

Justin F. Marquez (SBN 262417)
justin@wilshirelawfirm.com
Benjamin H. Haber (SBN 315664)
benjamin@wilshirelawfirm.com
Arrash T. Fattahi (SBN 333676)
afattahi@wilshirelawfirm.com

WILSHIRE LAW FIRM

3055 Wilshire Blvd., 12th Floor
Los Angeles, California 90010
Telephone (213) 381-9988
Facsimile: (213) 381-9989

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

KANEISHA KINGSBURY, individually, and on
behalf of all others similarly situated, and on
behalf of the State of California and other
aggrieved persons,

Plaintiff,

v.

CARAVAN FOODS II, INC., a corporation; and
DOES 1 through 10, inclusive,

Defendants.

Case No. RG21096357

CLASS ACTION

[Assigned to: Hon. Brad Seligman, Dept. 23]

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR FINAL APPROVAL
OF CLASS ACTION SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES**

[Filed concurrently with: Declaration of
Justin F. Marquez in Support of Plaintiff's
Motion for Final Approval of Class Action
Settlement; Declaration of Kaneisha
Kingsbury; Declaration of Tarus Dancy;
[Proposed] Order and Judgment Granting
Plaintiff's Motion for Final Approval of Class
Action Settlement]

FINAL APPROVAL HEARING

Date: January 31, 2023

Time: 3:00 p.m.

Dept: 23

RESERVATION ID: A-21096357-001

1 **TO THE COURT AND TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

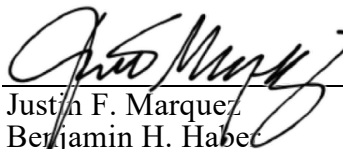
2 PLEASE TAKE NOTICE that on January 31, 2023, at 3:00 p.m., in Department 23 of the
3 Alameda County Superior Court, 1225 Fallon Street, Oakland, California 94612, pursuant to Code
4 of Civil Procedure § 382 and California Rules of Court 3.769, *et seq.*, Plaintiff Kaneisha Kingsbury
5 (“Plaintiff”) will move the Court for an Order granting final approval of the proposed class action
6 settlement between Plaintiff and Defendant Caravan Foods II, Inc. Plaintiff further moves the
7 Court for an Order:

- 8 1. Certifying a Class for settlement purposes only;
- 9 2. Approving the settlement as fair and reasonable and finding that class members were
10 given notice of the settlement, and advised of their right to participate in the
11 settlement, object to the settlement, or exclude themselves from the settlement, in a
12 reasonable manner;
- 13 3. Appointing Plaintiff Kaneisha Kingsbury as Class Representative for settlement
14 purposes only, and approving payment of \$10,000.00 to Plaintiff for her services as the
15 Class Representative;
- 16 4. Appointing Plaintiff’s Counsel, Wilshire Law Firm, PLC, as Class Counsel for
17 settlement purposes only;
- 18 5. Approving payment of settlement administrative expenses to CPT Group, Inc. in the
19 amount of \$14,500.00;
- 20 6. Approving payment of up to \$416,666.67 in attorney’s fees, which is 33 1/3% of the
21 initial Settlement Amount of \$1,250,000.00, and costs of \$17,165.76 for litigating this
22 action to Class Counsel;
- 23 7. Approving the PAGA Settlement in the amount of \$40,000.00, with \$30,000.00 to be
24 paid to the California Labor Workforce Development Agency;
- 25 8. Directing that the clerk of the Court enter the Court’s order as a final judgment;
- 26 9. Without affecting the finality of the final judgment, reserving continuing jurisdiction
27 over the parties for the purposes of implementing, enforcing and/or administering the
28 Settlement or enforcing the terms of the judgment.

1 The Motion will be based upon this Notice, the attached Memorandum of Points and
2 Authorities, the Declaration of Justin F. Marquez, the Declaration of Kaneisha Kingsbury, and the
3 Declaration of Tarus Dancy, filed concurrently herewith, the records and files in this action, and
4 any other further evidence or argument that the Court may properly receive at or before the hearing.
5

6 Dated: January 6, 2023

WILSHIRE LAW FIRM

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8 By: _____
9 Justin F. Marquez
Benjamin H. Haber
Arrash T. Fattahi

10 Attorneys for Plaintiff
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Kaneisha Kingsbury (“Plaintiff”) seeks final approval of a proposed \$1,250,000.00 non-reversionary, wage and hour class action settlement with Defendant Caravan Foods II, Inc. (“Defendant,” and together with Plaintiff, the “Parties”).

The proposed Settlement satisfies all the criteria for settlement approval under California law. A presumption of fairness exists as the Settlement was reached through extensive, mediated arm’s-length negotiations, sufficient investigation and discovery allowed Class Counsel to act intelligently, and Class Counsel is experienced in similar wage-and-hour litigation. The Settlement will provide substantial monetary payments to approximately 1,086 class members. Upon the Court’s approval of the settlement, participating class members will receive an **estimated average payment of \$698.74**. (Declaration of Tarus Dancy on Behalf of CPT Group, Inc. [“Dancy Decl.”], ¶ 16.) Among the participating class members, the **estimated highest payment will be \$2,367.63** and the estimated lowest payment will be \$8.67. (*Id.*) As of filing this Motion, there are no objections to the settlement, no disputes to the number of workweeks, and only one (1) request for exclusion. (*Id.* at ¶¶ 10-12.) Thus, the proposed Settlement is fair, reasonable, and adequate and is in the best interests of the Settlement Class Members.

Plaintiff’s request for attorneys’ fees in the amount of up to \$416,666.67 (which is one-third of the total Settlement amount), reimbursement of costs and expenses in the amount of \$17,165.76, an enhancement in the amount of \$10,000.00 to the Plaintiff, Settlement Administrative Costs of \$14,500.00, and a PAGA Settlement of \$40,000.00, with a 75% allocation to the California Labor Workforce Development Agency (“LWDA”) in the amount of \$30,000.00, are also reasonable and thus should be approved by the Court.

Accordingly, Plaintiff respectfully requests the Court grant final approval of the Settlement.

II. SUMMARY OF THE LITIGATION AND SETTLEMENT

A. Plaintiff’s Claims and Relevant Background

This is a wage and hour class and Private Attorneys General Act (“PAGA”) (Cal. Lab. Code §§ 2699, *et seq.*) representative action. Plaintiff and the putative class members worked

1 in California as hourly-paid, non-exempt employees for Defendant during the class period.
2 Defendant specializes in the development, production, and supply of frozen and fresh bakery
3 products. (Declaration of Justin F. Marquez in Support of Plaintiff’s Motion for Final Approval
4 of Class Action Settlement [“Marquez Decl.”], ¶ 2.)

5 Plaintiff alleges that Defendant’s payroll, timekeeping, and wage and hour practices
6 resulted in Labor Code violations. Plaintiff alleges that Defendant failed to pay for all hours
7 worked by not recording the actual start and end times of shifts for each workday. Plaintiff
8 further alleges that Defendant failed to include all remuneration in the employees’ overtime rate
9 and meal period premiums. Plaintiff further alleges that Defendant failed to provide employees
10 with legally compliant meal and rest periods. Plaintiff further alleges that Defendant failed to
11 reimburse employees for all necessary business-related expenditures. Based on these
12 allegations, Plaintiff asserts claims against Defendant for failure to pay minimum and straight
13 time wages, failure to pay overtime wages, failure to provide meal periods, failure to authorize
14 and permit rest periods, failure to timely pay all final wages at termination, failure to provide
15 accurate itemized wage statements, failure to indemnify employees for expenditures, unfair
16 business practices, and civil penalties under PAGA. (*Id.* at ¶ 3.) Defendant denies the
17 allegations and contends that its employment practices were at all relevant times compliant with
18 applicable California law.

19 On April 9, 2021, Plaintiff filed a putative wage-and-hour class action complaint against
20 Defendant for: (1) failure to pay minimum and straight time wages (Cal. Lab. Code §§ 204,
21 1194, 1194.2, and 1197); (2) failure to pay overtime wages (Cal. Lab. Code §§ 1194 and 1198);
22 (3) failure to provide meal periods (Cal. Lab. Code §§ 226.7 and 512); (4) failure to authorize
23 and permit rest periods (Cal. Lab. Code §§ 226.7); (5) failure to timely pay final wages at
24 termination (Cal. Lab. Code §§ 201-203); (6) failure to provide accurate itemized wage
25 statements (Cal. Lab. Code § 226); and (7) unfair business practices (Cal. Bus. & Prof. Code §§
26 17200, *et seq.*). (*Id.* at ¶ 4.) On May 6, 2021, Plaintiff filed a First Amended Class Action
27 Complaint, which removed Sterling Foods, Inc. from the complaint, added Sterling BV, Inc. as
28 a defendant, and added a cause of action for Failure to Indemnify Employees for Expenditures.

1 (*Id.*)

2 Following the filing of the Complaint, the Parties exchanged documents and information
3 before mediating this action. (*Id.* at ¶ 6.) The Parties’ informal discovery exchange included
4 the production of Defendant’s relevant policy documents that were in effect during the class
5 period and an approximately 20% randomized sampling of timekeeping and payroll records for
6 the class. (*Id.*) The number of shifts in the sample (70,728) that Plaintiff’s counsel was able to
7 review indicated a 0.44% margin of error on a 99% confidence interval when entered into a
8 sample size calculator. (*Id.*)

9 After reviewing the documents regarding Defendant’s wage and hour policies and
10 practices and analyzing Defendant’s timekeeping and payroll records, Class Counsel was able
11 to evaluate the probability of class certification, success on the merits, and Defendant’s
12 maximum monetary exposure for all claims. (*Id.* at ¶ 7.) Class Counsel also investigated the
13 applicable law regarding the claims and defenses asserted in the Litigation. (*Id.*) Class Counsel
14 reviewed these records and utilized an expert to prepare a damages analysis prior to mediation.
15 (*Id.*)

16 On November 1, 2022, Plaintiff filed her Second Amended Class and Representative
17 Action Complaint (the “Operative Complaint”), which was permitted by the Court and required
18 under the Settlement Agreement. (*Id.* at ¶ 5.) Plaintiff’s Operative Complaint includes an added
19 cause of action for civil penalties under PAGA and removed Sterling BV, Inc. as a defendant
20 (while simultaneously dismissing Sterling BV, Inc. from the action). (*Id.*)

21 **B. Settlement Negotiations**

22 On June 7, 2022, the Parties participated in private mediation with experienced class action
23 mediator, Tripper Ortman, Esq. (*Id.* at ¶ 8.) After extensive negotiations and discussions regarding
24 the strengths and weaknesses of Plaintiff’s claims and Defendant’s defenses, the Parties were able
25 to reach a resolution, the material terms of which are encompassed within the Settlement
26 Agreement. (*Id.* at ¶ 9, **Ex. 1** [Stipulation of Settlement].)

27 Following the Court’s initial review of the Parties’ Settlement and continuation of
28 Plaintiff’s Motion for Preliminary Approval hearing, the Parties negotiated an amendment to

the Settlement to reflect changes to that included designating a *cy pres* recipient, adjusting the PAGA allocation, adjusting the wages and penalties/interest allocations, and modifying the opt-out period as requested by the Court. The material terms of the Parties’ amendment to the Settlement are encompassed within the First Amendment to Stipulated Settlement Agreement (“Amendment to Settlement”). (*Id.* at ¶ 10; **Ex. 2** [Amendment to Settlement].)

Class Counsel submitted the proposed Settlement and Amendment to Settlement to the LWDA before filing this Motion for Final Approval. (*Id.* at ¶ 14.)

C. Key Terms of the Proposed Settlement

Under the Settlement, Defendant will pay \$1,250,000.00 to resolve this Litigation. This amount is all-inclusive. The Settlement’s key terms include:

1. Settlement Class: For settlement purposes only, the Parties agree to the certification of a class pursuant to California Code of Civil Procedure § 382 defined as: current and former non-exempt, hourly paid employees who were employed by Caravan in the State of California at any time from April 9, 2017 to June 7, 2022. (Settlement, Article III, Definitions, § (g).)

2. Settlement Period: The Settlement Period means the period from April 9, 2017 through June 7, 2022. (Settlement, Article III, Definitions, § (j).)

3. Participating Class Member(s): Participating Class Members means those Class Members who do not submit a valid requests for exclusion. (Settlement, Article III, Definitions, § (z).)

4. PAGA Member(s): PAGA Members means current and former non-exempt, hourly paid employees who were employed by Caravan in the State of California at any time from April 12, 2020 to June 7, 2022. (Settlement, Article III, Definitions, § (h).)

5. Gross Fund Value Amount: This amount is \$1,250,000.00, for all claims, including wages, interest, the Class Counsel Award, Litigation costs, Settlement Administration Costs, the PAGA payment, all other penalties, and the Class Representative Service Award. (Settlement, Article III, Definitions, § (s).)

6. No Reversion & Cy Pres: This is a non-reversionary settlement. Settlement checks will be valid for 120 days from the date of issuance and no portion of the uncashed funds will

1 revert back to Defendant. Instead, the uncashed checks will be transmitted by the Settlement
2 Administrator to Legal Aid at Work (located at 180 Montgomery Street, Suite 600, San Francisco,
3 CA 94104) no later than 180 days after the Settlement checks are first issued. (Amendment to
4 Settlement, ¶ 3.)

5 7. Release as to All Settlement Class Members: Upon the Court’s final approval of the
6 class settlement and entry of Final Order and Judgment, each member of the Settlement Class shall
7 be deemed to have released and discharged each Defendant and all of its former and present
8 parents, and affiliates, and their officers, directors, employees, partners, shareholders, attorneys,
9 and agents, and any other successors, assigns or legal representatives from any and all claims that
10 were asserted and that could have been asserted based on the facts contained in the Operative
11 Complaint filed in this Action and which were included leading up to and during mediation,
12 including without limitation to, any and all alleged claims for unpaid wages, unpaid minimum
13 wages, unpaid overtime, regular rate compensation, unpaid meal or rest break premiums, itemized
14 wage statement penalties, unreimbursed business expenses, failure to provide requisite writings,
15 waiting time penalties under the California Labor Code and Business & Professions Code
16 (including Section 17200, *et seq.*); claims for penalties brought under the PAGA; claims for
17 restitution and other equitable relief, liquidated damages, or penalties in their positions as
18 Settlement Class Members during the Class Period. The Settlement Class Members acknowledge
19 that they may hereafter discover claims presently unknown and unsuspected, or facts in addition
20 to or different from those which they now know or believe to be true with respect to claims released
21 herein. Nevertheless, Settlement Class Members acknowledge that a portion of the consideration
22 received herein is for a release with respect to unknown damages and complaints, whether resulting
23 from known injuries and consequences or from unknown injuries or unknown consequences, and
24 agree that it is their intention to fully, finally, and forever to settle and release all matters and all
25 claims that exist, hereafter may exist, or might have existed based on the facts and allegations set
26 forth in the Operative Complaint. Settlement Class Members who cash or deposit their Individual
27 Settlement Payment checks will also release their Class Claims. (Settlement, § 7.02.)

28 8. PAGA Allocation: The settlement includes \$40,000.00 allocated to Plaintiff’s

claims under PAGA, with 75% of which (\$30,000.00) being paid to the LWDA and 25% (\$10,000.00) being distributed on a pro-rata basis to the PAGA Members. (Amendment to Settlement, ¶ 5.)

9. Net Fund Value Amount: The “Net Fund Value Amount” is the amount that remains and that shall be paid to Settlement Class Members after the following amounts are subtracted: (1) attorneys’ fees and Litigation costs, (2) Administrative Costs, (3) enhancement to the Named Plaintiff, and (4) the penalties recoverable pursuant to the PAGA. (Settlement, Article III, Definitions, § (w).)

10. Distribution Formula: Members of the Settlement Class not opting out will receive a lump sum payment as good and valuable consideration for the waiver and release of claims as set forth in Section C (7), above, in an amount determined by the Settlement Administrator in accordance with the provisions as outlined in Section 5.06 of the Settlement Agreement.

11. Tax Allocation: Any settlement money paid to Settlement Class Members will be allocated as 80% wages and 20% penalties and interest. (Amendment to Settlement, ¶ 1.)

12. Class Representative Service Award: Subject to Court approval, Plaintiff shall be paid an enhancement award not to exceed \$10,000.00. (Settlement, § 5.06 (b)(3).) This amount is for Plaintiff’s time and effort in bringing and presenting the action, and in exchange for a general release of all claims, known or unknown, pursuant to Civil Code Section 1542. (Settlement, § 7.03.)

13. Attorneys’ Fees and Costs: The Settlement provides that Defendant will not oppose a fee application of up to 33 1/3% (\$416,666.67) of the Gross Fund Value Amount, plus out-of-pocket costs not to exceed \$20,000.00. (Settlement, § 5.06 (b)(1).)

14. Notice of Proposed Class Action Settlement : The Class Notice set forth in plain terms, a statement of the case, the terms of the Settlement Agreement, the approximate amount of attorneys’ fees, costs, and service award being sought, and an explanation of how the settlement allocations are calculated. (Dancy Decl., Ex. A.) Class Members were notified by first-class mail of the settlement. (*Id.* at ¶ 7.) CPT Group, Inc., the approved Settlement Administrator, undertook its best efforts to ensure that the notice was provided to the class members’ current addresses, and

1 Skip Tracing was performed for all returned envelopes and then notices were re-sent using updated
2 addresses, if applicable. (*Id.* at ¶¶ 6-9.) Notice was also provided in English and Spanish. (*Id.* at
3 ¶ 4, Ex. A.)

4 **D. Preliminary Settlement Approval, Class Notice, and Settlement**
5 **Administration.**

6 On October 10, 2022, this Court issued its Order Concerning Plaintiff’s Motion for
7 Preliminary Approval of Class Action Settlement, in which the Court granted Plaintiffs’
8 preliminary approval motion. (Marquez Decl., ¶ 13.)

9 Altogether, notices explaining class member rights were mailed out to 1,087 class members
10 in English and Spanish. (Dancy Decl., ¶¶ 4, 7.) To date, 44 notice packets (or approximately 4%
11 of the class members) remain undeliverable. (*Id.* at ¶ 9.) *There were no objections to the*
12 *settlement and only one (1) request for exclusion.* (*Id.* at ¶¶ 11-12.) If the Court approves the
13 settlement, the participating class members will receive an **estimated average payment of**
14 **\$698.74**, with the **estimated highest payment being \$2,367.63** and the estimated lowest payment
15 being \$8.67. (*Id.* at ¶ 16.)

16 **III. THE SETTLEMENT MERITS FINAL APPROVAL**

17 The law favors the settlement of lawsuits, particularly in class actions and other complex
18 cases. (*See e.g., Neary v. Regents of Univ. of California* (1992) 3 Cal.4th 272, 277-81.) Factors
19 to be considered in evaluating a class action settlement include “the strength of plaintiffs’ case, the
20 risk, expense, complexity and likely duration of further litigation, the risk of maintaining class
21 action status through proceedings, the experience and views of counsel, the presence of a
22 government participant, and the reaction of the class members to the proposed settlement.” (*Kullar*
23 *v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128.) A presumption that a settlement is
24 fair and reasonable exists where, as here, the following four factors are present: “(1) the settlement
25 is reached through arm’s length bargaining; (2) investigation and discovery are sufficient to allow
26 counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4)
27 the percentage of objectors is small.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th
28 224, 245.)

1 Whether a class action settlement should be approved is a question committed to the trial
2 court's broad discretion. (*Id.* at pp. 234-35.) In exercising its discretion, the Court should give
3 "[d]ue regard ...to what is otherwise a private consensual agreement between the parties." (*Dunk*
4 *v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) "The inquiry 'must be limited to the extent
5 necessary to reach a reasoned judgment that the agreement is not the product of fraud or
6 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a
7 whole, is fair, reasonable and adequate to all concerned.'" (*Id.* [internal citations omitted].)

8 **A. The Settlement Reflects a Reasonable Compromise.**

9 The Settlement represents a significant percentage of the maximum damages that may have
10 been awarded to the class in this case if they had prevailed at trial. The Settlement, of course,
11 reflects a compromise. The amount of settlement benefits takes into account all the litigation risks
12 related to obtaining class certification, proving Defendant's liability, and proving Class Members'
13 damages. In light of all the defenses asserted by Defendant which posed substantial litigation risks,
14 a compromise effectively awarding Class Members a significant percentage of the maximum value
15 of their claims is eminently fair and reasonable.

16 Because of the Settlement, and through the efforts of Plaintiff and Class Counsel, Class
17 Members will receive timely, guaranteed relief and will avoid the risk of an unfavorable judgment.

18 To be sure, Defendant ultimately has to pay less under the settlement than it would have
19 had to pay if Plaintiff had achieved a judgment on claims at trial. But an ideal settlement requiring
20 a defendant to pay the full amount of its potential damages is rarely achieved. As the Ninth Circuit
21 has observed, "the very essence of a settlement is compromise, 'a yielding of absolutes and an
22 abandoning of highest hopes.'" (*Officers for Justice v. Civil Service Commission of City and*
23 *County of San Francisco* (9th Cir. 1982) 688 F.2d 615, 624.) Thus, a proposed settlement "is not
24 to be judged against a hypothetical or speculative measure of what might have been achieved by
25 the negotiators." (*Id.* at p. 625.) A court's "intrusion upon what is otherwise a private consensual
26 agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to
27 reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or
28 collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair,

reasonable and adequate to all concerned.” (*Id.*)

B. The Settlement was Reached After Arms-Length Negotiations Following Informal Discovery.

The Settlement was reached following extensive negotiations between Class Counsel and Defendant’s counsel. (Marquez Decl., ¶¶ 6-10.) Prior to the mediation, Defendant provided Class Counsel with class-wide information and documents, including its wage and hour policies and practices during the class period and an extensive sampling of time and pay records for class members. (*Id.*) At the mediation that was conducted by experienced class action mediator Tripper Ortman, Esq, the Parties were able to reach a resolution, the material terms of which are encompassed within the Settlement and Amendment to Settlement. (*Id.* at ¶¶ 9-10, Exs. 1, 2.)

Counsel participated in lengthy arms-length settlement negotiations that involved numerous discussions, exchanges of information and candid evaluation of the respective Parties’ strengths and weaknesses. (*Id.* at ¶ 8.) There is no evidence to suggest that the Parties did not have sufficient information to make informed decisions about the value of this case or that the Settlement is a product of fraud, overreaching or collusion.

C. Class Counsel Has Extensive Experience in Class Action Litigation

Class Counsel has considerable experience and has demonstrated competence with litigating wage and hour class actions. (*Id.* at ¶¶ 31-42.) Class Counsel has substantial experience in all facets of litigation in state and federal court, including discovery, law and motion, trial, appeals, arbitration and mediation. Class Counsel has litigated numerous class actions on behalf of plaintiffs and have been lead counsel or otherwise exercised significant case handling responsibilities in numerous cases resulting in millions of dollars in class action settlements. (*Id.*)

Based on Class Counsel’s experience as employment and class action attorneys, Class Counsel is eminently qualified to evaluate the strength of Plaintiff’s claims, the strength of Defendant’s defenses against certification, the strength of Defendant’s defenses on the merits, and the fairness of the Settlement. Their opinion that final approval of the Settlement and Addendum to Settlement Agreement would be in the best interests of class members in light of the significant risks of litigation is entitled to great weight. (*See Kullar, supra*, 168 Cal.App.4th at 129 [“The

1 court undoubtedly should give considerable weight to the competency and integrity of counsel and
2 the involvement of a neutral mediator in assuring itself that a settlement agreement represents an
3 arms-length transaction entered without self-dealing or other potential misconduct”].)

4 **D. There Are No Objections To The Settlement.**

5 No class members have objected to the Settlement and only one (1) class member (which
6 represents 0.09% of the class) has requested exclusion from the Settlement. (Dancy Decl., ¶¶ 11-
7 12.) The overwhelmingly positive response of the class strongly supports final approval of the
8 Settlement. (See, e.g., *In re Lifelock, Inc. Marketing and Sales Practices Litigation* (D. Ariz. 2010)
9 2010 WL 3715138, *6 [relatively few objections and requests for exclusion support approval].)

10 Factors to be considered in evaluating a class action settlement include “the reaction of the
11 class members to the proposed settlement.” (*Kullar, supra*, 168 Cal.App.4th at p. 128.) The
12 reaction here has been overwhelmingly positive. Courts have approved class action settlements in
13 lesser circumstances. (See, e.g., *Hughes v. Microsoft Corp.* (W.D.Wash. 2001) 2001 U.S. Dist.
14 LEXIS 5976, 2001 WL 34089697, *8 [court found that the “class members overwhelmingly
15 support[ed] the settlement” where there were over 37,000 notices sent out, 2,745 class members
16 participated in the settlement, “only nine objections were submitted”, and there were 86 timely
17 opt-outs and over 20 additional defective or untimely opt-outs, “these indicia of the approval of
18 the class of the terms of the settlement support a finding of fairness under Rule 23”], citing *Hanlon*
19 *v. Chrysler Corp.* (9th Cir.1998) 150 F.3d 1011, 1027 [despite vigorous objections and appeal by
20 objectors, “fact that the overwhelming majority of the class willingly approved the offer and stayed
21 in the class presents at least some objective positive commentary as to its fairness”, court did not
22 abuse its discretion in approving settlement].)

23 **IV. THE COURT SHOULD AWARD PLAINTIFF THE REQUESTED AMOUNTS OF**
24 **ATTORNEYS’ FEES, COSTS AND AN ENHANCEMENT PAYMENT.**

25 Under the Settlement, subject to the Court’s approval, Defendant has agreed not to oppose
26 Class Counsel’s request for reasonable attorneys’ fees in the amount of up to \$416,666.67, which
27 is 33 1/3% of the Settlement Amount, and Litigation costs in an amount not to exceed \$20,000.00
28 for litigating this Action, which shall be paid from the Settlement Amount. In addition, Defendant

1 will not oppose an application for the payment of Administrative Costs in the amount of \$14,500.00
2 and a Class Representative Enhancement payment in the amount of \$10,000.00, to be paid from
3 the Settlement Amount. The proposed attorneys' fees and expenses were disclosed to the Class
4 Members in the Notice of Proposed Class Action Settlement.

5 "In general, questions whether a settlement was fair and reasonable, whether certification
6 of the class was proper, and whether the attorney fee award was proper are matters addressed to
7 the trial court's broad discretion." (*Wershba, supra*, 91 Cal.App.4th at pp. 234-235.) "Courts
8 recognize two methods for calculating attorney fees in civil class actions: the lodestar/multiplier
9 method and the percentage of recovery method." (*Id.* at p. 254; *Vincent v. Hughes Air West, Inc.*
10 (9th Cir. 1977) 557 F.2d 759, 769.)

11 **A. Counsel Requests an Award of Fees Based on the "Common Fund" Method.**

12 California courts have long awarded attorneys' fees as a percentage of the benefit created
13 by counsel in pursuing claims on behalf of a class. The California Supreme Court held that "when
14 a number of persons is entitled in common to a specific fund, and an action brought by a plaintiff
15 or plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff
16 or plaintiffs may be awarded attorneys' fees out of the fund." (*Serrano v. Priest* (1977) 20 Cal.3d
17 25, 34 [quoting *D'Amico v. Board of Medical Examiners* (1974) 11 Cal. 3d 1.]

18 Class Counsel intends to seek an award of attorneys' fees on the "percentage of recovery/
19 common fund" theory. The purpose of the common fund/percentage approach is to "spread
20 litigation costs proportionally among all the beneficiaries so that the active beneficiary does not
21 bear the entire burden alone." (*Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769.)
22 In *Quinn v. State of California* (1995) 15 Cal. 3d 162, 167, the California Supreme Court stated:
23 "[O]ne who expends attorneys' fees in winning a suit which creates a fund from which others
24 derive benefits may require those passive beneficiaries to bear a fair share of the litigation costs."
25 Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, 110, the California
26 Supreme Court recognized that the common fund doctrine has been applied "consistently in
27 California when an action brought by one party creates a fund in which other persons are entitled
28 to share."

1 The California Supreme Court affirmed in *Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th
2 480 that, “when class action litigation establishes a monetary fund for the benefit of the class
3 members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the
4 court may determine the amount of a reasonable fee by choosing an appropriate percentage of the
5 fund created.” (*Id.* at p. 503.) The court explained: “The recognized advantages of the percentage
6 method—including relative ease of calculation, alignment of incentives between counsel and the
7 class, a better approximation of market conditions in a contingency case, and the encouragement
8 it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation—
9 convince us the percentage method is a valuable tool that should not be denied our trial courts.”
10 (*Id.* [internal citations omitted].)

11 Several courts have expressed frustration with the alternative “lodestar” approach for
12 deciding fee awards, which usually involves wading through voluminous and often indecipherable
13 time records. Commenting on the lodestar approach, Chief Judge Marilyn Hall Patel wrote: “This
14 court is compelled to ask, ‘Is this process necessary?’ Under a cost-benefit analysis, the answer
15 would be a resounding, ‘No!’” (*In re Activision Securities Litigation* (N.D. Cal 1989) 723 F. Supp.
16 1373, 1375.) The percentage approach is preferable to the lodestar because: (1) it aligns the
17 interests of class counsel and absent class members; (2) it encourages efficient resolution of the
18 litigation by providing an incentive for early, yet reasonable, settlement; and (3) it reduces the
19 demands on judicial resources. (*Id.* at pp. 1378-79.) The Ninth Circuit now routinely uses the
20 percentage of the common fund approach to determine the award of attorney’s fees. (*See, e.g., In*
21 *re Pacific Enterprises Securities City and County of San Francisco Litigation* (9th Cir. 1994) 47
22 F.3d 373, 378-79 [approving attorney’s fee of 33 1/3%].)

23 **1. The Standard Fee Award in Class Actions Has Resolved Itself As One-**
24 **Third Of The Recovery In Common Fund Cases.**

25 According to a leading treatise on class actions, “No general rule can be articulated on what
26 is a reasonable percentage of a common fund. Usually 50% of the fund is the upper limit on a
27 reasonable fee award from a common fund in order to assure that the fees do not consume a
28 disproportionate part of the recovery obtained for the class, although somewhat larger percentages

are not unprecedented.” (*See* Conte & Newberg, Newberg on Class Actions (3rd Ed.) § 14.03.) Attorneys’ fees that are fifty percent of the fund are typically considered the upper limit, with *thirty to forty percent commonly awarded in cases where the settlement is relatively small*. (*See Id.*; *see also, Van Vranken v. Atlantic Richfield Company* (N.D. Cal. 1995) 901 F. Supp. 294 [stating that most cases where 30-50 percent was awarded involved “smaller” settlement funds of under \$10 million].)

The settled-for one-third fee award is consistent with the average fee award in class actions. Indeed, the custom and practice in class actions is to award approximately one-third of a fund as a fee award. (*See Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, n.11 [“Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.”].) Thus, Plaintiff’s fee request is in line with the prevailing guidelines established in California case law and academic literature, and is consistent with awards in California. Accordingly, Plaintiff requests that the Court approve the attorneys’ fees as negotiated by the Parties and requested herein.

2. This Matter Involves A “Fee-Shifting” Provision of the Labor Code.

Class Counsel is entitled to recover fees under Labor Code § 1194, which provides, in part:

[A]ny employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.

(Lab. Code § 1194.)

As this litigation culminated in a settlement that provided for a recovery of unpaid wages, including unpaid minimum wages and overtime compensation, which accounts for 80% of the settlement allocation, Plaintiff is entitled to recover reasonable attorneys’ fees and costs under the California Labor Code.

Class Counsel is also entitled to a fee award under California’s private attorney general statute, Code of Civil Procedure § 1021.5. “The award of attorneys fees is proper under Section 1021.5 if ‘(1) plaintiffs’ action ‘has resulted in the enforcement of an important right affecting the public interest,’ (2) ‘a significant benefit, whether pecuniary or nonpecuniary, has been conferred

1 on the general public or a large class of persons’ and (3) ‘the necessity and financial burden of
2 private enforcement are such as to make the award appropriate.’” (*Press v. Lucky Stores* (1983)
3 34 Cal.3d 311, 317-318.) The fundamental objective of the statute is “to encourage suits enforcing
4 public policies by providing substantial attorneys’ fees to successful litigants in such cases.”
5 (*Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 565.)

6 This action resulted in the enforcement of an important right affecting the public interest,
7 as Plaintiff sought to enforce Settlement Class Members’ rights to recover statutory wages arising
8 from Defendant’s alleged failure to pay all wages and failure to provide meal and rest breaks. (*See*
9 *Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1113 [noting that “health and
10 safety concerns” are what motivated the Industrial Welfare Commission to adopt mandatory meal
11 and rest periods].)

12 This action also conferred a significant benefit on a large class of persons. After Notice
13 was sent to 1,087 individuals, no Class Member objected to the Settlement and only one (1) class
14 member requested exclusion. The Settlement provides a significant monetary benefit, in that it
15 permits all persons who worked for Defendant during the applicable class period to obtain
16 significant compensation for unpaid wages and missed meal and rest periods, which they likely
17 would not have recovered if not for this action.

18 Finally, the necessity and financial burden of private enforcement render an award
19 appropriate. Without the incentive of an attorneys’ fee award, Plaintiff could not have afforded to
20 hire counsel to pursue this case, as the cost of litigating this matter far outweighed Plaintiff’s
21 potential recovery. (*See Ryan v. California Interscholastic Federation* (2001) 94 Cal.App.4th
22 1033, 1044 [“As to the necessity and financial burden of private enforcement, an award is
23 appropriate where the cost of the legal victory transcends the claimants’ personal interest; in other
24 words, where the burden of pursuing the litigation is out of proportion to the plaintiff’s individual
25 stake in the matter.”].)

26 **3. The Experience, Reputation and Ability of Class Counsel Support the**
27 **Fee Award.**

28 As demonstrated by their past experience in pursuing class actions on behalf of consumers

1 and employees, Class Counsel possesses considerable expertise in litigating class action matters.
2 Class Counsel has been involved as lead counsel or co-counsel in dozens of class actions resulting
3 in a multitude of beneficial results to class members in California. Because it is reasonable to
4 compensate class counsel commensurate with their skill, reputation and experience, a fee award of
5 one-third of the Settlement Amount is justifiable and considered within the norm in class action
6 practice.

7 Indeed, Class Counsel's experience in wage and hour class actions was integral in
8 evaluating the strengths and weaknesses of the case against Defendant, negotiating with
9 Defendant's counsel, and evaluating the reasonableness of the settlement. Practice in the narrow
10 field of wage and hour litigation requires skill and knowledge concerning the rapidly evolving
11 substantive law (state and federal), as well as the procedural law of class action litigation. Based
12 on these and other factors, Class Counsel has frequently received fee awards amounting to 33 1/3%
13 of the recovery for the class. Therefore, the requested fee award is reasonable and fair.

14 **B. While the Lodestar Method is Not Necessary in Common Fund Cases, Courts**
15 **May Perform a Cross-Check to Award Fees.**

16 "Despite its primacy, the lodestar method is not necessarily utilized in common fund cases."
17 (*Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 27.) Courts have criticized the
18 lodestar method as a drain on the judicial system and a disincentive on attorneys to take on high-
19 risk, challenging cases. (*Id.* at p. 29.) Indeed, the lodestar approach: "(1) 'increases the workload
20 of an already overtaxed judicial system,' (2) is 'insufficiently objective and produce[s] results that
21 are far from homogenous,' (3) 'creates a sense of mathematical precision that is unwarranted in
22 terms of the realities of the practice of law,' (4) 'is subject to manipulation by judges who prefer
23 to calibrate fees in terms of percentages of the settlement fund or the amounts recovered by the
24 plaintiffs or of an overall dollar amount,' (5) 'encourages lawyers to expend excessive hours, and
25 . . . engage in duplicative and unjustified work,' (6) 'creates a disincentive for the early settlement
26 of cases,' (7) deprives trial courts of 'flexibility to reward or deter lawyers so that desirable
27 objectives, such as early settlement, will be fostered,' (8) 'works to the particular disadvantage of
28 the public interest bar,' and (9) results in 'confusion and lack of predictability.'" (*Id.*)

1 Although California supports the common fund doctrine, the lodestar method can be used
2 to cross-check fee awards. “It may be appropriate in some cases, assuming the class benefit can
3 be monetized with a reasonable degree of certainty, to “cross-check” or adjust the lodestar in
4 comparison to a percentage of the common fund to ensure that the fee awarded is reasonable and
5 within the range of fees freely negotiated in the legal marketplace in comparable litigation.”(*In re*
6 *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557.)

7 Applying the lodestar method requires a two-step process. The first step is to multiply the
8 number of hours reasonably expended by a reasonable hourly rate. The second step is to apply a
9 multiplier to the lodestar to take into account various factors. “The purpose of such adjustment is
10 to fix a fee at the fair market value for the particular action. In effect, the court determines,
11 retrospectively, whether the litigation involved a contingent risk or required extraordinary legal
12 skill justifying augmentation of the unadorned lodestar in order to approximate the fair market rate
13 for such services.” (*Id.* at pp. 556-57.) “Under certain circumstances, a lodestar calculation may
14 be enhanced on the basis of a percentage-of-the-benefit analysis.” (*Id.* at p. 557.)

15 Wilshire Law Firm’s current lodestar is \$244,925 based on at least 395 hours of reported
16 work performed by Class Counsel. (Marquez Decl., ¶ 17.) Accordingly, the requested fee of
17 \$416,666.67 is reasonable and fair as it is based on a multiplier of 1.7. There are also additional
18 hours devoted by Class Counsel to this litigation that are not reflected in Class Counsel’s request
19 for attorney’s fees, such as future time that will need to be devoted to ensuring the settlement
20 checks are administered. (Marquez Decl., ¶¶ 19-21.)

21 **1. Class Counsel’s Rates Have Been Approved by Several Courts.**

22 Class Counsel provides a declaration to support their lodestar hourly rates. “Affidavits of
23 the plaintiffs’ attorney and other attorneys regarding prevailing fees in the community, and rate
24 determinations in other cases, particularly those setting a rate for the plaintiffs’ attorney, are
25 satisfactory evidence of the prevailing market rate.” (*United Steelworkers of America v. Phelps*
26 *Dodge Corp.* (9th Cir. 1990) 896 F.2d 403, 407.) Class Counsel has received final approval of
27 their hourly rates in other wage and hour class action settlements. These rates are not opposed or
28 challenged.

1 **2. The Lawsuit Provided a Public Benefit.**

2 Class Counsel’s choice to litigate this matter provided a public benefit to 1,086 California
3 employees. Indeed, California Labor Code section 90.5(a) states:

4 It is the policy of this state to vigorously enforce minimum labor standards in order
5 to ensure employees are not required or permitted to work under substandard unlawful
6 conditions...and to protect employers who comply with the law from those who
attempt to gain a competitive advantage at the expense of their workers by failing to
comply with minimum labor standards.

7 Moreover, the California Supreme Court stated that “Labor Code section 1194 confirms “a clear
8 public policy ... that is specifically directed at the enforcement of California's minimum wage and
9 overtime laws for the benefit of workers.” [citation omitted].” (*Sav-on Drug Stores, Inc. v. Super.*
10 *Ct.* (2004) 34 Cal.4th 319, 340.) Given the financial risks and numerous attorney hours attendant
11 to the litigation of Plaintiff’s claims, this factor supports Class Counsel’s fee request and
12 encourages the private enforcement of legal rights for the general good.

13 **C. Costs Are Reasonable.**

14 Class Counsel requests reimbursement of \$17,165.76 in expenses. (Marquez Decl., ¶ 25.)
15 Meanwhile, Defendant has previously agreed that it will not oppose any cost award request up to
16 \$20,000. The categories of costs are set forth in the accompanying Declaration of Justin Marquez,
17 and these costs are clearly seen to be both reasonable and necessary.

18 **D. The Enhancement Payment to Plaintiff is Reasonable.**

19 Named plaintiffs in class action lawsuits “are eligible for reasonable incentive payments to
20 compensate them for the expense or risk they have incurred in conferring a benefit on other
21 members of the class.” (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186
22 Cal.App.4th 399.) Courts routinely grant approval of class action settlement agreements
23 containing enhancements for the class representatives, which are necessary to provide incentive to
24 represent the class, and are appropriate given the benefit the class representatives help to bring
25 about for the class. (*See Rodriguez v. W. Publ’g Corp.* (9th Cir. 2009) 563 F.3d 948, 958-59.)

26 Service awards are particularly important to plaintiffs in wage and hour cases because they
27 promote the important public policies underlying the wage and hour laws. This strong policy is
28 codified in California Labor Code section 90.5, which provides, “it is the policy of this state to

1 vigorously enforce minimum labor standards in order to ensure employees are not required or
2 permitted to work under substandard unlawful conditions....”). Nonetheless, the California
3 Supreme Court has noted that “retaliation against employees for asserting statutory rights under
4 the Labor Code is widespread,” despite anti-retaliation statutes designed to protect employees.
5 (*Gentry v. Super. Ct.* (2007) 42 Cal.4th 443, 460-61.) In this context, class representatives should
6 be rewarded for assuming the risk of retaliation for the sake of class members. (*See Frank v.*
7 *Eastman Kodak Co.* (W.D.N.Y. 2005) 228 F.R.D. 174, 187.)

8 Under the Settlement Agreement, subject to the Court’s approval, Defendant agreed to pay
9 a Service Award in the amount of \$10,000.00 to Plaintiff. This amount is also in exchange for
10 Plaintiff’s general release of all claims against Defendant. Plaintiff has submitted a declaration
11 demonstrating that she devoted a great deal of time and work assisting counsel in the case,
12 including numerous meetings with Class Counsel and extensive phone calls to discuss the case,
13 case strategy, mediation, and settlement. (*See generally*, Declaration of Plaintiff Kaneisha
14 Kingsbury [“Kingsbury Decl.”] [showing **at least 45 hours of estimated time devoted to this**
15 **case** through the date of filing this motion]; *see also* Marquez Decl., ¶¶ 26-30 [highlighting the
16 time and efforts Plaintiff devoted to this case].)

17 When compared with the amounts awarded in typical class action cases, the amount
18 requested here is particularly reasonable. Indeed, a **2006** study examining the average incentive
19 award given to class action plaintiffs from **1993 to 2002** found that the “average award per class
20 representative was \$15,992 and the median award per class representative was \$4,357.” (Theodore
21 Eisenberg & Jeffrey P. Miller, “Incentive Awards to Class Action Plaintiffs: An Empirical Study”,
22 53 UCLA L. Rev. 1303, 1308 (2006).) That same study found that named plaintiffs in employment
23 discrimination class actions received an average award of \$69,850 and a median award of \$31,081,
24 while named plaintiffs in other employment class actions received an average award of \$12,121
25 and a median award of \$13,059. (*Id.* at p. 1334.) The authors of the study found that higher awards
26 in employment cases reflected the “courts’ wish to make representative plaintiffs whole by
27 compensating them for the high costs of their service to the class, including risks of stigmatization
28 or retaliation on the job.” (*Id.* at p. 1308.)

1 Another factor that supports the awarding of service awards is whether the class
2 representative's service resulted in notoriety or other personal difficulties. (*See, e.g., Schaffer*
3 *v. Litton Loan Servicing, LP* (C.D. Cal. 2012) 2012 WL 10274679, at *18.) The California
4 Supreme Court has recognized that "retaliation against employees for asserting statutory rights
5 under the Labor Code is widespread," despite anti-retaliation statutes designed to protect
6 employees. (*Gentry v. Superior Court* (2007) 42 Cal.4th 443, 460-61.) In this context, class
7 representatives should be rewarded for assuming the risk of retaliation for the sake of class
8 members. (*See Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 F.R.D. 174, 187.)

9 Here, Plaintiff has lent her name to this case and thus subjected herself to public
10 attention. She has also risked her reputation in the community and with regard to future
11 employment opportunities as a result of stepping forward publicly in a class action. When a
12 class representative shoulders some degree of personal risk in joining the litigation, such as
13 workplace retaliation or financial liability, an incentive award is especially important. (*See*
14 *Staton v. Boeing Co.* (9th Cir. 2003) 327 F.3d 938, 977; *Weeks v. Kellogg Co.* (C.D. Cal. 2013)
15 2013 WL 6531177, *36.) Plaintiff has been subject to the rigors of litigation and has had to
16 devote her own time and expenses in participating in the case. (*See generally*, Kingsbury Decl.;
17 *see also* Marquez Decl., ¶ 27-30.)

18 **E. Administrative Costs Should be Approved.**

19 CPT Group, Inc., the approved Settlement Administrator, is charging a total of \$14,500.00
20 (which is less than the amount the Settlement provides for) in costs associated with the
21 administration of this Settlement, including future estimated costs involved in completing the
22 administration. (Dancy Decl., ¶ 17.) These expenses are reasonable, based upon the size of the
23 class and the additional tasks associated with claim and exclusion tracking and Class Member
24 payment processing.

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28 ///

1 **V. CONCLUSION**

2 For the foregoing reasons, Plaintiff respectfully requests that the Court grant final approval
3 of the proposed settlement.
4

5 Dated: January 6, 2023

WILSHIRE LAW FIRM

6
7 By: _____

Justin F. Marquez
Benjamin H. Haber
Arrash T. Fattahi

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9 Attorneys for Plaintiff
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PROOF OF SERVICE

Kingsbury v. Caravan Foods II, Inc., et al.
RG21096357

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

I, Ashley Narinyans, state that I am employed in the aforesaid County, State of California; I am over the age of eighteen years and not a party to the within action; my business address is 3055 Wilshire Blvd., 12th Floor, Los Angeles, California 90010. My electronic service address is anarinyans@wilshirelawfirm.com.

On **January 6, 2023**, I served the foregoing **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES**, on the interested parties by placing a true copy thereof, enclosed in a sealed envelope by following one of the methods of service as follows:

Lindsay Hutner (SBN 238998)
hutnerl@gtlaw.com
Lynne Rose
rosel@gtlaw.com
GREENBERG TRAUIG, LLP
101 Second Street, Suite 2200
San Francisco, California 94105
Telephone: (415) 655-1300
Facsimile: (415) 707-2010

Samuel S. Hyde, Esq. (SBN 327065)
hydes@gtlaw.com
GREENBERG TRAUIG, LLP
1201 K Street, Suite 1100
Sacramento, California 94111
Telephone: (916) 442-1111
Facsimile: (916) 448-1709

Attorneys for Defendants

(X) **BY UPLOAD:** I hereby certify that the documents were uploaded by my office to the State of California Labor and Workforce Development Agency Online Filing Site.

(X) **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known email address or e-mail of record in this action.

I declare under the penalty of perjury under the laws of the State of California, that the foregoing is true and correct.

Executed on **January 6, 2023**, at Los Angeles, California.

Ashley Narinyans
Type or Print Name


Signature