ¶ 15.) Plaintiff actively participated in
8 the prosecution of this matter in particular but not exclusively through his discussions with Class
9 Counsel, identifying potential witnesses, providing factual information to Class Counsel about
10 Defendant's policies, practices, and procedures, providing documents, monitoring the progress of
11 the case, participating in settlement discussions, evaluating the terms of the settlement, and
12 reviewing and signing the Settlement Agreement. (See Orshansky Decl. ¶ 121; Camacho Decl. ¶¶
13 5, 10, 13.) Plaintiff invested significant time and effort into seeing this litigation through resolution.
14 (See Orshansky Decl. ¶ 121; Camacho Decl. ¶¶ 5-7, 10, 13-14.)

15 Plaintiff has diligently, adequately, and fairly represented Class Members, is a member of
16 the Settlement Class, has no conflict as outlined above, and has not placed his interests above those
17 of any member of the Class. (See Orshansky Decl. ¶¶ 120, 122; Camacho Decl. ¶¶ 5-14.)
18 Furthermore, the requested enhancement payment to the Class Representative was fully disclosed
19 to Class Members in the Class Notice and no objections have been made to date. (See Morales Decl.
20 ¶ 9; Orshansky Decl. ¶ 123; Camacho Decl. ¶ 15.)

21 Thus, Plaintiff's request for an enhancement payment is appropriate and justified as part of
22 the settlement and should be finally approved.

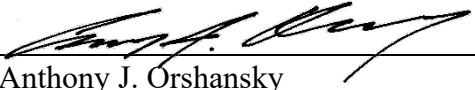
23 **V. CONCLUSION**

24 For the reasons stated herein, Plaintiff respectfully requests that this Court grant Plaintiff's
25 Motion and enter the Proposed Order Granting Plaintiff's Motion for Final Approval of Class and
26 Representative Action Settlement, Attorneys' Fees and Costs, and Class Representative's
27 Enhancement Payment, and the Proposed Judgment submitted concurrently herewith.

1 Dated: October 7, 2022

Respectfully submitted,

2 COUNSELONE, P.C.

3 By: 
4 Anthony J. Orshansky
5 Jennifer L. Connor
6 Justin Kachadoorian
7 Attorneys for Plaintiff, Settlement Class
8 Members, and PAGA Group Members
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