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13 individually, and on behalf of all others
14 similarly situated

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **FOR THE COUNTY OF LOS ANGELES**

17 JOAQUIN ROJAS, an individual,
18
19 Plaintiff,

20 vs.

21 JAR TRANSPORTATION INC., a California
22 Corporation, RAYMOND PAUL JUNE, an
23 individual, FEDEX GROUND PACKAGE
24 SYSTEM, INC., a Delaware corporation; and
25 DOES 1-20, inclusive,

26 Defendants.

CASE NO. 21STCV15613

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

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

Date: November 6, 2023
Time: 10:00 a.m.
Dept: 11

Complaint Filed: April 26, 2021
Consolidated with 21STCV41706

1 PLEASE TAKE NOTICE that on November 6, 2023 at 10:00 a.m., or as soon thereafter as
2 the matter may be heard in Department 11 of the above-entitled court. Plaintiff Joaquin Rojas
3 (“Plaintiff”) will and hereby does move this Court for: (1) an order determining the good faith of
4 and granting final approval of the proposed class action and PAGA settlement; (2) entry of the
5 proposed Order of Final Approval and Judgment; (3) an order awarding costs to the claims
6 administrator; and (4) an order awarding attorneys’ fees and costs and a class representative
7 enhancement award to Class Counsel and the Plaintiff, respectively.

8 This Motion is brought pursuant to California *Rules of Court*, Rule 3.769, on the grounds
9 that the Class Action and PAGA Settlement Agreement between Plaintiff, Joaquin Rojas
10 (“Plaintiff”), and Defendants JAR Transportation Inc. and Raymond Paul June (“Defendants”),
11 (collectively “Parties”) is fair, reasonable, and adequate, achieved as the result of informed, arms-
12 length negotiations, and deserving of approval for the benefit of the Settlement Class members to
13 whom it pertains.

14 This Motion is based on this Notice and Motion, the declarations of Daniel J. Bass, Joaquin
15 Rojas, and Jeremy Talavera on behalf of CPT Group, Inc., the other papers on file in this action,
16 and such other and further oral and documentary evidence as may be submitted at or before the
17 hearing on the Motion.

18
19 Dated: October 11, 2023

MAKAREM & ASSOCIATES, APLC

20
21 By: Daniel Bass
22 Daniel J. Bass
23 Attorney for JOAQUIN ROJAS,
24 individually and on behalf of all others
25 similarly situated
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1 **I. INTRODUCTION**

2 Pursuant to California Rules of Court, Rule 3.769(g), Plaintiff, Joaquin Rojas (“Class
3 Representative” or “Plaintiff”), as Class Representative—of the class of all individuals employed
4 by JAR Transportation Inc. (“JAR”) as non-exempt employees in the state of California at any time
5 between July 1, 2020, and September 7, 2022 and who did not submit a valid and timely request
6 for exclusion (“Class Members”), and all non-exempt employees in the state of California between
7 September 8, 2020, and September 7, 2022 (“PAGA Members”)—seeks an Order from this Court
8 granting final approval of the settlement reached in this matter. (see Declaration of Daniel J. Bass
9 [“Bass Decl.”], ¶ 12).

10 The Settlement will resolve all of Plaintiff’s class claims against Defendant. As set forth in
11 Plaintiff’s Motion for Preliminary Approval, which was granted by this Court on June 15, 2023,
12 (Bass Decl., Exh. B) this Court should approve as fair and reasonable the class-wide, non-
13 reversionary Class Action and PAGA Settlement Agreement (“Settlement Agreement”). (Bass
14 Decl., Exh. A). One Hundred Sixty-Five Thousand Dollars (\$165,000.00), inclusive of all fees and
15 costs (the “Gross Settlement Amount”) shall be paid for settlement of the claims of all Class and
16 PAGA Members. (Bass Decl., ¶ 13).

17 No Settlement Class members have opted out and the administrator reports that a total of
18 91 Class Members are part of this Settlement, which represents a 100% participation rate.
19 (Declaration of Jeremy Talavera [“Talavera Decl.”], ¶ 14). Moreover, no one has objected to the
20 Settlement, which reflects that the Settlement was well-received by all class members. See
21 Talavera Decl., ¶ 11; see also, *Anderson v. Nextel Retail Stores, LLC*, 2010 U.S. Dist. LEXIS
22 43377 at *49 (C.D. Cal. 2010) (holding that a relatively high participation rate and extremely low
23 objection rate weighed in favor of approving the settlement). Nor are there any workweek
24 disputes or requests for exclusion from the Settlement. (Talavera Decl., ¶¶ 12-13). Therefore, all
25 91 Settlement Class Members will be issued settlement payment. (*Id.* ¶¶ 11-14). A unanimous
26 participation rate “supports the fairness, reasonableness, and adequacy of the settlement.”
27 *Williams v. Costco Wholesale Corp.*, 2010 U.S. Dist. LEXIS 67731 at *13 (S.D. Cal. 2010).

Moreover, the Court should grant Plaintiff's request for a Class Representative Service Payment of \$7,500 (Bass Decl., ¶ 15), Plaintiff's request for attorneys' fees of \$55,000 (Bass Decl., ¶ 17), Class Counsel costs of \$15,823.00 (Bass Decl., ¶ 17), and settlement administration costs of \$10,000 (Talavera Decl., ¶ 15), because each payment is reasonable and based on diligent work performed or costs incurred for the benefit of all Class Members.

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

II. STATUS OF THE LITIGATION

A. Defendants and Plaintiff

Defendant employed Plaintiff Joaquin Rojas ("Plaintiff") as a non-exempt employee, serving as a delivery driver from approximately April 2020 to January 2021. During their employment, Plaintiff and fellow non-exempt employees performed their duties in Los Angeles County and other locations within California. (Declaration of Daniel J. Bass "Bass Decl.", ¶ 2).

During the time that Plaintiff was employed, he was subject to the same policies and procedures as all other non-exempt hourly paid employees, which among other things, Plaintiff contends caused employees to work long hours, sometimes off the clock, and without breaks. As such, Plaintiff and his fellow class members were denied full payment of their wages, including overtime and double time, and legally compliant breaks. (*Id.* at ¶ 3).

B. Commencement of the Action and Pleadings

Plaintiff's Allegations - This matter involves two lawsuits brought by Plaintiff on behalf of non-exempt employees of Defendants. The first action is the putative class action pending in Los Angeles County, Case No. 21STCV15613, filed on April 26, 2021. Thereafter, on November 12, 2021, Plaintiff filed a PAGA representative action as Los Angeles County Case No. 21STCV41706 (collectively "Actions"). The Actions were related and the Class Action ordered as the lead case. (*Id.* at ¶¶ 4-5.) The Actions were later consolidated.

Plaintiff maintains causes of action on behalf of himself and a putative class for: (1) Recovery of Unpaid Minimum Wages, (2) Recovery of Unpaid Overtime Wages, (3) Failure to Provide Meal Periods, (4) Failure to Furnish Accurate Wage Statements, (5) Waiting Time

1 Penalties and (6) Unfair Competition in Violation of Business and Professions Code Section
2 17200. (Bass Decl., Exh. A at 2.1).

3 Defendants contend that they at all times complied with California law. Defendants assert
4 that they properly paid employees for all time worked. Defendants further contend that they
5 provided Plaintiff and other putative class members with compliant meal and rest periods, and that
6 to the extent any employee did not take a compliant meal or rest period, the reason for the non-
7 compliant meal or rest period would be an individualized issue that would preclude class
8 certification. (Bass Decl. at ¶ 6.)

9 **C. Investigation**

10 Before filing the lawsuit, Class Counsel investigated and researched the facts and
11 circumstances underlying the pertinent issues and the laws applicable thereto. This required
12 thorough discussions between Class Counsel and the Plaintiff, as well as preliminary research into
13 the various legal issues and employment practices involved in the case. After conducting their initial
14 investigation, Class Counsel determined that Plaintiff's claims were well-suited for class action
15 adjudication owing to what appeared to be a common set of policies and procedures that impacted
16 Plaintiff and other putative class members in a similar fashion. (*Id.* at ¶ 7).

17 After filing the lawsuit, Class Counsel conducted an extensive investigation of the facts and
18 claims giving rise to the action, including:

- 19 (1) reviewing and analyzing time and payroll records and Defendant's written policies
20 and procedures;
- 21 (2) researching the applicable law and evaluating potential defenses;
- 22 (3) evaluating the damages based on countervailing interpretations of law;
- 23 (4) reviewing other documentation provided by Defendant. (*Id.* at ¶ 8).

24 Defendants, for their part, vigorously contested liability, the amount of claimed damages,
25 and the propriety of class certification. After Class Counsel analyzed the relevant documentary and
26 testimonial evidence, Class Counsel determined that this case was appropriate for resolution via
27 settlement. (*Id.* at ¶ 9).

28 **D. Mediation and Settlement**

On July 7, 2022, the Parties participated in an all-day mediation presided over by Gig
Kyriacou, which led to this Agreement to settle the Action. Over the next months, the parties

1 negotiated the details of the long form settlement agreement, which was fully executed on January
2 31, 2023, and for which preliminary approval was granted on June 15, 2023. (*Id.* at ¶¶ 10-11, Exhs.
3 A-B). After Preliminary Approval was granted, the Settlement Administrator confirmed for the
4 Parties that the records provided by Defendant showed that there were 91 potential Class
5 Members. (Talavera Decl. ¶ 14).

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

7 **A. Settlement Class**

8 The “Class” or “Settlement Class” means all individuals employed by Defendant JAR
9 Transportation Inc., as a non-exempt employee in the state of California at any time between July 1,
10 2020 and September 7, 2022. Based on its records, JAR estimates that there are 91 Class Members
11 who collectively worked a total of 3,196 Workweeks during the Class Period above and 91
12 Aggrieved Employees who worked a total of 3,070 PAGA Pay Periods during the PAGA Period
13 from September 8, 2020 to September 7, 2022. (Bass Decl., ¶ 12). As of the date of this filing, no
14 Settlement Class members have opted out and it is anticipated that all 91 Settlement Class members
15 will participate in the Settlement. (Talavera Decl., ¶¶ 13-14).

16 **B. Settlement Consideration**

17 Under the terms of the proposed agreement, the parties have agreed that all claims brought
18 on behalf of the Class and PAGA Members shall be fully and finally resolved for a “Gross
19 Settlement Amount” of One Hundred Sixty-Five Thousand Dollars \$165,000.00. (Bass Decl. ¶ 13).
20 The Gross Settlement Amount is non-reversionary and no portion of the Settlement Amount will
21 be returned to Defendant. (*Id.*). The following amounts will be deducted from the Gross Settlement
22 Amount, with the amount remaining after these deductions constituting the Net Settlement Amount
23 (*Id.* at ¶¶ 13-20, Talavera Decl. ¶ 15):

- 24 • **Class Representative Payment:** Up to \$7,500 to the named Plaintiff for his services as
the class representative.
- 25 • **Attorneys’ Fees and Costs:** Up to 33 1/3% of the Gross Settlement Amount or \$55,000
26 in attorneys’ fees and up to \$20,000 in litigation costs, though only \$15,823 in costs were
required (See Bass Decl., ¶ 14, Exh D).
- 27 • **Settlement Administration Costs:** The Settlement Administrator, CPT Group, will be
28 paid for the reasonable costs of administration of the Settlement and calculation and
distribution of payments, in the amount of \$10,000, \$1,800 less than the \$11,800 maximum
amount authorized.

- **LWDA PAGA Penalty Amount:** 75% share of the \$10,000.00 (or \$7,500.00) allocated from the Gross Settlement Amount for PAGA penalties that will be paid to the LWDA.
- **PAGA Group Payment:** 25% share of the \$10,000.00 (or \$2,500.00) allocated from the Maximum Settlement Amount for PAGA penalties that will be paid to Aggrieved Employees based on their respective PAGA Pay Periods.

Thus, the net Settlement amount is estimated to be around \$65,000. (Talavera Decl., ¶ 14), though this number will increase by \$4,177 in authorized but not spent litigation costs. (Bass Decl., ¶¶ 14, 20, Exh D). Each Participating Class Member shall be eligible to receive an Individual Class Payment, which is calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks. (Bass Decl., ¶ 19). The number of class members in the class, according to the Administrator's report, is 91. As a result, the estimated average settlement payment to each Class Member is \$714.29, with the highest estimated settlement payment being \$2,255.48 and the lowest estimated settlement payment of \$20.36. (Talavera Decl., ¶ 14; Bass Decl., ¶ 20).

C. Claims and Settlement Fund Distribution Procedure

According to the Agreement, JAR Transportation Inc. and Raymond Paul June ("Defendants") shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendants' share of payroll taxes by transmitting the funds to the Administrator no later than 14 days after the Effective Date.¹ (Bass Decl., Exh. A at 4.3). Within 14 days after Defendants fund the Gross Settlement Amount, the Administrator will provide a disbursement summary to Class Counsel and Defense Counsel for approval and then will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment.

¹ "Effective Date" means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur. Bass Decl., Exh. A at 1.19

1 Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses
2 Payment and the Class Representative Service Payment shall not precede disbursement of
3 Individual Class Payments and Individual PAGA Payments. (*Id.*, Exh. A at 4.4.)

4 The Administrator will issue checks for the Individual Class Payments and/or Individual
5 PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid.
6 The face of each check shall prominently state the date (not less than 180 days after the date of
7 mailing) when the check will be voided. The Administrator will cancel all checks not cashed by
8 the void date. The Administrator will send checks for Individual Settlement Payments to all
9 Participating Class Members (including those for whom Class Notice was returned undelivered).
10 The Administrator will send checks for Individual Settlement Payments to all Participating Class
11 Members (including those for whom Class Notice was returned undelivered). The Administrator
12 may send Participating Class Members a single check combining the Individual Class Payment
13 and the Individual PAGA Payment. Before mailing any checks, the Settlement Administrator
14 must update the recipients' mailing addresses using the National Change of Address Database.
15 (*Id.*, Exh. A at 4.4.1).

16 **IV. FAIRNESS ANALYSIS**

17 **A. Standard for Final Approval**

18 The trial court has broad discretion to determine whether a proposed class action
19 settlement is fair. See *Rebney v. Wells Fargo Bank* (1990) 220 Cal.App.3d 1117, 1138. There is a
20 presumption of fairness of a class action settlement when: (1) the settlement is reached as the
21 result of arm's length negotiations; (2) there has been sufficient investigation and discovery; (3)
22 counsel is experienced in similar litigation; and (4) the percentage of objections is low. See *Dunk*
23 *v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802. Before approving a class action settlement,
24 a trial court must have an understanding "of the amount that is in controversy and the realistic
25 range of outcomes of the litigation." *Kullar v. Footlocker Retail, Inc.* (2008) 168 Cal.App.4th
26 116, 120. However, the parties need not provide an explicit statement of the maximum amount
27 plaintiffs could have potentially recovered. See *Munoz v. BCI Coca Cola Bottling Co. of Los*
28 *Angeles* (2010) 186 Cal.App.4th 399, 409.

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

12 To make this fairness determination, the court must consider several relevant factors,
13 including “the strength of plaintiff’s case, the risk, expense, complexity and likely duration of
14 further litigation, the risk of maintaining class action status throughout trial, the amount offered in
15 settlement, the extent of discovery completed and the state of the proceedings, [and] the experience
16 and views of counsel...” *Dunk v. Ford Motor Co.*, *supra*, 48 Cal.App.4th at 1801; *Wershba v. Apple*
17 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 244-245; *7-Eleven Owners for Fair Franchising v. The*
18 *Southland Corp.*, *supra*, 85 Cal.App.4th at 1146. “The list of factors is not exclusive and the court
19 is free to engage in a balancing and weighing of factors depending on the circumstances of each
20 case.” *Wershba*, 91 Cal.App.4th at 245. Furthermore, courts must give:

21 [p]roper deference to the private consensual decision of the parties, [since] the court’s
22 intrusion upon what is otherwise a private consensual agreement negotiated between the
23 parties ... must be limited to the extent necessary to reach a reasoned judgment that the
24 agreement is not the product of fraud or overreaching by, or collusion between, the
negotiating parties, and the settlement, taken as a whole, is fair, reasonable and adequate ...
(*Hanlon*, 150 F.3d at 1027.)

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

26 Plaintiff believes that the Settlement Class claims in this action are legally meritorious and
27 present a reasonable probability of a favorable determination on behalf of the class. At the same
28 time, there is undeniably significant litigation risk avoided by the proposed Settlement, both at class

1 certification proceedings, at trial, and potentially in the appellate courts. (Bass Decl., ¶ 28).

2 Liability remains highly contested by Defendant, who denies that it engaged in any
3 violations of the law, and they further deny any liability or engagement in wrongdoing of any kind
4 associated with the claims alleged in the Action by the Plaintiff or any Class Member. Defendant
5 contends that at all times it complied with all wage-and-hour laws in connection with the
6 employment and/or retention of services of Plaintiff and the Class Members. (*Id.*, ¶ 29)

7 Plaintiff's counsel understood and appreciated the defenses and position of Defendant but
8 believed that Plaintiff would ultimately succeed in the action. In light of the strongly divergent
9 views, the parties, were able to negotiate a fair settlement, considering the costs and risks of
10 continued litigation. The negotiations were at all times conducted professionally and at arm's
11 length and have produced a result that the Parties believe to be in their respective best interests.
12 (*Id.*, ¶ 30)

13 The Parties have also considered the uncertainty and risk of the outcome of further
14 litigation, and the difficulties and delays inherent in such litigation. Plaintiff is also aware of the
15 burdens of proof necessary to establish liability for the claims asserted in the action, the defenses
16 thereto, and the difficulties in establishing damages. (*Id.*, ¶ 31)

17 In evaluating the settlement, the Court will seek a reasonable estimate of the nature and
18 amount of recovery that each class member could have obtained if the Plaintiff had prevailed in the
19 litigation. Numerous decisions summarize a trial court's task when considering whether to approve
20 the settlement of a putative class action. (*Id.*) As Division Five of this Court stated:

21 The trial court has broad discretion to determine whether the settlement is fair. [Citation.]
22 It should consider relevant factors, such as the strength of Plaintiff's case, the risk, expense,
23 complexity and likely duration of further litigation, the risk of maintaining class action
24 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.

25 *Cellphone Fee Termination Cases* (2009) 180 Cal.App.4th 1110, 1117-18 (citations omitted). The
26 court's consideration of relevant factors, however, does not transform the settlement approval
27 "into a trial or rehearsal for trial on the merits." *7-Eleven Owners for Fair Franchising*, 85
28 Cal.App.4th at 1145 (internal citation omitted). The record need only provide the trial court with

1 an understanding of the amount that is in controversy and the realistic range of outcomes of the
2 litigation. Because settlements are inherently a compromise, once the parties have provided it
3 with the requisite “basic information,” the trial court must only “satisfy itself that the class
4 settlement is within the ‘ballpark’ of reasonableness.” *Tech-Bilt, Inc. v. Woodward-Clyde &*
5 *Assoc.* (1985) 38 Cal.3d 488, 499-500.

6 Here, in preparation for mediation, Plaintiff calculated Defendants’ liability to Class
7 Members to be in excess of the settlement amount. Plaintiff’s valuation assumed that Plaintiff: (1)
8 prevailed in certifying the case; (2) prevailed in establishing liability on the merits; and (3) was
9 awarded the full amount of all discretionary penalties (Bass Decl., ¶ 32). The realistic range of
10 outcomes for this litigation took into account the present state of the law regarding meal and rest
11 break claims and the other claims brought in the Action, Defendant’s defenses for each claim, and
12 the likelihood of prevailing on a class certification motion as well as trial and any appeals (*Id.*, ¶
13 33). Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
14 *Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011,1026.

15 ***Kullar v. Footlocker Analysis***²

16 To allow this Court to make an informed assessment pursuant to *Kullar v. Foot Locker*
17 *Retail, Inc.* (2008) 18 Cal.App.4th 116, Plaintiff’s Counsel provides the following assessment of
18 the case and settlement. Plaintiff’s Counsel believes that the settlement is a very good one for the
19 class members. In this case, Plaintiff sought unpaid wages and statutory penalties as well as
20 equitable remedies of declaratory relief, disgorgement, accounting, and restitution. (Bass Decl., ¶
21 34). Plaintiff estimated Defendant’s total non-penalty exposure at \$415,417.00. As such, the
22 settlement represents over approximately 39.7% of Defendant’s non-penalty exposure based on
23

24 ² As discussed in Plaintiff’s Supplemental Briefing in Support of Motion for Preliminary
25 Approval, Plaintiff’s counsel was provided time and earnings records for 25 of Defendants’ 91
26 employees identified as putative class members. Thereafter, Plaintiff’s counsel relayed to Berger
27 Consulting for analysis that information agreed to and provided by Defendants’ counsel. This
28 information consisted of time punch and earnings records for 25 sample class members for the
dates of July 2020 through June 2022. Just like the current class size estimate, as of mediation the
class size including all locations was estimated to be 91 employees. According to Berger, using
the industry standard statistical sample size calculator from Raosoft, the 25 employees analyzed
out of the class size of 91 employees provides a 92% confidence level with an 15% margin of
error. (Bass Decl., ¶ 35).

1 Plaintiff's analysis. This is a reasonable recovery, particularly given the number of class members
2 at issue and the size of Defendant's operations. (Bass Decl., ¶ 36).

3 Courts have determined that settlements are, of course, reasonable even where Plaintiffs
4 recover only a portion of their actual losses. *See Behrens v. Wometco Enters., Inc.* (S.D. Fla. 1988)
5 118 F.R.D. 534, 542, *aff'd*, (11th Cir. 1990) 899 F.2d 21 (“[T]he fact that a proposed settlement
6 amounts to only a fraction of the potential recovery does not mean the settlement is unfair or
7 inadequate.”). Indeed, “[a] settlement can be satisfying even if it amounts to a hundredth or even -
8 a thousandth of a single percent of the potential recovery.” *Id.*; *see also City of Detroit v. Grinnell*
9 *Corp.* (S.D.N.Y. 1972) 356 F.Supp. 1380, 1386 [a recovery of 3.2% to 3.7% of the amount sought
10 is “well within the ball park”], *aff'd in part, rev'd on other grounds*, (2d Cir. 1974) 495 F.2d 448;
11 *Martel v. Valderamma* (C.D. Cal. 2015) 2015 U.S. Dist. LEXIS 49830 * 17 (approving a settlement
12 of \$75,000 when potential damages were \$1.2 million); *In re Toys R US FACTA Litig.* (C.D. Cal.
13 2014) 295 F.R.D. 438, 453 (approving settlement with vouchers (not cash) potentially worth a
14 maximum of three percent (3%) if all possible claims were actually made, or \$391.5 million
15 aggregate voucher potential where the class could have recovered \$13.05 billion); 4 William B.
16 Rubenstein et al., *Newberg on Class Actions* (5th ed. 2016) § 13:15 (the range of reasonableness
17 percentage could be as low as 1/100th or 1/1000th of 1%); *Ma v. Covidien Holding, Inc.*, (C.D. Cal.
18 Jan. 31, 2014, No. SACV 12-02161-DOC) 2014 WL 360196, at *5 (finding a settlement worth
19 9.1% of the total value of the action “within the range of reasonableness”); *Balderas v. Massage*
20 *Envy Franchising, LLC*, (N.D. Cal. July 21, 2014, No. 12-CV-06327 NC) 2014 WL 3610945, at
21 *5 (granting preliminary approval of a net settlement amount representing 5% of the projected
22 maximum recovery at trial); *Glass v. UBS Fin. Servs., Inc.* (N.D. Cal. Jan. 26, 2007, No. C-06-4068
23 MMC) 2007 WL 221862, at *9, *aff'd*, 331 Fed. Appx. 452 (9th Cir. 2009) (approving a settlement
24 of an action claiming unpaid overtime wages where the settlement amount constituted
25 approximately 25% to 35% of the estimated actual loss to the class).

26 Below, Plaintiff details the issues that necessitated deductions from the maximum potential
27 value of this case to arrive at the reasonable Maximum Settlement Amount derived in this action.
28 Here there are approximately 91 Class Members who collectively worked a total of 2,953

1 Workweeks and 91 Aggrieved Employees who worked an estimated 2,921 PAGA Pay Periods.
2 (Bass Decl. ¶ 37).

3 **Rest Periods:** Plaintiff calculated Defendant's maximum liability to be about 4.5
4 violations per employee per week at the average hourly rate of \$15.86 per violation. As such,
5 with a 100% violation rate, Plaintiff estimated that Defendant's exposure could be as high as
6 \$210,320. Plaintiff did not discount this number or the calculations that follow in order to arrive
7 at the settlement; rather, Plaintiff discounted the number in order to reach a settlement that
8 understood the risks of continued litigation and difficulties in showing a 100% violation rate for
9 rest breaks during employee shifts. (Bass Decl. ¶ 38).

10 **Meal Periods:** Plaintiff again calculated Defendant's maximum liability at about a 46.4%
11 unique violation rate for meal breaks or 1,030 unique meal period violations. However, the data
12 provided also showed approximately 491 meal premium payments were paid, reducing potential
13 violations to approximately 539 instances or 24.3% of eligible breaks. As such, Plaintiff
14 estimated that Defendant's exposure could be as high as \$3,420. Plaintiff did not discount this
15 number or the calculations that follow in order to arrive at the settlement; rather, Plaintiff
16 discounted the number in order to reach a settlement that understood the risks of continued
17 litigation and difficulties in showing a 100% violation rate for meal breaks during employee
18 shifts. (Bass Decl. ¶ 39).

19 **Unpaid Off-the-Clock:** Based on Plaintiff's experiences and personal observations at
20 work, Plaintiff estimated that approximately 0.5 hours (30 minutes) of work was performed off-
21 the-clock by employees on a daily basis, resulting in an approximately \$143,806 in
22 underpayments at employees' regular rate and \$5,667 in unpaid overtime. (Bass Decl. ¶ 40).

23 **Penalties:** Although the Class arguably could have seen a payout of approximately
24 \$279,061 for waiting time penalties (for 62 terminated employees during a three-year statutory
25 period) and \$202,300 in wage statement penalties (for 91 employees for a one-year period),
26 Plaintiff's Counsel had to weigh the likelihood of recovery against probable defenses and the wide
27 discretion Courts have exercised in awarding Labor code penalties. Along these lines, Plaintiff
28 considered that Defendant would argue that Plaintiff could not prove the "willful" prong needed to

1 obtain waiting time penalties under Cal. Lab. Code § 203 and would further argue that Plaintiff
2 could not show that Class Members suffered an “injury” as a result of wage statement violations,
3 as required by Cal. Lab. Code § 226. Further, Plaintiff arguably could not recover any waiting time
4 penalties for meal and rest claims. Moreover, Plaintiff would not recover any derivative penalties
5 if he failed to prove the underlying claims. (Bass Decl. ¶ 41).

6 **Certification in General:** The great discretion afforded trial courts in electing to grant or
7 deny class certification, and the resultant possibility that this Court would deny certification of any
8 of the claims, resulting in no recovery whatsoever for those unnamed class members further
9 weighed in favor of settlement. Indeed, going into settlement discussions and during the course of
10 constructing the settlement, Class Counsel bore in mind similar meal and rest break cases wherein
11 class certification was denied. *See e.g. In re Lamps Plus Overtime Cases* (2012) 209 Cal.App.4th
12 35; *Washington v. Joe's Crab Shack* (N.D. Cal. 2010) 271 F.R.D. 629 (“individualized inquiry will
13 be required to determine whether any single employee failed to take a meal break because he/she
14 was too busy, and also to determine whether a particular employee signed a waiver based on a
15 decision not to take meal breaks”). *Hernandez v. Chipotle Mexican Grill, Inc.* (2012) 146
16 Cal.Rptr.3d 424, 2012 WL 3579567, *10.

17 **Trial and Manageability Issues:** While Plaintiff was confident in the strength of his
18 claims, as is always the case with a trial, Plaintiff needed to accept that there was a possibility that
19 he would not prevail at trial. Compromise is inherent and necessary in the settlement process. Thus,
20 even if “the relief afforded by the proposed settlement is substantially narrower than it would be if
21 the suits were to be successfully litigated,” this is no bar to a class settlement because “the public
22 interest may indeed be served by a voluntary settlement in which each side gives ground in the
23 interest of avoiding litigation.” *Id.* at 250 (quoting *Air Line Stewards, Loc. 550 v. American*
24 *Airlines, Inc.*, (7th Cir.1972) 455 F.2d 101, 109. The Ninth Circuit observed “the very essence of
25 a settlement is compromise, ‘a yielding of absolutes and an abandoning of highest hopes.’” *Officers*
26 *for Justice v. Civil Serv. Commission* (9th Cir.1982) 688 F.2d 615, 624 (citation omitted). Thus,
27 when analyzing the amount offered in settlement, the Court should examine “the complete package
28

1 taken as a whole,” and the amount is “not to be judged against a hypothetical or speculative measure
2 of what might have been achieved by the negotiators.” *Id.* at pp. 625, 628.

3 Given the difficulties Plaintiff and the Settlement Class faced, both in terms of certification
4 and in adjudicating their claims on the merits, the litigation discounts afforded by Plaintiff are
5 appropriate and the settlement is fair, reasonable, and adequate. In the present case, it is clear that
6 the settlement before this Court is the best course of action as it ensures a fair and adequate recovery
7 for the members of the class. Thus, it was clearly reasonable for Plaintiff to negotiate a smaller
8 certain award rather than seek the full recovery but risk recovering nothing.

9 Plaintiff, in agreeing to the settlement had to take into account the difficulties in certifying
10 a class and maintaining any such certification. Moreover, Plaintiff had to take into account the
11 uncertainties, including business uncertainties facing Defendants and similar employers during the
12 ongoing COVID 19 pandemic. Each of these concerns weighed into Plaintiff’s analysis to
13 eventually agree to a settlement that is less than Defendant’s total projected liability even if Plaintiff
14 eventually won every aspect of this case including potential appeal. A settlement now guarantees
15 that class members will 1) obtain a recovery and 2) that they will get the recovery in a time period
16 that is shorter than one if the case went through a full trial and appeal process. (Bass Decl., ¶ 42).

17 The settlement amount was a negotiated compromise, factoring in the risks related to
18 certification, liability, and damages. Taking into account all of the circumstances of the action and
19 the significant factual and legal defenses raised by Defendant against certification, liability, and
20 damages, Class Counsel believe that the settlement is fair and reasonable. Each Class Member’s
21 individual share of the settlement amount is tailored to the number of shifts worked by each Class
22 Member during the class period so the distribution is weighted in favor of those Class Members
23 who were potentially most affected by the alleged violations. Moreover, because the class consists
24 of several employees, it was unlikely that the potential monetary claims of individual Class
25 Members would have proved viable without the class-action mechanism. (Bass Decl. ¶ 43).

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

27 This “Parties represented by competent counsel are better positioned than courts to
28 produce a settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pacific*

1 *Enterprises Security Litigation*, 47 F.3d 373, 378 (9th Cir. 1995). Here, Plaintiff is represented by
2 competent and experienced counsel who possess extensive experience litigating wage and hour
3 class actions and have been appointed as class counsel in numerous cases alleging similar claims.
4 (Bass Decl., ¶¶ 44-50).

5 There is an initial presumption that a proposed settlement is fair and reasonable if it is the
6 result of arms-length negotiations. See *Williams v. Vukovich*, 720 F.2d 909, 922-923 (6th Cir,
7 1983) (“The court should defer to the judgment of experienced counsel who have competently
8 evaluated the strengths of his proofs.”); *In re Excess Value Ins. Coverage Litig.*, No. M-21-84
9 (RMB) 2004 WL 1724980, at *10 (S.D.N.Y. July 30, 2004) (“Where ‘the court finds the
10 settlement is the product of arm’s length negotiations conducted by experienced counsel
11 knowledgeable in complex class litigation, the settlement will enjoy a presumption of fairness.’”);
12 *In re Inter-Op Hip Prosthesis Liab. Litig.*, 204 F.R.D. 330, 351 (N.D. Ohio 2001) (granting
13 preliminary approval of settlement “where the settlement is the result of extensive negotiations by
14 experienced counsel...”); see also 2 Hebert Newberg & Alba Conte, *Newberg on Class Actions*,
15 §11.41 at 90 (4th Ed. 2001).

16 Counsel for Plaintiff have extensive experience in employment law, particularly wage and
17 hour class action litigation. (Bass Decl., ¶¶ 44-52). Counsel for Plaintiff and Defendant each
18 zealously negotiated on behalf of their respective clients’ best interests, and the Settlement was
19 reach after lengthy negotiations. As a result, the Settlement is presumed to be fair and reasonable,
20 and was not the product of collusion.

21 **D. No Class Members Have Opted Out of or Objected to the Settlement**

22 As part of CPT’s preparation for mailing, all 91 names and addresses contained in the
23 Class List were processed against the National Change of Address (“NCOA”) database,
24 maintained by the United States Postal Service (“USPS”), for purposes of updating and
25 confirming the mailing addresses of the Settlement Class Members before mailing of the Notice
26 Packet. (See Talavera Decl., ¶ 6). On July 14, 2023, the Notices were mailed by U.S. first class
27 mail to 91 Settlement Class Members. The deadline to submit requests for exclusion or objection
28 was August 28, 2023. (*Id.*, ¶ 10). Two Notice Packets were returned as undeliverable, both of

1 which had a forwarding address. These Notice Packets were immediately re-mailed upon receipt.
2 (*Id.*, ¶ 8). As of this date, none of the Notice Packets were deemed undeliverable. (*Id.*, ¶ 9).

3 The Administrator has received no requests for exclusion from the Settlement, disputes or
4 objections. (*Id.*, ¶ 11-13). As of the date of this filing, a 100% participation rate is anticipated.
5 (*Id.*, ¶ 14). Accordingly, all factors typically used by California courts to determine the
6 appropriateness of final approval of a class action settlement weigh in favor of finding that this
7 Settlement is a fair and reasonable result after well-represented parties who engaged in arms-
8 length negotiations over hotly-contested and unclear issues of California's wage and hour laws,
9 culminating in a settlement that provides a substantial benefit to all class members. In other
10 words, the Settlement as proposed by the parties should be finally approved.

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

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

13 In the Settlement, Defendants agreed, subject to Court approval, to pay Class Counsel an
14 award of reasonable attorneys' fees in the amount of \$55,000 and \$20,000 in costs (Bass Decl.,
15 Exh., A at 3.2.2.), for work performed for the benefit of the Class. To date, Class Counsel has
16 incurred only \$15,823.00 in litigation costs. (Bass Decl., Exh. D). In terms of their actual time
17 spent on the matter, Class Counsel will have collectively spent more than 180.8 hours. (Bass
18 Decl., ¶ 56) Multiplying the hours by their hourly rates, Class Counsel's incurred fees exceed
19 \$139,316.00. (Bass Decl., ¶¶ 56-57). Class Counsel anticipate spending additional time attending
20 the final approval hearing and working with the Settlement Administrator through the
21 disbursement and accounting process, that will likely exceed 30 hours. (*Id.*, ¶ 58).

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

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

1 *Lealao*, 82 Cal.App.4th 19, 26-27. As stated above, Class Counsel’s actual fees incurred litigating
2 this case already exceed \$139,316.00. (Bass Decl., ¶¶ 56-57). Beyond a simple review of Class
3 Counsel’s hours worked, the fee award presently requested comports with attorneys’ fee awards
4 issued by other courts under both the “common fund” and “lodestar” methodologies.

5 Because the requested award is well within those typically provided a multiplier when
6 approved by California courts, and because it is fully supported by the factors that California
7 courts consider in determining the reasonableness of attorney fee awards in class action cases,
8 Class Counsel respectfully submit that their request for \$55,000 in fees is appropriate.

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

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

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

25 **1. The “Common Fund” Doctrine**

26 The California Supreme Court has held it is advisable for trial courts to employ the
27 “common fund” doctrine to award attorneys' fees and costs to Class Counsel in class actions,
28 where litigants proceeding in a representative capacity have secured a monetary settlement or

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

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

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

24 In fact, fees amounting to 35% or more of the settlement fund are often awarded. In
25 *Crandall v. U-Haul* (Los Angeles County Super. Ct., Case No. BC178775), the Honorable Steven
26 Czuleger awarded a 40% attorney fee request in an overtime-exemption class action; in *Bushnell*
27 *v. Cremar, Inc.* (Orange County Super. Ct., Case No. 657778), the Honorable Donald E.
28 Smallwood awarded attorneys' fees in the amount of 38%; in *Abzug v. Kerkorian* (CA000981,

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

10 In this case, 33 1/3% of the Settlement in attorney's fees is fair and reasonable in light of
11 the time spent by Class Counsel litigating this case and the substantial benefit received by class
12 members. Moreover, the award is approved by the class representative and Defendant, and to date
13 no class members have objected to the requested attorney's fees. Accordingly, the fee request
14 here is warranted and should be granted.

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

16 Some California courts also use a lodestar approach, with a multiplier, in awarding
17 attorneys' fees and costs. The lodestar method is often used to cross-check the propriety of the
18 common fund award. *Lealao, supra*, 82 Cal.App.4th at 49; *Salton Bay Marina, Inc. v. Imperial*
19 *Irrigation Dist.* (1985) 172 Cal.App.3d 914, 954. The issue here is not why the court should
20 award a fee commensurate with 33 1/3% of the fund, but why the court should not award such a
21 fee.

22 The lodestar method requires that a trial court first determine a "lodestar" figure based on
23 a "careful compilation of the time spent in reasonable hourly compensation for each attorney
24 involved in the presentation of the case." *Serrano*, 20 Cal.3d at 48. Presently, the "lodestar"
25 figure is over \$139,316.00. (Bass Decl., ¶¶ 56-57). The lodestar figure may then be increased by
26 the application of a "multiplier." *Id.* This settlement comes after protracted litigation, and Class
27 Counsel has provided this Court with both a summary of their hourly rates and hours billed in this
28 matter that attest to their diligent efforts. To summarize the lodestar, Class Counsel's time

1 summaries show that they worked over 180.8 hours on this case, not even including all the hours
2 spent on this motion, for the final approval hearing, and through the distribution and accounting
3 process thereafter. (Bass Decl., ¶¶ 56-58). Based on their hourly rates, the lodestar calculation
4 produces over \$139,316.00. in fees, not even requiring a multiplier. (Bass Decl., ¶¶ 56-57).

5 3. **Application of a Positive Multiplier Is Appropriate, but Unnecessary**

6 The lodestar amount may be increased by applying a multiplier. *See Serrano*, 20 Cal.3d at
7 49; *Beasley v. Wells Fargo Bank* (1991) 235 Cal.App.3d 1407. In California, “[m]ultipliers can
8 range from two to four or even higher” and are routinely applied in the range requested by Class
9 Counsel. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 254; *see also Chavez v.*
10 *Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 (upholding 2.5 multiplier); *Glendora Community*
11 *Redevelopment Agency v. Demeter* (1984) 155 Cal.App.3d 465 (affirming a fee award that
12 included a 12.0 multiplier); *Craft v. County of San Bernardino* (C.D. Cal. 2008) 624 F.Supp.2d
13 1113, 1125 (awarding a common fund fee which amounted to a 5.2 multiplier); *Vizcaino v.*
14 *Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051 (approving a 3.65 multiplier); *Van Vranken*
15 *v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 298-299 (approving multiplier of
16 3.6). Some of the factors a trial court considers when determining whether to apply a multiplier
17 are: “(1) the novelty and difficulty of the questions involved, (2) the skill displayed in presenting
18 them, (3) the extent to which the nature of the litigation precluded other employment by the
19 attorneys, (4) the contingent nature of the fee award.” *See Ketchum v. Moses* (2001) 24 Cal.4th
20 1122, 1132 (citations omitted). The ultimate goal is “to entice competent counsel to undertake
21 difficult public interest cases.” *San Bernardino Valley Audubon Soc. v. County of San*
22 *Bernardino* (1985) 155 Cal.App.3d 738, 755. Fee awards that are too small “chill the private
23 enforcement essential to the vindication of many rights....” *Lealao v. Beneficial California, Inc.*
24 (2000) 82 Cal.App.4th 19, 53. Recently, the Honorable Amy D. Hogue approved a multiplier of
25 3.25 based on similar factors in *Sofia Lopez v. Citris Valley Health Partners, Inc.*, Los Angeles
26 Superior Court case number BC544139 (Final approval granted November 19, 2015).

27 In *Ketchum*, the California Supreme Court held that fee enhancement in contingency cases
28 is necessary to (1) fully compensate counsel for the “loan” of legal services in light of the

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

14 Application of a multiplier would be appropriate but is unnecessary. Having filed the case
15 on April 26, 2021, Class Counsel will have been litigating this case for nearly 3 years before
16 receiving any reimbursement, expending significant time and resources which could have been
17 directed towards other cases. Class Counsel agreed to litigate this case on a contingent fee basis,
18 and in the process assumed considerable risk given the uncertain proposition these types of cases
19 entail. (Bass Decl., ¶ 53). As the results in other cases demonstrate, the risk presented in this case
20 was significant. Courts frequently dismiss class and representative allegations and compel
21 arbitration in similar cases. Class Counsel takes multiple risks while trying to vindicate the rights
22 of workers and serve to illustrate the recognition by the California Supreme Court in *Ketchum*
23 that, if multipliers are not awarded to class counsel in the cases that are successfully settled,
24 counsel’s fees are essentially being cut because the lodestar in and of itself would not account for
25 contingent risk. Thus, application of a multiplier would be appropriate given the contingent risk
26 incurred by Class Counsel, the difficulty of the questions involved, the substantial benefit
27 conferred on the Class and State as a result of the Settlement, and the skill displayed by Class
28

1 Counsel. Plaintiff respectfully requests that the Court award Class Counsel the requested fees of
2 \$ 55,000.00, under the common fund theory with a lodestar cross-check without a multiplier.

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

4 In the course of this litigation, Class Counsel have incurred costs totaling \$15,823.00 and
5 will incur additional expenses in filing this motion and through the completion of the
6 disbursement and accounting process (including, but not limited to, filing this Motion and
7 appearance at the hearing, and other appearances and communications regarding final
8 accounting). Such litigation-related costs are reimbursable in class action cases. *In re United*
9 *Energy Corp. Sec. Litig.*, 1989 U.S. Dist. LEXIS 19146 at *16 (C.D. Cal. 1989) [quoting
10 Newberg, Attorney Fee Awards § 2:19 (1987)].

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

15 **D. The Proposed Service Award to the Plaintiff is Reasonable**

16 The parties have agreed to a service award of no more than \$7,500.00 to Plaintiff (Bass
17 Decl., Exh. A at 3.2.1). The service award is proper for several reasons. First, service awards “are
18 not uncommon and can serve an important function in promoting class action settlements.”
19 *Sheppard v. Consolidated Edison Co. of New York, Inc.*, 2002 WL 2003206, * 5 (E.D.N.Y.
20 2002); see also *Petrovic v. Amoco Oil Co.*, 200 F.3d 1140 (8th Cir. 1999) (noting that class
21 representatives frequently receive substantial incentive payments); *In re Southern Ohio*
22 *Correctional Facility*, 175 F.R.D. 270, 272 (S.D. Ohio 1997) (“[c]ourts routinely approve
23 incentive awards to compensate named plaintiffs for the services they provided and the risks they
24 incurred during the course of the class action litigation”).

25 Second, the incentive is proper considering that Plaintiff spent a substantial amount of his
26 own time to ensure that the class claims could proceed and to ensure that class members received
27 a benefit in this case. (Bass Decl., ¶¶ 62-63). Plaintiff worked with counsel to assist in this case.
28 (Declaration of Joaquin Rojas (“Rojas Decl.”) ¶¶ 6-7). Specifically, Plaintiff met with his

1 attorneys before the lawsuit was filed and discussed his experience working for Defendant.
2 Plaintiff also searched for all documents related to his employment with Defendant. *Id.*
3 Throughout the litigation, Plaintiff remained in close contact with counsel and engaged in
4 numerous telephone conversations regarding the claims in the case and Defendants' defenses to
5 those claims. *Id.* Plaintiff assisted in preparation for mediation and appeared at mediation for this
6 matter. *Id.* Plaintiff had numerous conversations with counsel regarding the potential of the
7 lawsuit, as well as the terms of the ultimate Settlement Agreement which Plaintiff reviewed the
8 drafts and versions thereof. *Id.* It is estimated that over the course of the lawsuit, Plaintiff spent
9 well over 60 hours working on the case for the benefit of both himself and the other members of
10 the class. *Id.* at ¶ 6.

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

14 Fourth, notice was provided to the class that the incentive would be paid, and no class
15 member has objected. The other class members, who undertook none of the risks which Plaintiff
16 did, stand to substantially benefit from the Plaintiff's willingness to come forward.

17 Lastly, courts have frequently approved substantial incentive payments to class members
18 for their participation in class action lawsuits. See *In re Southern Ohio Correctional Facility*,
19 *supra*, 175 F.R.D. at 272 (recognizing that "[c]ourts routinely approve incentive awards to
20 compensate named plaintiffs for the services they provided and the risks they incurred during the
21 course of the class action litigation."); *Ingram v. The Coca-Cola Co.*, 200 F.R.D. 685, 694 (N.D.
22 Ga. 2001) (\$300,000 incentive award to each named plaintiff); *Enterprise Energy Corp. v.*
23 *Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 250-251 (S.D. Ohio 1991) (incentive
24 payments of \$50,000 to each class representative); *In re Dunn & Bradstreet Credit Services*
25 *Consumer Litigation*, 130 F.R.D. 366, 373-374 (S.D. Ohio 1990) (incentive payments amounting
26 to \$35,000 to \$55,000 for each class representative); see also, *Van Vranken v. Atlantic Richfield*
27 *Co.*, 901 F.Supp. 294, 299-300 (N.D. Cal. 1995) (approving \$50,000 participation award); *Lo Re*
28 *v. Chase Manhattan Corp.*, 1979 U.S. Dist. LEXIS 12210, *16-17 (S.D.N.Y. 1979) (payment of

1 \$229,000 out of \$1,579,000 settlement fund to settle named plaintiffs claims did not cause the
2 settlement to be unreasonable).

3 In sum, the named Plaintiff took risks, bore hardships, and made sacrifices that absent
4 class members did not. Rewarding his efforts is a proper incentive for individuals who come
5 forward to challenge employment practices on a class-wide level, thus fulfilling the policies and
6 purposes underlying the Labor Code.

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

8 Concurrently with this submission to the Court, Plaintiff's Counsel uploaded this motion,
9 supportive declarations, Proposed Order and Proposed Judgment to the LWDA's website. (Bass
10 Decl., ¶ 65, Exh. E). Similarly, a draft of Plaintiff's Motion and the Proposed Order and Judgment
11 were provided to Counsel for Defendants in advance of filing. (*Id.*, ¶ 66). Defendant's counsel
12 provided their suggested changes to the content of the Motion and Proposed Order or Judgment.
13 *Id.* As such it is not anticipated that Defendants will oppose Plaintiff's Motion. *Id.*

14 **VI. CONCLUSION**

15 For the foregoing reasons, Plaintiff respectfully requests that the Court grant final
16 approval the proposed settlement, certifying the Settlement Class, and entering the Proposed
17 Order and Proposed Judgment submitted concurrently herewith.

18
19 Dated: October 11, 2023

MAKAREM & ASSOCIATES, APLC

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21 By: Daniel Bass
22 Daniel J. Bass
23 Attorney for JOAQUIN ROJAS
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