

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

7 Attorneys for Plaintiffs Bernardo Hernandez and  
Maria G. Flores, on behalf of themselves and others  
8 similarly situated

9  
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
11 **FOR THE COUNTY OF SAN BERNARDINO**  
12

13 BERNARDO HERNANDEZ and MARIA G.  
14 FLORES, on behalf of themselves and others  
similarly situated,

15 Plaintiffs,

16 v.

17 WILBUR CURTIS CO., INC.; WCCO  
18 HOLDINGS, INC.; KEVIN ROBERT CURTIS;  
19 MICHAEL AITKIN CURTIS; and DOES 1  
through 100, inclusive,

20 Defendants.  
21  
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23  
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28

Case No.: CIVSB2125955

Assigned for all purposes to:  
Hon. David Cohn, Dept. S26

**CLASS ACTION**

**PLAINTIFFS' NOTICE OF MOTION  
AND MOTION FOR FINAL APPROVAL  
OF CLASS AND REPRESENTATIVE  
ACTION SETTLEMENT, ATTORNEYS'  
FEES AND COSTS, AND CLASS  
REPRESENTATIVES' ENHANCEMENT  
PAYMENTS; MEMORANDUM OF  
POINTS AND AUTHORITIES**

[Declarations of Anthony J. Orshansky,  
Bernardo Hernandez and Maria G. Flores in  
Support, Declaration of Abel E. Morales  
Regarding Notification and Settlement  
Administration, Proposed Final Approval  
Order, and Proposed Final Judgment  
submitted concurrently herewith]

**Final Approval Hearing**

Date: January 27, 2023  
Time: 10:00 a.m.  
Dept.: S26

**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:**

**PLEASE TAKE NOTICE** that on January 27, 2023 at 10:00 a.m., or as soon thereafter as the matter may be heard in Department S26 of the Superior Court of California, County of San Bernardino, located at 247 West Third Street, San Bernardino, California 92415, before the Honorable David Cohn, plaintiffs Bernardo Hernandez and Maria G. Flores (“Plaintiffs” or “Class Representatives”), individually and on behalf of all others similarly situated, will and hereby do move this Court for entry of an order pursuant to California Code of Civil Procedure section 382 and California Rules of Court, Rule 3.769:

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

2. Confirming the appointment of Plaintiffs Bernardo Hernandez and Maria G. Flores as the Class Representatives for settlement purposes;

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

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

5. Approving an award of \$551,250 in attorneys’ fees to Class Counsel;

6. Approving an award of \$25,000 in actual litigation costs reimbursement to Class Counsel;

7. Approving an award of \$14,250 to CPT Group, Inc. for its settlement administration services;

8. Approving an enhancement payment in the amount of \$10,000 to each of the Plaintiffs as Class Representatives; and

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

///

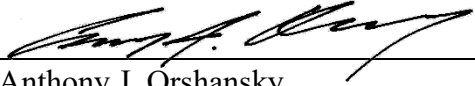
1 This motion is made on the following grounds: (1) the conditionally certified Class continues  
2 to meet the requirements for class certification for settlement purposes only under Code of Civil  
3 Procedure section 382; (2) Plaintiffs and Class Counsel continue to be adequate representatives of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

11 This motion is based on this Notice of Motion; the attached Memorandum of Points and  
12 Authorities; the supporting declarations of Anthony J. Orshansky, Bernardo Hernandez, Maria G.  
13 Flores, and Abel E. Morales of CPT Group, Inc. and the exhibits attached thereto; the Settlement  
14 Agreement; all other pleadings and papers on file in this action; and on any further oral or  
15 documentary evidence or argument presented at the time of hearing. Finally, given the multiplicity  
16 of issues addressed in this motion, Plaintiffs believe that there is good cause to exceed the 20-page  
17 limit set forth in California Rules of Court, Rule 3.764(c)(2), and respectfully request that the Court  
18 consider Plaintiffs' Memorandum of Points and Authorities, which is 32 pages in length.

19  
20 Dated: January 2, 2023

Respectfully submitted,

21 COUNSELONE, PC

22 By: 

23 Anthony J. Orshansky  
24 Jennifer L. Connor  
25 Justin Kachadoorian  
26 Attorneys for Plaintiff  
27  
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Bernardo Hernandez and Maria G. Flores (“Plaintiffs” or “Class Representatives”)  
4 hereby submit this Memorandum of Points and Authorities in support of their Motion for Final  
5 Approval of this class and representative action settlement on behalf of all current and former  
6 hourly-paid or non-exempt employees who worked for Defendants Wilbur Curtis Co., Inc., WCCO  
7 Holdings, Inc., Kevin Robert Curtis, and Michael Aitkin Curtis (collectively, “Defendants”), within  
8 the State of California from April 6, 2017 to August 24, 2022 (the “Class” or “Class Members”).

9 The Stipulation of Class and Representative Action Settlement (“Settlement Agreement”),  
10 attached to the concurrently filed Declaration of Anthony J. Orshansky as **Exhibit “1”**, between  
11 Plaintiffs and Defendants (together, the “Parties”), if approved, will resolve specific claims of  
12 Plaintiffs, Settlement Class Members, and PAGA Group Members<sup>1</sup> in exchange for Defendants’  
13 agreement to pay ***One Million Five Hundred Seventy-Five Thousand Dollars (\$1,575,000)***. In this  
14 ***non-reversionary*** settlement, all Settlement Class Members will automatically receive payments  
15 without the need to submit a claim form, resulting in an average individual settlement payment of  
16 approximately \$2,581.08. (See Declaration of Abel E. Morales Regarding Notification and  
17 Settlement Administration (“Morales Decl.”), filed concurrently herewith, at ¶ 12.) This is an  
18 extremely favorable resolution of the disputed wage and hour claims in this case. As of the date of  
19 filing of this motion, ***not a single Class Member has filed an objection*** to the settlement after  
20 receiving notice of the proposed settlement and the projected individual settlement payments, and  
21 ***not a single Class Member requested exclusion*** from the settlement, resulting in a ***100% settlement***  
22 ***participation rate***. (*Id.* at ¶¶ 10-12.)

23 As explained below, the Court should grant Plaintiffs’ motion because: (1) the conditionally  
24 certified Class continues to meet the requirements for class certification for settlement purposes  
25 under Code of Civil Procedure section 382; (2) the settlement is a fair, adequate, and reasonable  
26

27 <sup>1</sup> “PAGA Group Member(s)” means all Class Members employed by Defendants within California  
28 at any time during the PAGA Period. (Settlement Agreement ¶ 23.) “PAGA Period” means the  
period beginning on July 2, 2020 and ending on August 24, 2022. (Settlement Agreement ¶ 26.)

1 compromise of the disputed claims in this case; and (3) the amounts requested for Class Counsel's  
2 attorneys' fees and costs, Plaintiffs' enhancement payments, and settlement administration costs are  
3 all fair, adequate, and reasonable. In light of the foregoing, this Court should enter the Proposed  
4 Judgment and the Proposed Order Granting Plaintiffs' Motion for Final Approval of Class and  
5 Representative Action Settlement, Attorneys' Fees and Costs, and Class Representatives'  
6 Enhancement Payments, submitted concurrently herewith.

7 **II. FACTUAL AND PROCEDURAL BACKGROUND**

8 On July 2, 2021, Plaintiff Hernandez filed his pre-filing written notice with California Labor  
9 and Workforce Development Agency ("LWDA") and sent a letter by certified mail to Defendant  
10 Wilbur Curtis Co., Inc. setting forth the facts and theories of the violations alleged against Defendant  
11 Wilbur Curtis Co., Inc., on behalf of himself and similarly situated aggrieved employees in accord  
12 with the Private Attorneys General Act of 2004 ("PAGA"), Labor Code sections 2698, *et seq.*  
13 (Declaration of Anthony J. Orshansky in Support of Plaintiffs' Motion for Final Approval of Class  
14 and Representative Action Settlement ("Orshansky Decl."), filed concurrently herewith, at ¶ 23.)

15 On September 8, 2021, Plaintiff Hernandez filed the Class and Representative Action  
16 Complaint ("Complaint") asserting the following claims on behalf of himself and similarly situated  
17 employees: (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to  
18 provide compliant meal periods and/or pay premiums owed thereon; (4) failure to provide compliant  
19 rest breaks and/or pay premiums owed thereon; (5) failure to reimburse business expenses; (6)  
20 failure to provide accurate and compliant itemized wage statements; (7) failure to pay all wages  
21 owed timely during employment and upon separation of employment; (8) failure to maintain  
22 requisite payroll records in violation of Labor Code section 1174(d); (9) violation of California  
23 Business and Professions Code sections 17200, *et seq.*; and (10) violation of the PAGA, codified in  
24 Labor Code sections 2698, *et seq.*

25 On December 3, 2021, Plaintiffs Hernandez and Flores filed their amended written notice  
26 with the LWDA and sent a letter by certified mail to Defendants Wilbur Curtis Co., Inc., WCCO  
27 Holdings, Inc., Kevin Robert Curtis, and Michael Aitkin Curtis setting forth the facts and theories  
28

1 of the violations alleged against Defendants, as prescribed by Labor Code sections 2698, *et seq.*  
2 (Orshansky Decl. ¶ 25.)

3 On February 9, 2022, Plaintiffs filed their First Amended Class and Representative Action  
4 Complaint (“First Amended Complaint”) adding predecessor entity employer WCCO Holdings,  
5 Inc., and individuals Kevin Robert Curtis and Michael Aitkin Curtis. As owners and officers of the  
6 corporate employer, individual defendants Kevin Robert Curtis and Michael Aitkin Curtis are liable  
7 in their individual capacity for civil penalties, attorneys’ fees, and litigation costs available to  
8 aggrieved employees pursuant to Labor Code sections 558.1 and 1197.1. (Orshansky Decl. ¶ 26; *see*  
9 *Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809 [the California Court of Appeal held that the trial  
10 court did not err in holding the individual defendant liable, stating: “the language in both section  
11 558(a) and section 1197.1(a) is broad enough to unambiguously include [the owner and CEO of the  
12 defendant employer] as a person other than the corporate employer subject to the civil penalties  
13 awarded by the trial court under those two statutes.”].)

14 On April 5, 2022, Defendants filed their Answer, pleading general denial of wrongdoing and  
15 asserting 36 affirmative defenses. (Orshansky Decl. ¶ 27.) Defendants deny Plaintiffs’ allegations  
16 of wrongdoing; Defendants do not believe that any liability to Plaintiffs, Class Members, or PAGA  
17 Group Members exists, or that they are entitled to any recovery. (Settlement Agreement ¶¶ 42, 44.)

18 **A. Discovery and Investigation**

19 The Parties engaged in extensive discovery, informally exchanging information and  
20 documents, and reviewing and analyzing extensive data made available by Defendants, all of which  
21 enabled the Parties to thoroughly evaluate Plaintiffs’ claims, the claims of the putative Class  
22 Members. and the aggrieved employees’ PAGA claim, along with Defendants’ affirmative defenses  
23 and the likely outcomes, risks, and expense of pursuing litigation.

24 Prior to initiating the lawsuit, as early as June 2021, counsel for Plaintiffs, CounselOne, P.C.,  
25 independently and thoroughly investigated the claims and considered the facts and circumstances  
26 underlying the pertinent issues and applicable law. (Orshansky Decl. ¶ 22.) This required thorough  
27 discussions and interviews with Plaintiffs and other Class Members as well as research into the  
28 various legal issues involved in the case. (*Ibid.*) After conducting their initial investigation, Class

1 Counsel determined that the claims were well suited for class action adjudication owing to what  
2 appeared to be a common course of conduct affecting a similarly situated group of employees. (*Ibid.*)

3 Class Counsel analyzed information and documentation concerning the alleged violations,  
4 such as Defendants' written policies concerning those claims, including Defendants' employee  
5 handbooks, policies and procedures regarding the payment of wages, the provision of meal and rest  
6 breaks, reimbursement of business-related expenses, time keeping policies, such as recording hours,  
7 issuance of wage statements, and providing all wages at separation, as well as composite data  
8 regarding the number of Class Members and PAGA Group Members and the mix of current versus  
9 former employees, total number of workweeks, total number of pay periods, and the average hourly  
10 rate in effect. (Orshansky Decl. ¶ 28.) Defendants also produced time and pay records for Class  
11 Members. (*Ibid.*) Counsel met and conferred at length regarding the information and documents  
12 produced. (*Ibid.*) Class Counsel interviewed Class Members, analyzed the documents and data  
13 produced, and spent significant time consulting with an expert, to determine Defendants' degree of  
14 liability and potential amounts due in damages. (*Ibid.*)

15 **B. Mediation and Settlement**

16 After having performed extensive investigation and analysis of the legal and factual issues  
17 and risks, the Parties participated in a full day mediation with Paul Grossman of Paul Hastings LLP.  
18 (Orshansky Decl. ¶ 29.) Mr. Grossman is an experienced litigator and mediator of wage and hour  
19 class and representative actions. (*Ibid.*) During the mediation, the Parties exchanged further  
20 information and discussed all aspects of the case, including the risks and delays of litigation and the  
21 risk to both Parties for proceeding with a motion for class certification, liability under the claims  
22 asserted, and the implications of a PAGA representative action. (*Ibid.*) These were contentious issues  
23 because of the factual and legal complexity of the case. (*Ibid.*)

24 The case did not settle at mediation. (Orshansky Decl. ¶ 30.) However, after a few weeks,  
25 the Parties accepted the mediator's proposal. (*Ibid.*) Thereafter, the Parties engaged in extensive  
26 negotiations to draft the Settlement Agreement, along with the Notice of Pendency of Class and  
27 Representative Action Settlement. (*Ibid.*)

28 ///

1 The settlement negotiations were hard fought and conducted in good faith and at arm's length  
2 between attorneys with substantial experience litigating class and representative actions. (Orshansky  
3 Decl. ¶ 31.) The settlement was the product of a non-collusive settlement process in which the Parties  
4 were forced to make significant compromises in the interest of reaching a full and complete  
5 settlement of the action. (*Ibid.*)

6 From Class Counsel's review of the facts, strengths, and weaknesses of the case, the risks  
7 and delays posed by further litigation, and Class Counsel's own prior litigation experience, Class  
8 Counsel believe that the recovery being made available to Class Members and PAGA Group  
9 Members is fair, reasonable, and adequate taking into consideration the amounts received in other  
10 wage and hour class and representative actions, the risks inherent in litigation of this genre, and the  
11 reasonable tailoring of each Class Member's and PAGA Group Member's claim to the settlement  
12 award he or she will receive. (Orshansky Decl. ¶ 32.) Class Counsel believe that the settlement serves  
13 the best interests of Class Members and PAGA Group Members. (*See* Settlement Agreement ¶ 41;  
14 Orshansky Decl. ¶ 32.)

15 The Parties engaged in extensive negotiations to finalize the long-form Settlement  
16 Agreement, along with the Notice of Pendency of Class and Representative Action Settlement, and  
17 Plaintiffs filed their Motion for Preliminary Approval of Class and Representative Action  
18 Settlement. (Orshansky Decl. ¶ 30.) After the Motion for Preliminary Approval was filed, and the  
19 hearing thereon conducted, the Court issued its Order Granting Preliminary Approval of Class and  
20 Representative Action Settlement on October 10, 2022 (*see* Orshansky Decl. Exh. 2) preliminarily  
21 approving the Settlement Agreement.

22 On November 11, 2022, after performing a National Change of Address ("NCOA") search  
23 to update and verify addresses, the Settlement Administrator, CPT Group, Inc. ("CPT"), mailed via  
24 U.S. first class mail the Notice of Pendency Class and Representative Action Settlement ("Notice")  
25 to all Class Members and PAGA Group Members. (*See* Morales Decl. ¶¶ 6-7 and Exhibit A  
26 [Notice].) Class Members had until December 27, 2022 to submit disputes, requests for exclusion,  
27 or objections. (*Id.* at ¶ 7.) As of the date of this filing, CPT received ***no objections*** and ***no requests***  
28 ***for exclusion*** rendering an overall ***settlement participation rate of 100%***. (*Id.* at ¶¶ 10-12.) Given

1 the participation rate and estimated deductions from the Gross Settlement Amount, the average gross  
2 individual settlement payment is approximately \$2,581.08. (*Id.* at ¶ 12.) Plaintiffs now respectfully  
3 submit the settlement for this Court’s final approval.

4 **III. SUMMARY OF THE SETTLEMENT AND NOTICE PROCESS**

5 **A. The Class Definition**

6 The Class is defined as all current and former hourly-paid or non-exempt employees who  
7 worked for Defendants within the State of California from April 6, 2017 to August 24, 2022.  
8 (Settlement Agreement ¶ 5; Orshansky Decl. ¶ 4.)

9 **B. Monetary Terms**

10 Under the terms of the Settlement Agreement, Defendants have agreed to pay a non-  
11 reversionary amount of One Million Five Hundred Seventy-Five Thousand Dollars (\$1,575,000)  
12 into a common fund to settle the specific wage and hour claims of the Settlement Class Members  
13 and PAGA Group Members; this amount is called the “Gross Settlement Amount.” (Settlement  
14 Agreement ¶ 17.) This Gross Settlement Amount shall be inclusive of all settlement payments to  
15 Settlement Class Members, the Enhancement Payments to the Class Representatives, the  
16 Administration Costs to the Settlement Administrator, the Attorneys’ Fees and Costs to Class  
17 Counsel, and the PAGA Payment, including payment to PAGA Group Members and to the LWDA  
18 for civil penalties pursuant to statute. (*Ibid.*)

19 The amount available for distribution to Settlement Class Members is determined by  
20 deducting the following from the Gross Settlement Amount:

- 21 • Up to \$551,250—which is 35% of the Gross Settlement Amount—for attorneys’ fees and  
22 up to \$25,000 in litigation costs to Class Counsel (the “Attorneys’ Fees and Costs”);
- 23 • Up to \$10,000 to each Class Representative as an Enhancement Payment (for a total of  
24 \$20,000);
- 25 • Up to \$140,000 allocated as a PAGA Payment—of which 75% is allocated for payment  
26 to the LWDA for civil penalties pursuant to statute and 25% is allocated for payment to  
27 PAGA Group Members on a *pro rata* basis; and

- Up to \$14,250 to the Settlement Administrator for Administration Costs to notify Class Members and PAGA Group Members and administer the settlement.

The amount remaining after the foregoing deductions, approximately \$824,500,<sup>2</sup> is called the “Net Settlement Amount.” (Settlement Agreement ¶¶ 22, 47(a)-(d); Orshansky Decl. ¶ 7.) The entire Net Settlement Amount shall be paid out to Settlement Class Members. Settlement Class Members shall automatically receive payments without the need to submit a claim form, and PAGA Group Members shall receive PAGA payments irrespective of whether they opt out of the class settlement. (Settlement Agreement ¶¶ 47(d), 51; Orshansky Decl. ¶ 7.)

### C. Summary of Notice Process

On October 31, 2022, counsel for Defendants provided CPT Group, Inc. (“CPT”), the Court-approved Settlement Administrator, with a list of Class Members and PAGA Group Members containing the full names, last known mailing addresses, Social Security numbers, number of Workweeks during the Class Period, and number of Pay Periods during the PAGA Period, along with the start and end dates of employment in an hourly-paid or non-exempt position in the State of California during the Class Period. (*See* Morales Decl. ¶ 5.) After performing a NCOA search to update and verify addresses, CPT mailed the Notice via U.S. first class mail to all Class Members and PAGA Group Members. (*Id.* at ¶ 6.) As a result of either a skip trace or mail forwarding, the Settlement Administrator re-mailed five notices. (*Id.* at ¶ 8.) Class Members had until December 27, 2022 to submit disputes, requests for exclusion, or objections. (*Id.* at ¶ 7.) As of the date of this filing, not a single Class Member has submitted a dispute as to Workweeks listed on the Notice or objected to the settlement, nor has any Class Member opted out of the settlement; accordingly, this results in a **100% settlement participation rate**. (*Id.* at ¶¶ 9-12.) The average individual settlement payment is \$2,581.08. (*Id.* at ¶ 12.)

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<sup>2</sup> The Parties originally estimated the Net Settlement Amount at \$820,750. However, the actual Net Settlement Amount is \$824,500 because actual Administration Costs are \$14,250, which is less than the allocated costs amount of \$18,000. (*See* Morales Decl. ¶ 13.)

1           **D.       Timing of Payments**

2           The settlement calls for the Gross Settlement Amount, along with the Defendants' share of  
3 the payroll and employment taxes, to be funded within twenty-one (21) calendar days of the  
4 Effective Date. (Settlement Agreement ¶ 57.) The Settlement Administrator shall distribute  
5 settlement payments within ten (10) calendar days of the Effective Date. (*Ibid.*)

6           In the event any settlement checks are not cashed, deposited, or negotiated within one  
7 hundred and eighty (180) calendar days from the date of issuance, then the check(s) will be cancelled  
8 and the funds associated with the cancelled check(s) will be transmitted to *cy pres* recipient to be  
9 agreed upon by the Parties in conformity with the requirements of California Code of Civil  
10 Procedure section 384. (*See* Settlement Agreement ¶ 57; Orshansky Decl. ¶ 14.)

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

12           The Court's Final Approval Order and Judgment will be posted on the Settlement  
13 Administrator's website pursuant to California Rules of Court, Rule 3.771(b). (Orshansky Decl. ¶  
14 121.)

15       **IV.    ARGUMENT**

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

19           Under Code of Civil Procedure section 382, a class may be certified if: (1) it is ascertainable  
20 and its members are too numerous for joinder to be practical; (2) the representative and absent class  
21 members share a community of interest, and questions of law and fact common to the class  
22 predominate over questions unique to individual class members; (3) the representative's claims are  
23 typical of the class's claims; and (4) the representative will fairly and adequately represent the  
24 class's interests. (*See Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470.) Here, this Court  
25 found that the proposed Class meets all the requirements for class certification for settlement  
26 purposes when it granted preliminary approval of the Settlement Agreement on October 10, 2022.  
27 (*See* Orshansky Decl. ¶ 15 and Exh. 2.) Since then, no events have cast doubt on the propriety of  
28 this determination, and in fact the reaction of the Class Members has been overwhelmingly

supportive of the settlement, with no Class Member objecting to the settlement and no Class Member opting out of the settlement, for a 100% settlement participation rate. (*See* Morales Decl. ¶¶ 10-12.) This Court should therefore confirm its conditional certification of the Class.

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

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

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

A settlement is presumptively fair where it is reached through arm's-length bargaining, it is based on sufficient discovery and investigation to allow counsel and the court to act intelligently, counsel is experienced in similar litigation, and the percentage of objectors to the settlement is small. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802.) In deciding whether to approve a proposed settlement, a trial court has broad powers to determine if the proposed settlement is fair under the circumstances of the case. (*Mallick v. Superior Court* (1979) 89 Cal.App.3d 434, 438.) In exercising these powers, the overriding concern is to ensure that a proposed settlement is "fair, adequate, and reasonable." (*Dunk, supra*, 48 Cal.App.4th at p. 1801 [internal quotations omitted].) Relevant factors for the Court to consider include, but are not limited to:

1 [T]he strength of plaintiffs’ case, the risk, expense, complexity and likely duration of  
2 further litigation, the risk of maintaining class action status through trial, the amount  
3 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.

4 (*Ibid.*) These factors require balancing, are non-exhaustive and, as such, trial courts should tailor the  
5 factors to each case and give due regard to “what is otherwise a private consensual agreement  
6 between the parties.” (*Ibid.*)

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

15 Here, the settlement resulted from extensive arm’s-length settlement negotiations between  
16 qualified and experienced counsel with the assistance of a well-respected mediator. (*See* Orshansky  
17 Decl. ¶ 29.) While Plaintiffs maintain that their claims are meritorious, Plaintiffs acknowledge the  
18 substantial risks and uncertainty in proceeding with class certification and eventually trial, which  
19 justify a downward departure from the maximum exposure that Plaintiffs calculated that each claim  
20 carried. (*Id.* at ¶¶ 34-35.) For the reasons discussed herein, Class Counsel believe that the settlement  
21 is fair, adequate, and reasonable for all Settlement Class Members.

22 As detailed in Plaintiffs’ Motion for Preliminary Approval, Defendants presented numerous  
23 defenses to Plaintiffs’ claims, both on the merits and with respect to class certification. (Orshansky  
24 Decl. ¶ 35.) For example, Defendants defended against the minimum and overtime wage claims by  
25 relying on policies that explicitly prohibited Class Members from engaging in off-the-clock work.  
26 (*Ibid.*) Defendants also argued that Class Members worked in different job positions and had  
27 different managers, and as a result, Defendants contended there was variation to the circumstances  
28 that could allegedly cause the employees to be deprived of the opportunity to take legally compliant,

1 duty-free meal and rest periods, and this variation in circumstances raised highly individualized  
2 questions of fact. (*Ibid.*) Further, Defendants contended Plaintiffs would face significant hurdles to  
3 certification given that Class Members signed arbitration agreements with class action waivers as a  
4 condition of their employment, which, if enforceable, would convert a putative class action (with  
5 the potential for class-wide damages) into an individual dispute and action—effectively forcing  
6 Class Members and PAGA Group Members to retain their own counsel and proceed on the basis of  
7 individual claims only.<sup>3</sup> (*Ibid.*)

8 Although Plaintiffs were prepared to litigate these claims through class certification and,  
9 ultimately, through trial, given the substantial amount offered in settlement, Class Counsel predicted  
10 that it was far from certain that Plaintiffs would be able to recover a greater amount at trial,  
11 particularly after considering the increased litigation costs that would accrue. (Orshansky Decl. ¶  
12 39.) Thus, this factor supports preliminary approval of the settlement.

13 Applying the *Clark* and *Kullar* analysis, Class Counsel’s valuation is that the Gross  
14 Settlement Amount recovery reflects an estimated 53.84% of the potential damages recoverable at  
15 trial. (Orshansky Decl. ¶¶ 40, 71.) Specifically, the Parties posited as follows:

16 **Unpaid Minimum and Overtime Wages.** Plaintiffs, along with other hourly non-exempt  
17 employees, performed pre- and post- shift off-the-clock work to minimize the incidence of overtime.  
18 (Orshansky Decl. ¶ 42.) Plaintiffs contended that all off-the-clock work is compensable time. (*Ibid.*)  
19 An employer must pay its employees no less than the minimum wage for all hours worked (*see*  
20 Labor Code § 1197); thus, Plaintiffs sought to recover at least the minimum wage for all off-the-  
21 clock work, plus liquidated damages in that amount under Labor Code section 1194.2. (Orshansky  
22 Decl. ¶ 52.) Additionally, Plaintiffs contended that certain non-discretionary pay was not included  
23 in employees’ regular rate of pay. (*Ibid.*)

24 ///

25  
26 <sup>3</sup> On June 15, 2022, the U.S. Supreme Court issued a decision in *Viking River Cruises, Inc. v.*  
27 *Moriana* (2022) 596 U.S. \_\_\_\_ (No. 20-1573), holding that the FAA preempts California’s  
28 prohibition on the employer’s ability to contract with employees to bring only their individual claims  
in arbitration and not a representative Private Attorneys General Act (PAGA) claim. This potentially  
limits an employer’s exposure to PAGA representative claims through use of arbitration agreements.

1 Class Counsel analyzed the documents and data produced by Defendants, and in conjunction  
2 with interviews of Plaintiffs and Class Members, determined Defendants' degree of liability and  
3 amounts due in damages—specifically, the incidence and amount of purported off the clock activity.  
4 (Orshansky Decl. ¶ 43.) Notwithstanding the obvious evidentiary challenge of quantifying  
5 unrecorded off-the-clock hours, Plaintiffs estimated that Defendants are liable for an aggregate of  
6 approximately fifteen (15) minutes of unpaid straight and overtime pay per workweek. (*Id.* at ¶ 43.)  
7 Based on Defendants' records, Plaintiffs determined that 78.1% of Class Members' shifts qualified  
8 for an overtime rate of pay. (*Ibid.*) At the average straight time hourly rate of \$17.22 and the average  
9 overtime hourly rate of \$25.83, such yields an estimated damages amount of \$271,589.47. (*Ibid.*)  
10 Plaintiffs also determined that inequitable rounding of time resulted in unpaid wages to Class  
11 Members in the amount of \$451,588.00. (*Ibid.*) Thus, the estimated total of unpaid straight and  
12 overtime wages is \$723,177.47, without discounting for risks associated with certification or merits.  
13 (*Ibid.*)

14 In opposition to certification, Defendants contended that Plaintiffs' claim for off-the-clock  
15 work is not amenable to class treatment because employees worked in a variety of departments with  
16 different requirements, and it would require an unmanageable series of mini-trials to determine how  
17 much time was spent without pay. (Orshansky Decl. ¶ 44.) Further, in terms of merit defenses,  
18 Defendants vigorously disagreed with Plaintiffs' theories regarding how much off-the-clock work  
19 occurred in reality and the credibility of those claimed hours given Defendants' policies to the  
20 contrary. (*Ibid.*) The failure to track all hours poses evidentiary difficulties because it is hotly  
21 contested how much off-the-clock work actually occurred. (*Ibid.*) Although Class Counsel  
22 conducted multiple Class Member interviews, for Plaintiffs to establish the quantity of specific  
23 disputed and unrecorded work activities—especially over multiple job titles, at differing pay rates—  
24 would have been costly, time-consuming, and daunting. (*Ibid.*)

25 Defendants further responded that any off-the-clock time is *de minimis*. (Orshansky Decl. ¶  
26 45.) Plaintiffs countered that such defense lacks viability in light of *Troester v. Starbucks Corp.*  
27 (2018) 5 Cal.5th 829, given that the California Supreme Court refused to allow the *de minimis*  
28 defense to insulate Starbucks from having to pay employees for small amounts of work regularly

1 performed off-the-clock. What is not clear, however, is to what extent the *de minimis* defense would  
2 apply where the uncaptured hours were associated with an occasionally recurring activity.  
3 (Orshansky Decl. ¶ 45.)

4 Additionally, in response to Plaintiffs’ allegation that overtime was underpaid because  
5 Defendants incorrectly calculated the regular rate by failing to include non-discretionary forms of  
6 pay, Defendants vigorously disputed the discretionary nature of certain payments, and the degree to  
7 which they were required to be included in calculating the regular rate of pay. (Orshansky Decl. ¶  
8 46.)

9 In light of these considerations—especially the evidentiary difficulties of demonstrating off-  
10 the-clock work on a class-wide basis—Class Counsel applied a discount that incorporated the risks  
11 of non-certification and being unsuccessful on the merits. (Orshansky Decl. ¶ 47.)

12 **Meal and Rest Period Violations.** Plaintiffs asserted that there are compliance issues *vis-*  
13 *à-vis* meal breaks—some are late, missed, short, or interrupted. (Orshansky Decl. ¶ 48.)

14 On February 25, 2021, in *Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58, the  
15 California Supreme Court reversed the Fourth Appellate District and set forth two clear rules: (1)  
16 employers are not permitted to round time records when determining if employees are entitled to  
17 meal premium pay, and (2) it is the employer’s burden to show that compliant meal periods were  
18 provided to employees if the time records show otherwise. Using this opportunity to echo its long  
19 stance that California liberally construes the Labor Code and wage orders to favor protection of  
20 employees, the California Supreme Court emphasized that meal periods are part of the remedial  
21 worker protection framework to protect the health and safety of employees.

22 Although Defendants made some premium payments for non-complaint meal periods, those  
23 payments are merely a portion of what should have been paid pursuant to code. (Orshansky Decl. ¶  
24 50; *cf.* IWC Wage Order Nos. 4-2001 and 7-2001, § 11(b).) Consequently, Plaintiffs alleged that  
25 Defendants violated Labor Code sections 226.7 and 512, and applicable Wage Orders, by failing to  
26 compensate Plaintiffs and Class Members for all short, late, interrupted, and missed meal periods.  
27 (Orshansky Decl. ¶ 50.)

28 ///

Defendants, however, contended that they had practices, policies, and procedures to provide meal and rest breaks every workday to their employees that fully complied with the law. (Orshansky Decl. ¶ 51.) Defendants vehemently argued that they complied with the requirements articulated by the California Supreme Court in *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004. (Orshansky Decl. ¶ 51.) Specifically, Defendants maintained that they “provide” employees with a reasonable opportunity to take timely meal periods of at least 30 minutes, relieve employees of all duties during meal periods, and relinquish control over employees’ activities, including the ability to leave the premises during meal periods. (*Ibid.*)

Like most employers facing meal period litigation, Defendants argued that employees were apprised of their right to take meal periods and provided compliant meal periods, but some may have voluntarily waived them. (Orshansky Decl. ¶ 52.) Defendants contended that the issue of voluntary waiver would necessarily devolve into a series of individualized mini-trials, precluding class certification. (*Ibid.*; see *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 25 [holding that the defendant must be provided an opportunity to litigate affirmative defenses, even when they turn on individual questions].)

Based upon the analysis of Class Members’ time and payroll records and, in conjunction with interviews of Plaintiffs and Class Members, Plaintiffs determined that 74.75% of eligible shifts were the subject of unique violations for missed, short, or late meal periods, and calculated the potential exposure of this claim to be \$2,446,260.76, without discounting for risks associated with certification or merits. (Orshansky Decl. ¶ 53.)

Plaintiffs also alleged that Class Members did not receive authorized rest breaks as required whereby employers “relinquish control over how employees spend their time and relieve employees of all duties.” (Orshansky Decl. ¶ 54; *Augustus v. ABM Security Service, Inc.* (2016) 2 Cal.5th 257, 260.) Due to Defendants’ work demands and inadequate staffing, Plaintiffs and Class Members did not receive timely rest breaks, nor did Defendants relinquish control over how employees spent their rest breaks. (Orshansky Decl. ¶ 54.) Plaintiffs also alleged that Class Members did not receive rest break premium payments for non-compliant rest breaks, nor is there evidence that Defendants made rest break premium payments to Class Members at any time (unlike non-compliant meal periods, for

1 which Defendants made some premium payments, as noted above). (*Ibid.*) Thus, Plaintiffs alleged  
2 that Defendants did not provide premium pay for each non-compliant rest break as required under  
3 Labor Code section 226.7. (Orshansky Decl. ¶ 54.)

4 Here again, Defendants disputed liability and damages. Defendants maintained that they  
5 authorized and permitted duty-free rest breaks of not less than ten minutes for every major fraction  
6 of four hours worked as required by Labor Code section 226.7. (Orshansky Decl. ¶ 55.) Defendants  
7 explained that Class Members had ample opportunity to take, and did take, regular rest breaks. (*Ibid.*)  
8 As with meal periods, Defendants argued that any Class Member who failed to take a rest break, or  
9 took a short or late rest break, did so voluntarily and that all applicable rest breaks were still  
10 authorized and provided. (*Ibid.*) Defendants also attempted to distinguish *Augustus, supra*, which  
11 involved security guards who were required to monitor a pager, phone, or other device as having an  
12 added constraint that is not present in the matter *sub judice*. (Orshansky Decl. ¶ 55.)

13 Unlike meal periods, rest breaks need not be recorded and thus establishing Defendants'  
14 exertion of pressure, control, and resulting violations is likely to be more difficult. (Orshansky Decl.  
15 ¶ 56.) Thus, Class Counsel applied a 20% violation rate based on the narratives of Plaintiffs and  
16 other Class Members, for a maximum exposure of \$683,393.72. (*Ibid.*) For settlement purposes, and  
17 to account for the difficulties of certifying and proving unrecorded rest break violations, a downward  
18 departure from that maximum exposure was and is warranted. (*Ibid.*)

19 **Unreimbursed Expenses.** Plaintiffs alleged a cause of action under Labor Code section  
20 2802(a), which states that an employer must reimburse employees for all necessary expenditures  
21 that employees incur in discharging their duties. (Orshansky Decl. ¶ 57.) Here, Plaintiffs and Class  
22 Members were required to use their personal cell phones to communicate with supervisors and  
23 coworkers for reasons related to work, yet Defendants failed to reimburse for these necessary  
24 business expenses. (*Ibid.*)

25 Defendants contended that they have a policy and practice of reimbursing employees for  
26 necessary business-related expenses. (Orshansky Decl. ¶ 58.) Defendants also contended that, with  
27 respect to the alleged expenses for which Plaintiffs and other Class Members never requested  
28 reimbursement from Defendants, Defendants did not know and had no reason to know that the

1 alleged business-related expenses were incurred. (*Ibid.*) Moreover, to the extent it occurred,  
2 Defendants asserted that this claim is not suitable for class treatment as it would require  
3 individualized determinations as to whether each employee used a personal cell phone for work-  
4 related purposes and, if so, how much of that use was a reasonable percentage of his or her individual  
5 monthly phone bill. (*Ibid.*)

6 Defendants also argued that the California Labor Code only requires reimbursement of  
7 “necessary” expenses—as opposed to any expense that is incurred in the course of performing  
8 work—and argued that distinguishing a necessary expense from an unnecessary one would require  
9 individualized inquiry. (Orshansky Decl. ¶ 59; *see* Labor Code § 2802; *Gattuso v. Harte-Hanks*  
10 *Shoppers, Inc.* (2007) 42 Cal.4th 554.) Furthermore, whether an expense was necessary would  
11 depend in part on the reasonableness of the employee’s choice and would thus have to be established  
12 by way of extensive individual factual inquiry and/or statistical evidence. (Orshansky Decl. ¶ 59;  
13 *Cochran v. Schwan’s Home Services, Inc.* (2014) 228 Cal.App.4th 1137.)

14 For the foregoing reasons, and taking into account the wide variety of telephone plans,  
15 providers and costs which creates evidentiary complexities on an individual basis, let alone class-  
16 wide, Plaintiffs assigned *de minimis* value to this claim. (Orshansky Decl. ¶ 60.)

17 **Wage Statement Violations.** Plaintiffs alleged a cause of action under Labor Code section  
18 226(a) for Defendants’ failure to provide accurate itemized wage statements. Failure to comply with  
19 the statute entitles employees to recover the greater of all actual damages or fifty dollars (\$50) for  
20 the initial pay period in which a violation occurs and one hundred dollars (\$100) for each violation  
21 in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000).  
22 (*See* Labor Code § 226(e).) This cause of action is derivative of the foregoing causes of action  
23 because if Defendants did not provide wages for all hours worked, premiums for non-compliant  
24 meal and rest breaks, and so forth, then the wage statements were inevitably inaccurate. (Orshansky  
25 Decl. ¶ 61.)

26 Defendants contended, however, that Labor Code section 226(e) penalties are not automatic.  
27 (Orshansky Decl. ¶ 62.) Rather, the employee must show that Defendants’ non-compliance was  
28 “knowing and intentional.” Defendants suggested that any non-compliance was not knowing and

1 intentional. (*Ibid.*) Moreover, Defendants argued that meal and rest period violations cannot support  
2 derivative wage statement penalties. (*Ibid.*; see *Naranjo v. Spectrum Security Service, Inc.* (2019)  
3 40 Cal.App.5th 444, 474 [holding that violations of Labor Code’s meal break provisions do not  
4 entitle employees to pursue the derivative wage statement penalties]; *cf.*, but *review granted*,  
5 *Naranjo v. Spectrum Security Services, Inc.* (Cal., Jan. 02, 2020, No. S258966) 455 P.3d 704, 257  
6 Cal.Rptr.3d 188.) It was not until after this case settled, on May 23, 2022, that the California Supreme  
7 Court ruled that premium pay for missed meal and rest breaks constitutes “wages” that must be  
8 reported on wage statements and paid within the statutory deadlines when an employee leaves the  
9 job, thereby overturning the decision of the Court of Appeal. (Orshansky Decl. ¶ 70.)

10 Further, because the damages for this cause of action are penalties, the statute of limitations  
11 is only one year prior to the filing of the original complaint. (See Code Civ. Proc. § 340.) The Parties  
12 discussed these issues and, based on the \$50 initial violation plus the \$100 per pay period subsequent  
13 violation rates, Plaintiffs estimate the total maximum wage statement exposure to be \$488,450.00.  
14 (Orshansky Decl. ¶ 63.)

15 **Derivative Waiting Time and UCL Claims.** Plaintiffs further asserted causes of action  
16 against Defendants for failure to timely pay all wages due employees at separation and for engaging  
17 in unfair, unlawful, and fraudulent business practices. (See Labor Code §§ 203, 2699, *et seq.*; Bus.  
18 & Prof. Code §§ 17200, *et seq.*) As with other claims, Defendants vigorously disagreed that they  
19 engaged in any conduct giving rise to liability or entitlement to recovery of penalties or equitable  
20 relief. (Orshansky Decl. ¶ 64.)

21 Defendants argued that waiting time penalties are not appropriate because they attempted to  
22 pay employees all final wages owed in good faith upon their separation, thereby precluding a finding  
23 of willfulness necessary to obtain waiting time penalties. (Orshansky Decl. ¶ 65.) Moreover,  
24 Defendants maintained that no waiting time penalties were recoverable from alleged meal or rest  
25 period violations. (*Ibid.*) Defendants raised the Second Appellate District’s decision in *Naranjo*,  
26 *supra*, 40 Cal.App.5th at p. 444, to argue that meal and rest break violations trigger neither wage  
27 statement nor waiting time penalties. (Orshansky Decl. ¶ 65.) At that time, the *Naranjo* decision was  
28 still pending before the California Supreme Court, and though a decision has since issued (on May

23, 2022) the uncertainty and risk of an adverse decision added additional weight to the Defendants’ defense. (Orshansky Decl. ¶ 65.) Finally, Defendants argued that adequate remedies at law exist to render the action unsuitable for equitable remedies, and again contended that the allegations underlying the unfair competition claim lacked merit. (*Ibid.*)

Class Counsel calculated the maximum value of the waiting time claim to be \$2,136,657.60. (Orshansky Decl. ¶ 66.) However, to account for the uncertainty of proving the underlying claims, Class Counsel made a realistic allowance with the agreed upon settlement dollar figure. (*Ibid.*)

**PAGA Penalties.** The success of Plaintiffs’ PAGA claim is wholly dependent upon the success of their underlying claims occurring within the one-year statute of limitations applicable to the PAGA. (Orshansky Decl. ¶ 67.) Defendants maintained and continue to maintain that they had legally compliant employment policies and practices throughout the statutory period. (*Ibid.*) Defendants denied and continue to deny that they ever violated any provision of the California Labor Code and argued that, even assuming such violations occurred, Defendants will not be treated as having engaged in subsequent violations giving rise to heightened penalties. (*Ibid.*) In other words, Defendants argued that heightened civil penalties for subsequent violations would not be assessed unless it could be shown that Defendants had notice that they were violating the law, *e.g.*, they had been cited by a labor agency or adjudged by a court to have done so. (Orshansky Decl. ¶ 67; *see, e.g., Amaral v. Cintas Corp.* (2008) 163 Cal.4th 1157, 1209.) Thus, Defendants contended that, at best, even if a violation giving rise to a penalty was shown for each pay period, only the lower civil penalty associated with initial violations would apply. (Orshansky Decl. ¶ 67.)

Moreover, Defendants asserted that before a PAGA claim could be tried, under existing law, the court of law would have to be satisfied that the adjudication of the PAGA claim, based on a theory of uniform wage and hour practices relating to a large group of aggrieved employees, is sufficiently “manageable” so as not to interfere with Defendants’ right to due process. (Orshansky Decl. ¶ 68.) Defendants reiterated how employees’ job duties and managers varied. (*Ibid.*) Defendants contended that there was variation as to the circumstances that could allegedly cause employees to work off the clock or to be deprived of the opportunity to take legally compliant, duty-free meal and/or rest breaks. (*Ibid.*) Defendants further opined that these issues presented challenges

1 not only to liability but also challenges to Plaintiffs’ ability to show that a PAGA claim could be  
2 efficiently and manageably adjudicated without abridging Defendants’ due process rights. (*Ibid.*)

3 Defendants argued that the Court has discretion to reduce any award of PAGA penalties  
4 where it views them as duplicative. (Orshansky Decl. ¶ 69; *see* Labor Code § 2699e(2) [the Court  
5 may “award a lesser amount than the maximum civil penalty amount [authorized by PAGA] if, based  
6 on the facts and circumstances of the particular case, to do otherwise would result in an award that  
7 is unjust, arbitrary and oppressive, or confiscatory.”].)

8 Although, strictly speaking, class certification requirements are not required to be satisfied  
9 in order to adjudicate a PAGA claim, the state of the law with respect to the adjudication and  
10 valuation of a PAGA claim is uncertain. (Orshansky Decl. ¶ 70.) Thus, counsel applied discounts  
11 for the risks in establishing manageability and possible bifurcation of discovery and/or trial, the risks  
12 regarding success on the merits and establishing liability, and the risks with proving the extent of  
13 penalties that are warranted and possible discretionary reduction of penalties by the Court. (*Ibid.*)  
14 As a result, Plaintiffs used the “initial” \$100 per pay period violation (as opposed to the \$200  
15 subsequent per violation rate) to calculate a realistic estimate of \$496,300.00 in potential PAGA  
16 penalty exposure—of which, by statute, only 25%, or \$124,075.00—would be recoverable by  
17 aggrieved employees.<sup>4</sup> (*Ibid.*)

18 **Summary.** The foregoing considerations not only bore heavily on the negotiations leading  
19 to the settlement, but also confirm that the settlement is a fair, adequate, and reasonable compromise  
20 in view of the risks of further litigation. Plaintiffs and Class Counsel carefully vetted the claims at  
21 issue and conducted a detailed analysis of Defendants’ produced data to arrive at the calculated  
22 damages. In the end, it was determined that the \$1,575,000.00 Gross Settlement Amount represents  
23 an approximate 53.84% of the possible damages recoverable at trial. (Orshansky Decl. ¶ 71.)  
24 Plaintiffs presented a detailed *Clark* and *Kullar* analysis in connection with their motion for  
25

26 <sup>4</sup> This case was settled before the U.S. Supreme Court issued a decision in *Viking River Cruises,*  
27 *Inc. v. Moriana* (2022) 596 U.S. \_\_\_\_ (No. 20-1573), holding that the FAA preempts California’s  
28 prohibition on the employer’s ability to contract with employees to bring only their individual claims  
in arbitration and not a representative Private Attorneys General Act (PAGA) claim. This potentially  
limits an employer’s exposure to PAGA representative claims through use of arbitration agreements.

1 preliminary approval, which has not significantly changed in the interim. Thus, for reasons of  
2 economy and space, Plaintiffs refer the Court to their prior preliminary approval filing and to the  
3 concurrently-filed Orshansky Decl. at ¶¶ 40-71 for detailed claim valuation estimates. While the  
4 above-described risks are far from exhaustive, they demonstrate that the settlement is fair, adequate,  
5 and reasonable in light of them.

6                   **2. The Settlement Fairly, Reasonably, and Adequately Compensates**  
7                   **Settlement Class Members and PAGA Group Members Because Each**  
8                   **Settlement Class Member and PAGA Group Member Will Be Paid**  
9                   **Based on the Extent of His or Her Injury**

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

19                   **3. The 100% Participation Rate and Absence of Any Objections Confirms**  
20                   **That the Settlement Is Fair, Adequate, and Reasonable**

21           The Class Members’ response to the settlement is relevant in evaluating whether it merits  
22 final approval. (*Dunk, supra*, 48 Cal.App.4th at p. 1801.) Further, the absence of objections and  
23 requests for exclusion support a fairness presumption. (*See 7-Eleven Owners for Fair Franchising*  
24 *v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1152-53 [finding 9 objections and 80 opt-outs  
25 showed a “particularly impressive” response from class members].) Here, ***not a single Class***  
26 ***Member objected*** to the settlement and ***not a single Class Member opted out*** of the settlement,  
27 resulting in a ***100% settlement participation rate***. (Morales Decl. ¶¶ 10-12.) This extremely positive  
28 reaction from the Class further confirms that the settlement is fair, adequate, and reasonable.

1           **C.       The Requested Award of Attorneys’ Fees Is Reasonable as a Percentage of the**  
2                   **Common-Fund Total Settlement Amount**

3           A percentage method may be used to calculate a reasonable fee in a common fund case such  
4 as this. (*Laffitte v. Robert Half Int’l. Inc.* (2016) 1 Cal.5th 480, 503.) A fee award is justified where  
5 the legal action has produced its benefits by way of a voluntary settlement. (*See, e.g., Maria P. v.*  
6 *Riles* (1987) 43 Cal.3d 1281, 1290-91; *Westside Community for Independent Living, Inc. v. Obledo*  
7 (1983) 33 Cal.3d 348, 352-53.) When a settlement results in a common fund for the benefit of a  
8 class, class counsel may be awarded fees as a percentage of the common fund. (*See Wershba, supra,*  
9 91 Cal.App.4th at p. 254 [recognizing the “percentage of recovery” method].) The California  
10 Supreme Court confirmed in *Laffitte* that “[t]he percentage of fund method survives in California  
11 class action cases.” (*Lafitte, supra*, 1 Cal.5th at p. 506.) Specifically, the *Laffitte* Court held:

12           The recognized advantages of the percentage method - including relative ease of  
13 calculation, alignment of incentives between counsel and the class, a better  
14 approximation of market conditions in a contingency case, and the encouragement it  
15 provides counsel to seek an early settlement and avoid unnecessarily prolonging the  
litigation - convince us the percentage method is a valuable tool that should not be  
denied our trial courts.

16 (*Id.* at p. 503 [internal citation omitted]; *see also, e.g., Serrano v. Priest* (1977) 20 Cal.3d 25, 34  
17 [“when a number of persons are entitled in common to a specific fund, and an action brought by a  
18 plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund, such  
19 plaintiff or plaintiffs may be awarded attorney’s fees out of the fund.”]; *Serrano v. Unruh* (1982) 32  
20 Cal.3d 621, 627 [in awarding a fee from the common fund obtained for the benefit of all parties, the  
21 trial court acts within its equitable power to prevent the other parties’ unjust enrichment]; *Rawlings*  
22 *v. Prudential-Bache Properties, Inc.* (6th Cir. 1993) 9 F.3d 513, 516 [the percentage of the fund  
23 method for calculating attorneys’ fees more accurately reflects the results achieved for the putative  
24 class than the lodestar method and “establishes reasonable expectations on the part of plaintiffs’  
25 attorneys as to their expected recovery; and it encourages early settlement, which avoids protracted  
26 litigation.”]; *In re Rite Aid Corp. Securities Litigation* (3d Cir. 2005) 396 F.3d 294, 300 [“The  
27 percentage-of-recovery method is generally favored in common fund cases because it allows courts  
28

1 to award fees from the fund ‘in a manner that rewards counsel for success and penalizes it for  
2 failure.’”].)

3 The settlement calls for the payment of up to 35% of the Gross Settlement Amount for  
4 attorneys’ fees. (Settlement Agreement ¶ 47(a).) This request is fair, reasonable, and adequate to  
5 compensate Class Counsel for the excellent results achieved with average settlement payments of  
6 \$2,581.08, no objectors, and a 100% settlement participation rate. (See Morales Decl. ¶¶ 10-12;  
7 Orshansky Decl. ¶ 85.) First, Class Counsel negotiated a substantial recovery for Class Members  
8 resulting in a settlement participation rate of 100%. (See Morales Decl. ¶ 12; Orshansky Decl. ¶ 85.)  
9 Second, not a single Class Member objected to the settlement or to Class Counsel’s requested fees.  
10 (See Morales Decl. ¶ 10; Orshansky Decl. ¶ 85.) That Class Counsel achieved these results in the  
11 face of serious defense challenges (e.g., purported voluntary waiver of meal and rest periods) and in  
12 the face of an uncertain legal landscape (e.g., existence of arbitration agreements, and the then-  
13 pending California Supreme Court’s *Naranjo* decision) confirms the strength of the results achieved.  
14 (Orshansky Decl. ¶ 85.)

15 The attorneys’ fees requested is also consistent with Class Counsel’s experience in similar  
16 wage and hour class action matters. (Orshansky Decl. ¶ 87.) Additionally, the fee request is  
17 consistent with the contingency-fee agreement entered into by Plaintiffs. (*Id.* at ¶ 89) Further, the  
18 attorneys’ fees award requested is also consistent with what courts have awarded in other class and  
19 representative action cases. (See *Ammari Electronics, et al. v. Pacific Bell Directory*, Alameda  
20 County Sup. Ct. Case No. RG05198014 [awarded 43.8%]; *Zelada v. Majestic Terminal Services*,  
21 San Bernardino County Super. Ct. Case No. CIVDS1916968 [38% fee awarded on \$1,800,000  
22 settlement]; *In re California Indirect Purchaser X Ray Film Antitrust Litigation*, San Francisco  
23 County Super. Ct. [citing *Abzug v. Kerkorian*, Los Angeles County Super. Ct. Case No. CA-00981  
24 [45%] and *Haitz v. Meyer*, Alameda County Sup. Ct. Case No. 5729683 [45%]]; *Banda v. Verizon*  
25 *California, Inc.*, Los Angeles County Super. Ct. Case No. BC434587 [35% fee on \$15,000,000  
26 settlement]; *Hall v. Cinema 7, Inc.*, San Francisco County Super. Ct. Case No. CGC-01-409105  
27 [53%]; *Birch v. Office Depot*, U.S. District Court, Southern District of California Case No.

1 06cv1690 DMS [40% fee awarded on \$16,000,000 settlement]; and *Rundberg v. Intrawest Napa*  
2 *Dev. Co.*, Napa County Super. Ct. Case No. 26-56886 [40%]; Orshansky Decl. ¶ 87.)

3 In light of the facts and circumstances surrounding the case, Class Counsel’s application for  
4 attorneys’ fees is well within the range of reasonableness. In fact, courts have historically awarded  
5 fees as high as fifty percent (50%) of the settlement in complex actions. (*See In re Ampicillin*  
6 *Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494 [**awarding attorneys’ fees in the amount of 45%**  
7 of the \$7.3 million total settlement amount]; *Beech Cinema, Inc. v. Twentieth- Century Fox Film*  
8 *Corp.* (S.D.N.Y. 1979) 480 F.Supp. 1195 [awarding approximately **53% of the settlement as**  
9 **attorneys’ fees**]; *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 fn. 11 [lower court found  
10 the range of contingency fees in marketplace to be **up to 40 percent** and determined such a  
11 percentage fee was appropriate]; *Van Vranken v. Atlantic Richfield Co.* (N.D.Cal. 1995) 901 F.Supp.  
12 294, 297-298 [observing that “[m]ost of the cases Class Counsel have cited in which high  
13 percentages such as **30-50 percent of the fund** were awarded involved relatively smaller funds of  
14 less than \$10 million”]; *see also* 4 Rubenstein et al., *Newberg on Class Actions* (4th Ed. 2013) §  
15 14.6 [“No general rule can be articulated on what is a reasonable percentage of a common fund.  
16 Usually 50% of the fund is the upper limit on a reasonable fee award from a common fund in order  
17 to assure that the fees do not consume a disproportionate part of the recovery obtained for the class,  
18 although somewhat larger percentages are not unprecedented.”]; Orshansky Decl. ¶ 88.)

19 The fee award requested here is also justified because Class Counsel achieved a significant  
20 monetary recovery for Settlement Class Members and PAGA Group Members in an uncertain and  
21 risky case while bearing the substantial burdens of representation on a contingency basis, and the  
22 fees requested are in line with the market rate. (*See Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290  
23 F.3d 1043, 1048-1051 [finding that exceptional results in a contingency case, significant risk and  
24 the absence of supporting precedents, are proper considerations in awarding attorneys’ fees];  
25 Orshansky Decl. ¶ 90.) Class Counsel negotiated a substantial recovery for the Class Members,  
26 resulting in a settlement participation rate of 100%. (*See* Morales Decl. ¶ 12; Orshansky Decl. ¶ 90.)  
27 Moreover, no Class Member objected to the settlement or to Class Counsel’s requested fees. (*See*  
28 Morales Decl. ¶ 10.) Further, the average individual settlement payment of \$2,581.08 far exceeds

1 average settlement payments in similar wage and hour class action settlements.<sup>5</sup> (Orshansky Decl. ¶  
2 90.) Class Counsel achieved these results in the face of serious defense challenges and in the face of  
3 an uncertain legal landscape. (*Id.* at ¶ 91.)

4 As discussed above, this case presented significant risks of both non-certification as well as  
5 potential challenges on the merits of Plaintiffs' claims. (Orshansky Decl., *passim*.) Accordingly, it  
6 is fair and reasonable to account for these risks in compensating Class Counsel. Class Counsel  
7 should also be compensated for the risks involved in undertaking this litigation and expending  
8 considerable effort, all while working on a pure contingency basis. (*Id.* at ¶¶ 94-97, 100-108.) Since  
9 undertaking representation of Plaintiffs, Class Counsel expended costs and devoted substantial time  
10 to this litigation. (*See id.* at ¶¶ 101-102.) Given the considerable potential for adverse outcomes in  
11 this case, including, but not limited to, being unable to proceed on a class-wide basis and/or risking  
12 unfavorable adjudication on the merits, the contingent risk borne by Class Counsel was great. (*Id.*  
13 at ¶ 97.)

14 Class Counsel's previous experience litigating wage and hour class actions also supports the  
15 reasonableness of the fee request. (Orshansky Decl. ¶ 92.) Class Counsel are well-versed in plaintiff-  
16 side wage and hour class and representative action litigation, with substantial experience litigating  
17 claims for unpaid wages, meal and rest period violations, expense reimbursement and related  
18 penalties, and have been certified as class counsel in numerous other cases. (*Ibid.*) Class Counsel's  
19 experience in similar matters was integral to evaluating the strengths and weaknesses of this case  
20 and the reasonableness of the settlement. (*Id.* at ¶ 93.) Practice in the narrow field of wage and hour  
21

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22  
23 <sup>5</sup> (*See, e.g., Ressler v. Federated Department Stores, Inc.* (L.A. County Super. Ct. Jan. 2, 2009) Case  
24 No. BC335018 [average recovery of \$90]; *Palencia v. 99 Cents Only Stores* (Sacramento County  
25 Super. Ct.) Case No. 34-2010-00079619 [average recovery of \$80]; *Lim v. Victoria's Secret Stores,*  
26 *Inc.* (Orange County Super. Ct. Jan. 20, 2006) Case No. 04CC00213 [average recovery of \$35];  
27 *Gomez v. Amadeus Salon, Inc.* (L.A. County Super. Ct. July 23, 2010) Case No. BC392297 [average  
28 recovery of \$20]; *Sorenson v. PetSmart, Inc.* (E.D.Cal. 2008) Case No. 2:06-CV-02674-JAM-DAD  
[wage and hour class action settlement approved where average class member recovery was  
approximately \$60]; *Williams v. Centerplate, Inc.* (S.D.Cal. 2013) 2013 WL 4525428, at \*4  
[granting final approval of class action settlement where average recovery for each class member  
was approximately \$108]; *Schiller v. David's Bridal, Inc.* (E.D.Cal. June 11, 2012, No. 1:10-cv-  
00616-AWI-SKO) 2012 WL 2117001, at \*17 [finding that average payment to class members of  
less than \$200 was a "good" result]; Orshansky Decl. ¶ 90.)

1 litigation requires skill and knowledge concerning the rapidly evolving substantive state and federal  
2 law, as well as the procedural law of class and representative action litigation. (*Ibid.*)

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

6 **D. The Requested Award of Attorneys' Fees Is Reasonable as Evidenced by the**  
7 **Lodestar Cross-Check Method**

8 Significantly, *Laffitte* also held that trial courts have discretion to assess reasonableness of  
9 fee awards with tools such as the lodestar cross-check, though they need not do so. (*Laffitte, supra*,  
10 1 Cal.5th at p. 506 [“We hold further that trial courts have discretion to conduct a lodestar cross-  
11 check on a percentage fee...they also retain the discretion to forego a lodestar cross-check and use  
12 other means to evaluate the reasonableness of a requested percentage fee.”].) This Court can and  
13 should award attorneys' fees and costs based on the percentage fee alone in light of the excellent  
14 results achieved and for the reasons stated herein. Nevertheless, the lodestar “cross-check” here also  
15 supports the requested contingency-fee percentage.

16 Notably, “regardless of whether the percentage method or the lodestar method is used, fee  
17 awards in class actions average around one-third of the recovery.” (*Chavez, supra*, 162 Cal.App.4th  
18 at p. 66 fn. 11; *see also, e.g., Cicero v. DirectTV, Inc.* (C.D.Cal. July 27, 2010, No. EDCV 07-1182)  
19 2010 WL 2991486, at \*7 [observing that “30-50% [is] commonly awarded in cases in which the  
20 common fund is relatively small” and that in California, “courts usually award attorneys' fees in the  
21 30-40% range in wage and hour class actions...”]; *Williams v. Costco Wholesale Corp.* (S.D.Cal.  
22 July 7, 2010, No. 02-cv-2003-IEG-AJB) 2010 WL 2721452, at \* 6 [collecting cases where courts  
23 awarded between 33.33% and 40% in attorneys' fees in wage and hour class actions].)

24 A lodestar cross-check analysis typically happens in three steps. First, a trial court must  
25 determine a baseline guide or “lodestar” figure based on the time spent and reasonable hourly  
26 compensation for each attorney involved in the case. (*Serrano, supra*, 20 Cal.3d at p. 48.) The court  
27 then sets a reasonable hourly fee to apply to the time expended, with reference to the prevailing rates  
28 in the geographical area in which the action is pending. (*Bihun v. AT&T Information Systems, Inc.*

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

The *Serrano* factors militate strongly in favor of the requested fee award. (Orshansky Decl. ¶ 100.) Chief among these are factual risks and evidentiary challenges of substantiating unrecorded time and Defendants’ failure to authorize and permit breaks on a class-wide basis. (*Ibid.*) Also, class certification was by no means a foregone conclusion. Defendants argued that Plaintiffs would be unable to certify a class outside of the settlement context because Plaintiffs’ claims on the merits would require a series of individualized mini-trials. (*Ibid.*) Moreover, Plaintiffs would face significant hurdles to certification given that Defendants raised individualized affirmative defenses such as Class Members’ purported voluntary waiver of meal periods and rest breaks. (*Ibid.*) Further, Defendants contended Plaintiffs would face significant hurdles to certification given that Class Members signed arbitration agreements with class action waivers as a condition of their employment, which if enforceable would convert a putative class action (with the potential for class-wide damages) into an individual dispute and action. (*Ibid.*) If Plaintiffs prevailed and certified a class action, there is no guarantee that Defendants would not later move for and obtain decertification. (*Ibid.*) If the Court either denied class certification or later decertified it, the Settlement Class would recover nothing and Settlement Class Members would be forced to retain their own counsel and proceed on the basis of individual claims only. (*Ibid.*)

The attorneys’ fees award is intended to reimburse Class Counsel for all uncompensated work that they have already done and for all the work they will continue to do. To investigate, litigate, and ultimately negotiate and craft the settlement, Class Counsel expended a significant amount of time on the following: (1) regular discussions with Plaintiffs; (2) thorough pre-litigation investigation of facts with a focus on class certification elements; (3) investigation of Defendants’ organizational and corporate structure, and executive reporting structure as it relates to the

1 employment and management of employees (prior and current ownership); (4) research and  
2 investigation re: staffing models and staffing levels; (5) drafting the PAGA notices to the LWDA  
3 and pleadings; (6) legal research and analysis into substantive law; (7) developing and executing  
4 settlement and litigation strategies; (8) conducting informal discovery; (9) meeting and conferring  
5 with defense counsel; (10) interviewing Class Members; (11) reviewing policies and procedures  
6 regarding payment of wages, provision and tracking of meal and rest breaks, and timekeeping  
7 protocol, including recording hours, issuance of wage statements, and providing all wages at  
8 separation; (12) research and investigation re: various software programs Defendants use to conduct  
9 everyday business, including timekeeping software, with a focus on what documents are created in  
10 the normal course of business; (13) examining Class Members' time records and wage statements  
11 in conjunction with Class Member interviews to determine Defendants' degree of liability; (14)  
12 consulting with an expert; (15) building a comprehensive damages model; (16) preparing a  
13 mediation brief; (17) preparing for and attending mediation; (18) negotiating and preparing the long-  
14 form Settlement Agreement and Notice; (19) preparing the Motion for Preliminary Approval and  
15 supporting documents; (20) overseeing the class notice process; (21) responding to questions from  
16 Class Members; and (22) preparing the Motion for Final Approval and supporting documents.  
17 (Orshansky Decl. ¶ 101.)

18       The work performed by Class Counsel performed was meaningful, and Class Counsel's  
19 hourly rate is commensurate with experience and the prevailing rates among defense and plaintiffs'  
20 firms that regularly litigate wage-and-hour class actions (Orshansky Decl. ¶ 102.) Class Counsel's  
21 rate is commensurate with the prevailing market rates in California for attorneys of comparable  
22 experience and skill handling complex litigation. (*Id.* at ¶¶ 102, 104.) Class Counsel's rate is based  
23 on prevailing fees in this geographical area and has been approved in California and Ninth Circuit  
24 courts. (*Ibid.*) The reasonableness of Class Counsel's hourly rate is further confirmed in light of the  
25 hourly rates identified based on years of experience in the Laffey Matrix. (*See* Orshansky Decl. ¶  
26 105 and Exhibit 3 [Laffey Matrix].)

27 ///

28 ///

1 As set forth in detail in the accompanying Declaration of Anthony J. Orshansky, Class  
2 Counsel spent a substantial amount of time during the course of its representation of Plaintiffs and  
3 the prosecution of this action. With an aggregated lodestar amount of \$260,229.00, a multiplier of  
4 only 2.12 is necessary to yield the requested fees. (Orshansky Decl. ¶ 107 and Exhibit 4 [Attorney  
5 Task and Time Chart].) This multiplier is fair and reasonable based on the contingent nature of the  
6 case, the risks and difficulties presented, and the result achieved.

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

16 The requested multiplier in this case is within even the modest multipliers that are awarded  
17 by California courts. (*See Vizcaino, supra*, 290 F.3d at pp. 1050-1051 [looking to multipliers  
18 awarded in comparable cases as evidence of reasonableness; affirming 3.65 multiplier].) Multipliers  
19 routinely range from 3 to 5, and it is not uncommon that multipliers of between 5 and 10, or higher,  
20 are applied. (*See, e.g., Wilson v. Bank of Am. Natl. Trust & Savs. Assn.* (Cal. Sup. Ct., Aug. 16, 1982)  
21 Case No. 643872 [multiplier of 10]; *Glendora Comm. Redev. Agency v. Demeter* (1984) 155  
22 Cal.App.3d 456, 465 [affirming multiplier of 12, and expressly rejecting argument that fee was either  
23 exorbitant or unconscionable]; *Wershba, supra*, 91 Cal.App.4th at p. 255 [noting that “[m]ultipliers  
24 can range from 2 to 4 or even higher”]; *Van Vranken, supra*, 901 F.Supp. at p. 298 [multipliers of 3-  
25 4 are in the “range [of] common” multipliers for class actions]; *Holleran v. Rita Medical Systems,*  
26 *Inc.* (Cal. Super. Ct. Oct. 04, 2007, No. RG06302394) 2007 WL 7759253 [multiplier of 4.57];  
27 *Gutierrez v. Wells Fargo Bank, N.A.* (N.D.Cal. May 21, 2015, No. C07-05923-WHA) 2015 WL  
28 2438274, at \*7 & 8 fn. 3 [multiplier of 4.53]; *Johnson v. Fujitsu Tech. & Bus. of Am., Inc.* (N.D.Cal.

May 11, 2018, No. 16-CV-03698-NC) 2018 WL 2183253, at \*7 [multiplier of 4.375]; *Buccellato v. AT & T Operations, Inc.* (N.D.Cal. Jun. 30, 2011, No. C10-00463-LHK) 2011 WL 3348055, at \*2 [multiplier of 4.3]; *Chau, et al v. CVS RX Services, Inc.*, Los Angeles County Superior Court No. BC349224, Order Granting Final Approval of Class Action Settlement, Reasonable Attorneys’ Fees and Costs and Service Payments to the Class Representatives [a 3.8 multiplier was applied based primarily on contingent risk and the “excellent results [] obtained [] with relative efficiency”]; Orshansky Decl. ¶ 107.)

For the reasons stated herein, Class Counsel firmly believe that the settlement in this case strongly supports the request for a 35% fee award. The settlement provides substantial relief to the Class Members and is an all-in resolution where all the funds will be paid out. As with all wage and hour cases, this one presented real issues as to the viability of both certification and liability, was litigated in an effective manner so as to drive a fair settlement, and the result merits the requested fee award.

Thus, the lodestar cross-check affirms that the fee award requested does in fact fall within the range of reasonableness.

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

Class Counsel incurred and respectfully request reimbursement of \$25,000 in litigation costs. (Orshansky Decl. ¶¶ 110, 111 and Exhibit 5 [Cost Breakdown].) This amount is less than the actual costs incurred to date by Class Counsel totaling \$25,195.37. (Orshansky Decl. ¶ 110 and Exhibit 5.) The cost breakdown does not include Westlaw fees, copy charges, and additional fees associated with filing the final approval motion. (Orshansky Decl. ¶ 110.) Class Counsel’s request is fair, adequate, and reasonable, as all of these costs are documented and reasonably incurred. (Orshansky Decl. ¶¶ 110, 111 and Exhibit 5.) Moreover, the costs for which Plaintiffs seek reimbursement are the types of costs routinely approved by courts. (*See, e.g., Harris v. Marhoefer* (9th Cir. 1994) 24 F.3d 16, 19 [counsel should recover “those out-of-pocket expenses that would normally be charged to a fee paying client”]; *Ashker v. Sayre* (N.D.Cal. 2011, No. 05-03759-CW) 2011 WL 825713, at \* 3 [“costs of reproducing pleadings, motions and exhibits are typically billed

1 by attorneys to their fee-paying clients” and are reimbursable]; *Trustees of Const. Industry &*  
2 *Laborers Health and Welfare Trust v. Redland Ins. Co.* (9th Cir. 2006) 460 F.3d 1253, 1258-1259  
3 [legal research costs are reimbursable]; *In re Immune Response Securities Litigation* (S.D.Cal. 2007)  
4 497 F.Supp.2d 1166, 1177-78 [mediation expenses, legal research, copies, postage, filing fees,  
5 messenger and overnight delivery costs are reimbursable].) The requested reimbursement of costs  
6 of up to 25,000 was fully disclosed to Class Members and there have been no objections. (*See*  
7 *Morales Decl.* ¶ 10.) Because the expenses by Class Counsel were reasonably incurred, and no Class  
8 Member has objected to them, the Court should grant the request for reimbursement of \$25,000.00  
9 for litigation costs.

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

12 Plaintiffs also request that the Court approve \$14,250 in administration costs to the  
13 Settlement Administrator. (*See* Settlement Agreement ¶ 47(b) [agreeing to an amount up to  
14 \$18,000]); *Morales Decl.* ¶ 13.) As detailed in the declaration Abel E. Morales submitted  
15 concurrently with this Motion, CPT performed duties in connection with this settlement that were  
16 instrumental in effectuating the settlement and the notice process. Among other things, CPT  
17 calculated each Class Member’s individual settlement payment, updated addresses contained in the  
18 class data supplied by Defendants (*e.g.*, NCOA and skip-traces), formatted the Notices for mailing,  
19 mailed the Notices to all Class Members and PAGA Group Members, kept the Parties informed of  
20 any communications received from the Class Members and PAGA Group Members, and otherwise  
21 administered the settlement. (*See Morales Decl., passim.*) For these reasons, CPT’s requested costs  
22 are fair, reasonable, and adequate, and should be finally approved.

23 **G. The Court Should Finally Approve Plaintiffs’ Requested Class Representatives’**  
24 **Enhancement Payments Because the Amount Is Fair, Adequate, and**  
25 **Reasonable in Light of Plaintiffs’ Efforts and Risks Assumed on Behalf of the**  
26 **Class**

27 A class representative must possess the same interest and suffer the same injury as the class  
28 members. “To assure ‘adequate’ representation, the class representative’s personal claim must not

1 be inconsistent with the claims of other members of the class.” (*J.P. Morgan & Co., Inc. v. Sup. Ct.*  
2 (*Heliotrope General, Inc.*) (2003) 113 Cal.App.4th 195, 212.) Thus, the adequacy requirement is  
3 satisfied when the class representative’s interests are not antagonistic to those of the class. (*McGhee*  
4 *v. Crocker-Citizens Nat. Bank* (1976) 60 Cal.App.3d 442, 451.) Plaintiffs have no conflicts with the  
5 Settlement Class and in fact their interests are aligned with those of the Settlement Class. (*See*  
6 Orshansky Decl. ¶ 112; Declaration of Bernardo Hernandez (“Hernandez Decl.”), filed concurrently  
7 herewith, at ¶ 10; Declaration of Maria G. Flores (“Flores Decl.”), filed concurrently herewith, at ¶  
8 10.) Because Plaintiffs’ claims are the same as those that would be asserted by unnamed class  
9 members were they before the Court, Plaintiffs have every interest in zealously representing the  
10 unnamed class members. (Hernandez Declaration, *passim*; Flores Decl., *passim*.) Plaintiffs have not  
11 shirked from this responsibility; on the contrary, Plaintiffs, along with their counsel, prosecuted this  
12 case with allegiance and dedication. (Hernandez Decl. ¶¶ 10-12; Flores Decl. ¶¶ 10-12; Orshansky  
13 Decl. ¶ 112.)

14 Courts routinely approve enhancement payments to compensate named plaintiffs for the  
15 services they provide and the risks they incur during class action litigation. (*See, e.g., Bell v.*  
16 *Farmers Ins. Exchange* (2004) 115 Cal.App.4th 715, 726 [upholding “service payments” to named  
17 plaintiffs for their efforts in bringing the case]; *Van Vranken, supra*, 901 F.Supp. at p. 294  
18 [approving \$50,000 service payment].)

19 Here, Plaintiffs each request an Enhancement Payment in the amount of \$10,000. This  
20 request is reasonable given their efforts in initiating the action, the time and effort involved, the  
21 substantial benefits conferred on the Settlement Class Members and PAGA Group Members, and  
22 the risks assumed by them. (Orshansky Decl. ¶ 116.) Plaintiffs actively participated in the  
23 prosecution of this matter, in particular, but not exclusively, through their discussions with Class  
24 Counsel, identifying potential witnesses, providing factual information to Class Counsel about  
25 Defendants’ business, policies, practices, and procedures, monitoring the progress of the case,  
26 participating in settlement discussions, evaluating the terms of the settlement, and reviewing and  
27 signing the Settlement Agreement. (*See* Orshansky Decl. ¶ 113; Hernandez Decl. ¶ 12; Flores Decl.

¶ 12.) Plaintiffs invested significant time and effort into seeing this litigation through resolution. (Hernandez Decl. ¶¶ 12-13; Flores Decl. ¶¶ 12-13.)

Plaintiffs have diligently, adequately, and fairly represented Class Members, are members of the Settlement Class, have no conflicts as outlined above, and have not placed their interests above those of any member of the Settlement Class. (Orshansky Decl. ¶ 114; Hernandez Decl. ¶ 10; Flores Decl. ¶ 10.) Furthermore, the requested enhancement payments to the Class Representatives were fully disclosed to Class Members in the Notice and no objections have been made. (See Morales Decl. ¶ 10.)

Thus, Plaintiffs' requested enhancement payments are appropriate and justified as part of the settlement, and should be finally approved.

**V. CONCLUSION**

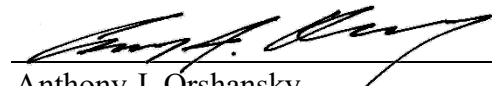
For the reasons stated herein, Plaintiffs respectfully request that this Court grant Plaintiffs' Motion and enter the Proposed Order Granting Plaintiffs' Motion for Final Approval of Class and Representative Action Settlement, Attorneys' Fees and Costs, and Class Representatives' Enhancement Payments and the Proposed Judgment, both of which are submitted concurrently herewith.

Dated: January 2, 2023

Respectfully submitted,

COUNSELONE, P.C.

By:



Anthony J. Orshansky

Jennifer L. Connor

Justin Kachadoorian

Attorneys for Plaintiffs