

1 JAMIE K. SERB (SBN 289601)
2 jamie@crosnerlegal.com
3 NIKKI TRENNER (SBN 316007)
4 nikki@crosnerlegal.com
5 ZACHARY M. CROSNER (SBN 272295)
6 zach@crosnerlegal.com
7 CROSNER LEGAL, PC
8 9440 Santa Monica Blvd., Ste. 301
9 Beverly Hills, CA 90210
10 Tel: (866) 276-7637
11 Fax: (310) 510-6429
12 Attorneys for Plaintiff Va Pau Lo

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

VA PAU LO, as an individual and on behalf
of all others similarly situated,

Plaintiff,

vs.

CYBERPOWER, INC. doing business as
CYBERPOWER P.C., a California
corporation; and DOES 1 to 50, inclusive

Case No.: 21STCV41181

Assigned for all Purposes to:
Hon. Daniel Freeman
Dept. SSC-14

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF MOTION
FOR FINAL APPROVAL OF CLASS ACTION
SETTLEMENT AND REQUEST FOR
ATTORNEY'S FEES AND COSTS

[Filed concurrently with Notice of Motion and
Motion; Declarations of Nikki Trenner and
Tarus Dancy; [Proposed] Order]

Date: April 30, 2024
Time: 10:00 a.m.
Dept.: SSC-14

TABLE OF CONTENTS

I. INTRODUCTION	1
II. BACKGROUND/LITIGATION HISTORY	2
III. TERMS OF THE PROPOSED SETTLEMENT	3
A. Certification of the Settlement Class.....	3
B. The Benefit Conferred on the Settlement Class	4
C. Settlement Administration.....	5
D. Release of Claims.....	5
E. PAGA Claims and Notice to the LWDA	5
IV. ARGUMENT	6
A. The Proposed Settlement Merits Final Approval	7
1. The Settlement Is the Product of Arm's-Length, Informed Negotiations	7
2. The Class Reacted Favorably to the Settlement	7
3. The Settlement Is Fair and Reasonable Considering the Benefits Conferred, the Case Value, and Significant Litigation Risks	8
B. The Class Representative Service Awards Are Justified Given the Risks and Should be Preliminarily Approved.....	12
VI. SETTLEMENT ADMINISTRATION COSTS.....	13
VII. ATTORNEY'S FEES AND COSTS	13
A. The Attorney's Fees Requested Are Fair and Reasonable and Should Be Approved	13
B. The Requested Fee Award Is Reasonable and Appropriate.....	14
C. Class Counsel's Fees are Justified When Calculated as a Percentage of the Common Fund	15
D. A Lodestar Cross-Check Also Supports Class Counsel's Fee Request	16

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

E. The Award is Supported By 1) the Results Achieved; 2) the Risk, 3) the Skill Required, 4) the Contingent Nature of the Fee and 5) Awards in Similar Cases. 18

1. The Results Achieved..... 19

2. Class Counsel Bore Considerable Risk. 19

3. The Skill Required and the Quality of Work. 20

4. The Contingent Nature of the Fee and Risk Assumed 20

5. Awards in Other Cases 21

F. Class Counsel’s Costs and Expenses are Reasonable 21

VIII. CONCLUSION 22

1 **TABLE OF AUTHORITIES**

2 **Page(s)**

3

4 **Cases**

5 7-Eleven Owners for Fair Franchising v. Southland Corp.

6 (2000) 85 Cal.App.4th 1135..... 11

7

8 Alvarado v. Dart Container Corp.

9 (2018) 4 Cal.5th 542..... 9

10 Amaral v. Cintas Corp. No. 2

11 (2008) 163 Cal.App.4th 1157..... 10

12

13 In re: American Bank Note Holographics,

14 127 F.Supp.2d 418 (S.D.N.Y. 2001)..... 7

15 Augustus v. ABM Security Serv., Inc.

16 (2016) 2 Cal.5th 257..... 9

17

18 Bell v. Farmers Ins. Exch.

19 (2004) 115 Cal. App. 4th 715..... 12

20 Blum v. Stenson

21 (1984) 465 U.S. 886 14

22

23 Boeing Co. v. Van Gernert

24 (1980) 444 U.S. 472 16

25 Brinker Restaurant Corp. v. Superior Court

26 (2012) 53 Cal.4th 1004..... 9

1	<u>Carrington v. Starbucks Corp.</u>	
2	(2018) 30 Cal.App.5th 504.....	10
3		
4	<u>Cazares v. Saenz</u>	
5	(1989) 208 Cal.App.3d 279	20
6	<u>In re Cellphone Fee Termination Cases</u>	
7	(2010) 186 Cal. App. 4th 1380.....	12
8		
9	<u>Chavez v. Netflix, Inc.</u>	
10	(2008) 162 Cal.App.4th 43	18
11	<u>Class Plaintiffs v. City of Seattle</u>	
12	(9th Cir. 1992) 955 F.2d 1268, <u>cert. denied</u> , 506 U.S. 953	6
13		
14	<u>Deposit Guaranty Nat’l Bank, Jackson, Miss. v. Roper</u>	
15	(1980) 445 U.S. 326, <u>rehg. den.</u> 446 U.S. 947	13
16	<u>Donahue v. AMN Services, LLC</u>	
17	(2021) 11 Cal.5th 58. (Trenner Decl.).....	9
18		
19	<u>Dunk v. Ford Motor Co.</u>	
20	(1996) 48 Cal.App.4th 1794.....	6, 7
21	<u>Evans v. Jeff D.</u>	
22	(1986) 475 U.S. 717	14
23		
24	<u>Harris v. Marhoefer</u>	
25	(9th Cir. 1994) 24 F.3d 16	22
26	<u>Hensley v. Eckerhart</u>	
27	(1983) 461 U.S. 424	14
28		

1	<u>Hernandez v. Restoration Hardware, Inc.</u>	
2	(2018) 4 Cal.5th 260.....	15
3	<u>Jennings v. Open Door Mktg. Inc.</u>	
4	(N.D. Cal. Oct. 3, 2018) 2018 U.S. Dist. LEXIS 171356	11
5		
6	<u>Ketchum v. Moses</u>	
7	(2001) 24 Cal.4th 1122.....	20
8	<u>Laffitte v. Robert Half Int’l., Inc.</u>	
9	(2016) 1 Cal.5th 480.....	15, 17, 19
10		
11	<u>Lane v. Facebook, Inc.</u>	
12	(9th Cir. 2012) 696 F.3d 811	12
13	<u>Lealao v. Beneficial Cal., Inc.</u>	
14	(2000) 82 Cal.App.4th 19.....	13, 15
15		
16	<u>Levy v. Toyota Motor Sales, U.S.A.</u>	
17	(1992) 4 Cal.App.4th 807.....	13
18	<u>Mandujano v. Basic Vegetable Prods., Inc.,</u>	
19	541 F.2d 832 (9th Cir. 1976).....	7
20		
21	<u>McKittrick v. Gardner</u>	
22	(4th Cir. 1967) 378 F.2d 872.....	20
23	<u>In re Omnivision Techs., Inc.</u>	
24	(N.D. Cal. 2008) 559 F.Supp.2d 1036	19
25		
26	<u>Paul, Johnson, Alston & Hunt v. Graulty</u>	
27	(9th Cir. 1989 886 F.2d 268, 272).....	18
28		

1	<u>Potter v. Pacific Coast Lumber Co.</u>	
2	(1951) 37 Cal.2d 592.....	6
3		
4	<u>Powers v. Eichen</u>	
5	(9th Cir. 2000) 229 F.3d 1249.....	20
6	<u>Rider v. County of San Diego</u>	
7	(1992) 11 Cal.App.4th 1410.....	22
8		
9	<u>See's Candies v. Superior Court</u>	
10	(2012) 210 Cal.App.4th 889.....	10
11	<u>Serrano v. Priest</u>	
12	(1977) 20 Cal.3d 25.....	16, 21
13		
14	<u>Slavkov v. First Water Heater Partners I</u>	
15	(N.D. Cal. July 25, 2017) 2017 U.S. Dist. LEXIS 116303	11
16	<u>Staton v. Boeing</u>	
17	(9th Cir. 2003) 327 F.3d 938.....	13
18		
19	<u>In re Taco Bell Wage and Hour Actions</u>	
20	(E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. LEXIS 48557	10
21	<u>Van Bronkhorst v. Safeco Corp.</u>	
22	(9th Cir. 1976) 529 F.2d 943,950.....	6
23		
24	<u>Van Kempen v. Matheson Tri-Gas, Inc.</u>	
25	(N.D. Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182	10
26	<u>Vincent v. Hughes Air West, Inc.</u>	
27	(9th Cir. 1977) 557 F.2d 759.....	16
28		

1	<u>In re Warner Communications Sec. Litig.</u>	
2	(S.D.N.Y. 1985) 618 F.Supp. 735	16, 21
3		
4	<u>Wershba v. Apple Computer</u>	
5	(2001) 91 Cal.App.4th 224.....	<i>passim</i>
6	<u>White v. Experian Information Solutions, Inc.</u>	
7	(C.D. Cal. 2011) 803 F.Supp.2d 1086.....	12
8		
9	Statutes	
10	Cal. Code Regs. Tit. 8 § 13520	10
11		
12	Cal. Rule of Court 3.769	6, 13
13	Labor Code sections 512, 226.7	9
14		
15	Labor Code § 2699(e)(2).....	10
16	Labor Code section 2699(l)(2)	6
17		
18	Other Authorities	
19	<u>Attorney Fee Awards</u> (2d ed. 1993) § 104	16
20	<u>Managing Class Action Litigation: A Pocket Guide for Judges</u> (3d ed. 2010),	
21	available at http:// www.fjc.gov/sites/default/files/2012/ClassGd3.pdf	12
22		
23	<u>Newberg on Class Actions</u> (4th ed. 2002), § 11.41.....	6
24		
25	<u>Newberg on Class Actions</u> (3d ed.) § 14.03.....	16, 21
26		
27		
28		

1 **I. INTRODUCTION**

2 Plaintiff and Class Representative Va Pau Lo seeks final approval of a non-reversionary
3 class action settlement resolving wage and hour claims on behalf of 566 individuals who worked
4 for Defendant CyberPower, Inc. dba Cyberpower P.C. (“Cyberpower” or “Defendant”) in the State
5 of California as non-exempt employees at any time between August 25, 2017 and December 31,
6 2022. The proposed \$1,925,000 total settlement provides about \$1,187,400 in cash payments to
7 the Class, with an average award of about \$2,100, plus additional amounts payable under PAGA.
8 The remaining balance will cover a modest service award to Plaintiff, settlement administration
9 costs, civil penalties to the state, and reasonable attorney’s fees and costs. The parties and their
10 counsel finalized the settlement after extensive and difficult arms-length negotiations overseen by
11 an experienced and highly-regarded mediator. The Court conditionally certified the Class and
12 preliminarily approved the settlement on September 21, 2023. Since then, the Court-approved
13 notice form was mailed to the Class Members on November 3, 2023, and they reacted very
14 favorably to the settlement. As of the filing of this motion, there are no objections, and only one
15 single class member has requested exclusion.

16 Class Counsel secured an excellent settlement with Defendant after more than two
17 years of investigation, litigation, and settlement negotiation and administration, all
18 without any compensation for services rendered or costs expended. The class notice duly
19 informed the class members that Class Counsel would request attorney’s fees not to
20 exceed 33.33% of the Gross Settlement Amount, along with reimbursement of no more
21 than \$30,000 for actual costs incurred litigating this matter. As of the filing of this
22 motion, *not one Class Member objected* to the proposed fee award. Consistent with the
23 Settlement and notice, Plaintiff now respectfully requests the Court award Class
24 Counsel's fees in the amount of \$641,666 and costs in the amount of \$20,444.87, as
25 described in the Declaration of Nikki Trenner (“Trenner Decl.”) filed herewith. The
26 requested attorney’s fees are well within the range of reasonableness, especially
27 considering the complex and risky nature of this litigation, the contingent risk assumed,
28

1 the nearly three year delay in payment and, when subjected to a lodestar crosscheck,
2 results in a fee award with a modest 1.91 enhancement to the base lodestar.

3 Accordingly, on behalf of himself and the Settlement Class, Plaintiff respectfully
4 requests the Court grant this motion, give full and final approval to the settlement, grant Class
5 Counsel's request for attorney's fees and costs, and enter judgment accordingly.

6 **II. BACKGROUND/LITIGATION HISTORY**

7 The details of the procedural and factual background of this matter were outlined in the
8 Plaintiffs' Motion for Preliminary Approval of Class Action Settlement (filed on or about
9 August 16, 2023). To re-familiarize the Court with this litigation, Defendant Cyberpower is a
10 computer system manufacturer, manufacturing and distributing customized high-end gaming
11 machines, notebook systems, and high-performance workstations. Plaintiff worked for Cyberpower
12 in a warehouse in Los Angeles County from approximately August 2020 to June 2021, as an hourly
13 paid general warehouse laborer. [Trenner Decl., ¶ 2.]

14 On August 25, 2021, Plaintiff filed a class action complaint in this Court alleging various
15 wage and hour violations. Plaintiff then submitted a PAGA notice letter to the LWDA on August
16 23, 2021, and exhausted his administrative remedies. Plaintiff did not receive notice from the
17 LWDA that it intended to investigate the alleged violations outlined in his PAGA letter.
18 Consequently, on November 8, 2021, Plaintiff filed a PAGA-only complaint¹ against Defendant,
19 also alleging violations of various Labor Code provisions. [Trenner Decl., ¶ 3.]

20 Based on this informal discovery, Plaintiff contends the Class Members were not paid all
21 minimum or overtime wages, not provided with legally compliant meal and rest periods, did not
22 receive compliant wage statements, and did not receive all wages due on separation of employment.
23 In considering the reasonableness of the proposed settlement, Plaintiff considered each of
24 Defendant's counterarguments, which sharply contested Plaintiff's claims. Plaintiff's Counsel
25 weighed the strength of Defendant's arguments, including the risks of prevailing at class
26 certification and on the merits, and determined that the proposed settlement is in the best interests
27

28 ¹ LASC Case No. 21STCV41181.

1 of the Class. Although remaining confident in the strength of their claims, all these factors led
2 Plaintiff to discount the exposure analysis, as discussed in detail below. [Trenner Decl., ¶ 4.]

3 Plaintiff and Cyberpower engaged in numerous meet and confer discussions regarding
4 discovery, potential law and motion, and potential ADR. Ultimately, the Parties agreed to mediation
5 and also agreed to an informal exchange of information to facilitate meaningful settlement
6 discussions. The Parties then retained Steve Cerveris, Esq., a well-respected neutral with extensive
7 experience mediating wage and hour class actions. In April and October 2022, Plaintiff and
8 Cyberpower mediated with Mr. Cerveris and after two full days of negotiations, the Parties reached
9 agreement on all major issues. The Court preliminarily approved the settlement on September 21,
10 2023. [Trenner Decl., ¶¶ 5-6.]

11 Class Notices were mailed to class members on November 3, 2023, and Class Members
12 had until December 18, 2023 to opt out or object to the proposed settlement. [Declaration of
13 Tarus Dancy (“Dancy Decl.”), ¶ 7.]

14 **III. TERMS OF THE PROPOSED SETTLEMENT**

15 Under the settlement, Cyberpower will pay \$1,925,000.00 into a common fund, the Gross
16 Settlement Amount or GSA. Attorney’s fees of up to 33.33% of the GSA (\$641,666.00), litigation
17 costs of up to \$30,000 (only \$20,444.87 is requested), an enhancement award of \$10,000 for the
18 plaintiff, settlement administration costs of \$15,500, and a payment of \$50,000 for PAGA civil
19 penalties (of which \$37,500 (75%) will go to the Labor & Workforce Development Agency for its
20 share of the PAGA penalties and \$12,500 (25%) will be paid to Aggrieved Employees²), all will be
21 paid from the GSA. The remainder of approximately \$1,187,400 will be allocated to the
22 Participating Class Members based on their total weeks worked during the Class Period. No portion
23 of the GSA will revert to Cyberpower. [Trenner Decl., ¶ 7.]

24 **A. Certification of the Settlement Class**

25 The Court conditionally certified a settlement class including all current and former non-
26 exempt employees who worked for Cyberpower in California at any time during the Class Period

27
28 ² “Aggrieved Employee” means all current and former non-exempt employees who worked for Defendant
in California at any time from September 4, 2020 through December 31, 2022 (the “PAGA Period”).

1 of August 25, 2017 to December 31, 2022. The Settlement Administrator ultimately mailed
2 class notices to 566 individuals identified as members of the Class. [Dancy Decl., ¶ 7.]
3 Nothing has changed to require reconsideration of the Court's certification of the
4 Settlement Class.

5 **B. The Benefit Conferred on the Settlement Class**

6 As noted, the settlement obligates Cyberpower to pay \$1,925,000 to resolve the claims of
7 the Settlement Class, inclusive of attorney's fees and costs. Approximately \$1,187,400 from the
8 GSA will be distributed to the Participating Class Members, with additional amounts going to
9 PAGA Employees for their portion of the PAGA payment. This is a cash settlement that does not
10 require Participating Class Members to submit a claim form to receive their settlement share.
11 Participating Class Members will receive their settlement checks automatically via First Class U.S.
12 Mail. Twenty percent of each settlement share will be allocated to wages and the remaining eighty
13 percent will be allocated to penalties and interest. Cyberpower will pay any and all applicable
14 employer-side payroll taxes separately and in addition to the GSA. Subject to the Court's approval,
15 any amounts not cashed, will be forwarded to the State Controller's Unclaimed Property Fund.
16 [Trenner Decl., ¶ 8.]

17 Each Participating Class Member will receive a share of the Net Settlement Amount based
18 on his or her total weeks worked for Cyberpower in California during the Class Period while
19 employed in a non-exempt position. Thus, each Class Member's Individual Settlement Share will
20 be calculated using criteria typically used in determining appropriate amounts of unpaid wages,
21 unpaid premium wages for missed meal breaks, and potential statutory penalties under applicable
22 law. These methods are intended to ensure each Class Member receives a portion of the available
23 settlement funds corresponding to the relative value of his or her potential claims. The proposed
24 allocation provides a reasonable way to compensate Class Members based on the amount of time
25 they worked for Cyberpower and the number of instances they missed a meal break, were not
26 provided compensation in lieu of such missed breaks, or lost wages due to the alleged regular rate
27 miscalculation, etc. [Trenner Decl., ¶ 9.] The average class payment will be about \$2,101, and the
28

1 maximum class payment will be about \$4,979. The average PAGA payment will be about \$33.
2 [Dancy, Decl., ¶¶ 14-15.]

3 **C. Settlement Administration**

4 CPT Group, Inc., as the Court-approved Settlement Administrator, mailed the Notice
5 Packet to the Class members after making all reasonable effort to ascertain the best mailing
6 address, including running each address through the National Change of Address database and
7 "skip-tracing" any Notice Packets returned as undeliverable. [Dancy Decl., ¶¶ 3-9.] The Class
8 Notice, previously approved by the Court, duly informed Class Members of the settlement
9 terms, including the estimated relief each Class Member will receive, the amounts to be
10 requested for attorney's fees and the class representative enhancement awards, and the right to
11 opt out of or object to the settlement. [Dancy Decl., ¶ 4; Exh. A.] CPT mailed 566 Notice
12 Packets on November 3, 2023, including Spanish, Vietnamese, and Chinese translations.
13 [Dancy Decl., ¶¶ 4, 7.] Ultimately, two Notice Packets were deemed undeliverable, representing
14 a 99.6% success rate. [Dancy Decl., ¶ 9.] The response window for opting out of or objecting
15 to the settlement expired on December 18, 2023.³ [Dancy Decl., ¶ 7.] As of the filing of this
16 motion, CPT has received one request for exclusion (for a 99.87% participation rate), and zero
17 objections to the settlement. No disputes have been submitted regarding the information used
18 to calculate class member settlement shares. [Dancy Decl., ¶¶ 10-12.]

19 **D. Release of Claims**

20 All Participating Class Members will release Cyberpower from all claims alleged in the
21 operative complaint, or that could have been brought based on the factual allegations in the operative
22 complaint, including PAGA claims, during the Class Period. The release is limited to the claims that
23 were actually pleaded or could have been pleaded based on the alleged facts in the operative
24 complaint. [Trenner Decl., ¶ 10.]

25 **E. PAGA Claims and Notice to the LWDA**

26 The Parties allocated \$50,000 from the settlement to civil penalties under PAGA, and
27 Plaintiff respectfully requests that the Court approve this amount as fair, reasonable and adequate.

28 ³ Extended to January 2, 2024 for remailed notices.

1 Consistent with PAGA, \$37,500 from this amount will be paid to the LWDA as the state's share
2 of the civil penalties, and the remaining \$12,500 will be distributed to the 378 individuals
3 eligible to receive a PAGA Employee Payment. [Dancy Decl., ¶ 14.] As required by Labor Code
4 section 2699(l)(2), Plaintiff gave notice of the settlement and the final approval hearing to the
5 LWDA via its online portal. [Trenner Decl., ¶ 11; Exh. 1.]

6 **IV. ARGUMENT**

7 The law favors settlement, particularly in class actions where substantial resources can
8 be conserved by avoiding the time, cost, and rigors of formal litigation. H. Newberg & A.
9 Conte, 4 Newberg on Class Actions (4th ed. 2002), § 11.41; Class Plaintiffs v. City of Seattle
10 (9th Cir. 1992) 955 F.2d 1268, 1276, cert. denied, 506 U.S. 953; Van Bronkhorst v. Safeco
11 Corp. (9th Cir. 1976) 529 F.2d 943,950; Potter v. Pacific Coast Lumber Co. (1951) 37 Cal.2d
12 592, 602. Nevertheless, to make certain the rights of absent parties are not unjustly
13 compromised, the settlement of a class action requires court approval. Cal. Rule of Court
14 3.769; Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th 1794, 1801; Wershba v. Apple Computer
15 (2001) 91 Cal.App.4th 224, 245. The purpose of that judicial review is to protect against fraud
16 or collusion, and to ensure fairness to absent class members. Dunk, 48 Cal.App.4th at 1800-01;
17 Newberg, at §§ 11.22, *et seq.* Review is accomplished through a two-step process intended to
18 determine whether, under the totality of circumstances, the settlement is fair, reasonable and
19 adequate. Dunk, 48 Cal.App.4th at 1801; Wershba, 91 Cal.App.4th at 245.

20 On a motion for final approval, the trial court is charged with determining whether, in
21 light of the total circumstances of the action and the response of the class members to the
22 proposed settlement, the settlement is fair, reasonable, and adequate. Dunk, 48 Cal.App.4th at
23 1801-02; Wershba, 91 Cal.App.4th at 244-45. The court has broad discretion in making that
24 determination and may consider a number of relevant factors, including: the strength of
25 plaintiff's case; the likelihood of potential recovery; the risk, expense and likely duration of
26 further litigation; the amount offered in settlement; the extent of discovery and stage of the
27 proceedings; the experience and opinion of counsel; and the reaction of class members to the
28 settlement. Id. In light of the strong judicial policy favoring the settlement of class actions,

1 courts generally apply a presumption of fairness to a proposed class action settlement when:
2 (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery
3 are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in
4 similar litigation; and (4) the percentage of objectors is small. Dunk, 48 Cal.App.4th at 1802;
5 Wershba, 91 Cal.App.4th at 245.

6 **A. The Proposed Settlement Merits Final Approval**

7 The proposed settlement of this action warrants final approval under the standards
8 summarized above. The settlement is fair, reasonable and adequate, and represents a favorable
9 resolution of highly disputed claims. Further, the settlement was overwhelmingly approved by
10 the class members, as there were no objections and no class members opted out.

11 **1. The Settlement Is the Product of Arm's-Length, Informed Negotiations**

12 The settlement is not the result of fraud or collusion. Rather, the proposed settlement
13 was reached following arm's-length negotiations presided over by Steve Cerveris, Esq., a highly
14 respected and well-known mediator with extensive experience mediating wage and hour class
15 actions. [Trenner Decl., ¶ 5.] Moreover, Plaintiff and his counsel were well-informed about the
16 facts and the law, and counsel Zachary M. Crosner, Jamie Serb, and Nikki Trenner have years of
17 litigation experience, including litigating wage and hour class actions. Plaintiff's counsel are well-
18 qualified to evaluate the risks and benefits of pursuing further litigation or settling the matter.
19 [Trenner Decl., ¶¶ 25-29, 35.] Defendant likewise was represented by highly-qualified and
20 experienced defense counsel. Both sides advocated vigorously for their clients, and nothing
21 was "left on the table."

22 **2. The Class Reacted Favorably to the Settlement**

23 The settlement was well-received by the class. As of the filing of this motion, no
24 objections have been filed, and only one Class Member requested exclusion. [Dancy Decl., ¶¶ 12-
25 13.] As many courts recognize, class member reaction to the settlement is one of the most important
26 factors to consider in determining if final approval should be granted. Mandujano v. Basic Vegetable
27 Prods., Inc., 541 F.2d 832, 837 (9th Cir. 1976); see also In re: American Bank Note Holographics,
28 127 F.Supp.2d 418, 425 (S.D.N.Y. 2001) ("It is well-settled that the reaction of the class to the

1 settlement is perhaps the most significant factor to be weighed in considering its adequacy”)
2 (internal quotation marks omitted).

3 **3. The Settlement Is Fair and Reasonable Considering the Benefits**
4 **Conferred, the Case Value, and Significant Litigation Risks**

5 The proposed settlement involves a substantial sum of money that, when distributed,
6 will confer meaningful monetary benefits on the Class Members. As described above, each
7 individual award will be based on an allocation consistent with the nature of the claims asserted
8 and will fairly and equitably allocate the available funds in relation to the degree of damage
9 each Class member incurred. While Class members who worked for only a short period of time
10 will receive relatively small sums, those with longer tenures and who worked more hours and
11 shifts throughout the class period will receive appropriately larger awards.

12 Prior to settlement, the parties engaged in extensive formal and informal discovery to
13 facilitate settlement discussions. As a result, Plaintiff reviewed payroll records, personnel
14 policies/handbooks, meal break policies, personnel files, and a random sampling of paystubs and
15 time records produced by Cyberpower. Defendant provided documents and information reflecting
16 the estimated total number of workweeks and pay periods they worked, and average hourly pay
17 rates, among other relevant data. Plaintiff also had that information reviewed by a consulting expert
18 to assist with calculating potential violation rates and potential damages. Plaintiff’s counsel is
19 confident they obtained sufficient information to enable them to understand the law and facts of this
20 case and make an informed decision regarding the proposed settlement and whether it is in the best
21 interests of the class. [Trenner Decl., ¶¶ 4, 12.]

22 Plaintiff contends Defendants failed to provide legally compliant meal and rest breaks.
23 Specifically, Plaintiff contends Defendant placed substantial restrictions on how employees used
24 their break time, such as prohibiting any personal business being conducted on company premises
25 and further limiting employee’s ability to leave the work site during their breaks. Accordingly,
26 Plaintiff contends class members remained subject to employer control during their breaks. Beyond
27 that, Plaintiff also contends Defendant did not provide required second meal breaks and third rest
28 breaks on shifts longer than 10 hours, and that review of Defendant’s time records suggests

1 numerous “de facto” violations for missed, late, and short meal periods. Plaintiff claims this violates
2 Labor Code sections 512, 226.7, and the applicable IWC Wage Orders, as well as Brinker Restaurant
3 Corp. v. Superior Court (2012) 53 Cal.4th 1004 and Augustus v. ABM Security Serv., Inc. (2016)
4 2 Cal.5th 257 for failure to provide meal and rest periods and within the applicable time frames.
5 Furthermore, Plaintiff contends Defendant unlawfully rounded meal period time punches, resulting
6 in shortened meal breaks to appear compliant, in violation of Donahue v. AMN Services, LLC
7 (2021) 11 Cal.5th 58. (Trenner Decl., ¶ 13.)

8 Defendant denies Plaintiff’s contentions, claiming they made meal and rest breaks available
9 to Class Members in compliance with California law. Defendant contended its meal and rest break
10 policies are lawful and that Class Members were frequently reminded via training and supervisors,
11 that they were required to take all meal and rest breaks. Defendant also contends that time records
12 and signed declarations demonstrate that Class Members took duty-free, timely meal and rest breaks.
13 Defendants contend their meal and rest break policies and practices comported with the flexibility
14 the *Brinker* court held was integral to California’s meal and rest period requirements. Finally,
15 Defendant argued that Plaintiff’s meal and rest break claims are not susceptible to common proof,
16 as the claims would require individualized inquiry, including whether there was an unlawful
17 companywide policy, whether employees had the opportunity to take meal and rest periods, whether
18 they voluntarily chose to forego their meal and rest periods, and whether Defendant ever prevented
19 them from taking meal and rest periods. Accordingly, Defendant contends these claims are
20 vulnerable to a ruling that class treatment is not appropriate. Without taking into consideration any
21 of Defendant’s defenses to certification or on the merits, Plaintiff calculated Defendant’s exposure
22 for the meal and rest break claims as \$7,227,934. [Trenner Decl., ¶ 14.]

23 Plaintiff also asserts Defendant’s rounding of time entries deprived employees of earned
24 wages and gave rise to unpaid wages, and also that employees lost compensable time while waiting
25 in long lines to clock in. Plaintiff further contends Defendant failed to pay all overtime wages at the
26 regular rate of pay, as Defendant failed to incorporate non-discretionary bonuses paid during the
27 same pay periods that overtime wages were earned, in violation of Alvarado v. Dart Container Corp.
28 (2018) 4 Cal.5th 542. Without taking into consideration any of Defendant’s defenses to certification

1 or on the merits (such as the rounding policy being legal under See's Candies v. Superior Court
2 (2012) 210 Cal.App.4th 889), Plaintiff's expert calculated Defendant's maximum exposure for this
3 claim as \$743,422 on the off the clock/rounding claim and about \$81,189 on the regular rate claim.
4 [Trenner Decl., ¶ 15.]

5 Plaintiff's claims for inaccurate wage statements and waiting time penalties are derivative
6 of the unpaid wage claims. Should those claims fail, Plaintiff's claim for inaccurate wage statements
7 and waiting time penalties would also fail. Defendant also contended it would not be liable for
8 waiting time penalties because a "good faith dispute" exists over the payment of past wages. Cal.
9 Code Regs. Tit. 8 § 13520; Amaral v. Cintas Corp. No. 2 (2008) 163 Cal.App.4th 1157, 1201.
10 Further, Defendants contend Plaintiff would have to prove that Defendant "willfully" failed to pay
11 Class Members appropriate wages due upon separation of employment. Defendant contended that
12 any failure to pay wages upon separation was not willful. [Trenner Decl., ¶ 41.] Without taking into
13 consideration any of Defendant's defenses to certification or on the merits, Plaintiff calculated
14 Defendants' maximum exposure for wage statement penalties as \$788,150 and waiting time
15 penalties as \$1,196,565. [Trenner Decl., ¶ 16.]

16 As far as potential PAGA liability, the theoretical civil penalties likely exceed \$2,043,000
17 million should Plaintiff prevail on all claims and establish violations of the multiple Labor Code
18 sections at issue. [Trenner Decl., ¶ 17.] As with the class claims, Plaintiff discounted the potential
19 PAGA penalties based on Defendant's various defenses on the merits and also accounted for the
20 Court's wide discretion to reduce such penalties, or to decline to award penalties at all. Labor Code
21 § 2699(e)(2); Carrington v. Starbucks Corp. (2018) 30 Cal.App.5th 504 (trial court awarded
22 penalties of \$5 per pay period after a bench trial, which decision was upheld on appeal); In re Taco
23 Bell Wage and Hour Actions (E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. LEXIS 48557 (PAGA
24 penalties denied after trial). Accordingly, the Parties allocated \$50,000 to PAGA penalties.

25 Plaintiff submits this amount is reasonable under the circumstances and in line with
26 comparable settlements in other wage and hour class actions in California. *E.g.*, Van Kempen v.
27 Matheson Tri-Gas, Inc. (N.D. Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182 (granting final
28 approval of \$5,000 PAGA penalty from \$370,000 settlement, or 1.4 percent of total settlement);

1 Slavkov v. First Water Heater Partners I (N.D. Cal. July 25, 2017) 2017 U.S. Dist. LEXIS 116303
2 (finding a \$7,500 PAGA payment reasonable when measured against the overall settlement of
3 \$345,000 and the possible weaknesses in plaintiffs' case, or 2.2 percent of total settlement).
4 Additionally, the LWDA has been informed of the terms of the PAGA portion of the settlement,
5 and will be able to weigh in as necessary. Jennings v. Open Door Mktg. Inc. (N.D. Cal. Oct. 3,
6 2018) 2018 U.S. Dist. LEXIS 171356, at *27 (approving settlement with PAGA penalties of 0.6%
7 where "[p]laintiffs [have] submitted the settlement agreement to the LWDA, and the LWDA has
8 not objected to the settlement.").

9 Thus, Plaintiff and his counsel discounted the value of the class claims consistent with the
10 risks discussed above, and carefully weighed the likelihood of the class receiving substantially
11 greater benefit if the litigation continued. Plaintiff and counsel concluded – in light of these very
12 real and substantial risks – settlement on the proposed terms and without prolonged and costly
13 litigation was in the best interests of the class. The overall \$1,925,000 recovery represents a
14 significant percentage of Defendant's potential exposure, and is roughly 19% of the theoretical
15 maximum value of the class claims (\$1,925,000/\$10,037,000). Given Defendant's multi-layered
16 defenses and all other potential risks of continued litigation, a total recovery for the class of
17 \$1,925,000, which will result in average award of some \$2,140 per class member, plus additional
18 sums under PAGA, is a significant result well within the range of reasonableness considering all
19 potential outcomes, and it will provide direct monetary awards to all Class Members without further
20 delay. [Trenner Decl., ¶¶ 18-20.]

21 Importantly, the mere fact that a settlement does not provide the same recovery as might be
22 achieved at trial is not a proper indicator of whether the settlement is fair, reasonable, and adequate.
23 Wershba, 91 Cal.App.4th at 246, 250 ("Compromise is inherent and necessary in the settlement
24 process...even if the relief afforded by the proposed settlement is substantially narrower than it
25 would be if the suits were to be successfully litigated, this is no bar to a class settlement because the
26 public interest may indeed be served by a voluntary settlement in which each side gives ground in
27 the interest of avoiding litigation"); 7-Eleven Owners for Fair Franchising v. Southland Corp. (2000)
28 85 Cal.App.4th 1135, 1150 ("The fact that a proposed settlement may amount to only a fraction of

1 the potential recovery does not, in and of itself, mean that the proposed settlement is grossly
2 inadequate and should be disapproved”); White v. Experian Information Solutions, Inc. (C.D. Cal.
3 2011) 803 F.Supp.2d 1086, 1098 (rejecting contention settlement was not fair and reasonable even
4 though it represented 99% discount off the maximum value of the claims); Lane v. Facebook, Inc.
5 (9th Cir. 2012) 696 F.3d 811, 819 (“[T]he question whether a settlement is fundamentally fair . . . is
6 different from the question whether the settlement is perfect in the estimation of the reviewing
7 court”). Importantly as well, the proposed settlement is non-reversionary and will provide immediate
8 benefits to the Class Members without a claims process. *White*, 803 F.Supp.2d at 1098; *c.f.*, Federal
9 Judicial Center, Managing Class Action Litigation: A Pocket Guide for Judges (3d ed. 2010) at 20,
10 available at [http:// www.fjc.gov/sites/default/files/2012/ClassGd3.pdf](http://www.fjc.gov/sites/default/files/2012/ClassGd3.pdf) (reversionary provisions
11 and/or cumbersome claims process may indicate lack of fairness). Plaintiff and his counsel submit
12 the settlement is within the “range of reasonableness,” and is fair and adequate for the Class.

13 **B. The Class Representative Service Awards Are Justified Given the Risks and**
14 **Should be Preliminarily Approved**

15 The Agreement provides for a service payment not to exceed \$10,000.00 to Plaintiff. Courts
16 routinely approve service payments, or incentive awards, to compensate named plaintiffs for the
17 services they provide and the risks they incur during class litigation. In re Cellphone Fee
18 Termination Cases (2010) 186 Cal. App. 4th 1380, 1393 (“These awards are discretionary . . . and
19 are intended to compensate class representatives for work done on behalf of the class, to make up
20 for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize
21 their willingness to act as a private attorney general.”); Bell v. Farmers Ins. Exch. (2004) 115 Cal.
22 App. 4th 715, 725-26 (upholding service payments to class representatives).

23 The requested service awards are reasonable in light of the benefits Plaintiff
24 conferred upon the entire Class, resulting in a benefit to all Class Members and the State of
25 California, the time spent assisting counsel with the investigation and prosecution of these
26 claims, commitment to responding to discovery, and consenting to the proposed Agreement.
27 Furthermore, by attaching his name to a lawsuit, Plaintiff also took on the reputational risk that
28 future employers would learn of his participation in this case and unfairly associate them with

1 costly litigation, costing them future employment opportunities. Any future employer could
2 easily perform a simple Google search – an unauthorized simple background check unknown to
3 Plaintiff that can still provide a plethora of information – and conclude Plaintiff isn't worth the
4 risk of hiring. This kind of reputational risk, borne only by Plaintiff alone and no other Class
5 Member, that an incentive award is meant to compensate. Furthermore, in pursuing this action
6 on behalf of the Class, Plaintiff risked a judgment for attorney's fees and costs in the event this
7 matter had been lost. [Trenner Decl., ¶ 321; Declaration of Va Pau Lo, ¶¶ 2-9.] For these reasons
8 Plaintiff requests an enhancement payment of \$10,000. Staton v. Boeing (9th Cir. 2003) 327
9 F.3d 938, 977 (collecting cases awarding class representatives service and incentive payments
10 ranging from \$2,000 to \$25,000).

11 **VI. SETTLEMENT ADMINISTRATION COSTS**

12 The settlement provides for a payment to CPT for its services as the Settlement
13 Administrator. As set forth in the Declaration of Tarus Dancy, CPT has performed and will
14 continue to perform its required duties through final distribution of the settlement funds and
15 incurred \$15,500 in fees and expenses. [Dancy Decl., ¶ 16.] Plaintiff accordingly requests the
16 Court approve payment of \$15,500 to CPT from the GSA. [Trenner Decl., ¶ 22.]

17 **VII. ATTORNEY'S FEES AND COSTS**

18 **A. The Attorney's Fees Requested Are Fair and Reasonable and Should Be**
19 **Approved**

20 This Court has discretion over the amount of attorneys' fees awarded and court
21 approval is required for Class Counsel's fees. Cal. Rule of Court 3.769; Levy v. Toyota
22 Motor Sales, U.S.A. (1992) 4 Cal.App.4th 807, 813; Lealao v. Beneficial Cal., Inc. (2000) 82
23 Cal.App.4th 19. In defining a reasonable fee, the Court should attempt to mimic the
24 marketplace for cases involving significant contingent risk, such as this one. Deposit
25 Guaranty Nat'l Bank, Jackson, Miss. v. Roper (1980) 445 U.S. 326, 338, rehg. den. 446 U.S.
26 947; Lealao, 82 Cal.App.4th at 49-50 (court should attempt "to award the fee that informed
27 private bargaining, if it were truly possible, might have reached" in determining a reasonable
28 fee, and a fee award should approximate a "range of fees freely negotiated in comparable

1 litigation”). Here, Class Counsel's request for attorney’s fees and costs is reasonable and
2 justified by the work performed, the benefits obtained, and the contingent risk assumed.

3 As addressed in detail above, at the time the parties reached the tentative settlement
4 success for Plaintiff and the putative class was far from certain. Plaintiff faced a real risk that
5 some or all the claims would not be certified for class treatment, as Defendants had strong
6 arguments that its compensation policies were legal and properly compensated the class
7 members. Even if Plaintiff certified some or all of the claims and ultimately prevailed on the
8 merits, it undoubtedly would have taken several years to realize any recovery while she
9 pursued class certification, trial, and an almost certain appeal. [Trenner Decl., ¶¶ 13-20.]

10 Nonetheless, Plaintiff succeeded and expeditiously obtained the relief he set out to
11 obtain, and the settlement provides substantial cash payments to Class Members, with an
12 average award of about \$2,100, and with a maximum award of almost \$5,000. Importantly as
13 well, the Class Members have been overwhelmingly supportive of the Settlement as there are
14 no objections and only one opt out to the settlement. [Dancy Decl., ¶ 10-11, 15.]

15 **B. The Requested Fee Award Is Reasonable and Appropriate**

16 The United States Supreme Court has ruled the parties to a class action properly may
17 negotiate not only the settlement of the action itself but also the payment of attorney's fees.
18 Evans v. Jeff D. (1986) 475 U.S. 717, 734-35, 738, fn. 30.) In Hensley v. Eckerhart (1983)
19 461 U.S. 424, 437, the Supreme Court explained that negotiated, agreed-upon attorney's fee
20 provisions are the ideal towards which the parties should strive: "A request for attorney's fees
21 should not result in a second major litigation. Ideally, of course, litigants will settle the
22 amount of a fee." The United States Supreme Court has reemphasized this policy and further
23 stressed trial courts have “a responsibility to encourage agreement” on fees. Blum v. Stenson
24 (1984) 465 U.S. 886, 902 n.19.

25 As part of the Settlement, Cyberpower agreed not to object to an award of no more
26 than 33.33% of the GSA for attorney's fees, or \$641,666.00, and up to \$30,000 in
27 reimbursement for litigation costs and expenses (although only \$20,444.87) is requested).
28 Such a fee is commensurate with what the market would provide for similar services and the

1 Court therefore can most certainly enforce the agreement. As California's Court of Appeal has
2 instructed:

3 Given the unique reliance of our legal system on private litigants to enforce
4 substantive provisions of law through class and derivative actions, attorneys
5 providing the essential enforcement services must be provided incentives roughly
6 comparable to those negotiated in the private bargaining that takes place in the
7 legal marketplace, as it will otherwise be economic for defendants to increase
8 injurious behavior.

9 Lealao, 82 Cal.App.4th at 47.

10 Here, the parties did not negotiate the inclusion of attorney's fees until after extensive
11 arms-length bargaining regarding relief to the Class was completed. [Trenner Decl., ¶ 23.]
12 The requested fee and cost award was a product of these arms-length negotiations and fairly
13 reflects the marketplace value of the services rendered by Class Counsel in this case. As a
14 result, the fee agreed to by the parties should be approved.

15 **C. Class Counsel's Fees are Justified When Calculated as a Percentage of the**
16 **Common Fund**

17 In approving fee applications, courts typically apply either a percentage-of-recovery
18 method or the lodestar method. Laffitte v. Robert Half Int'l., Inc. (2016) 1 Cal.5th 480, 489;
19 Wershba v. Apple Computer, Inc. (2001) 91 Cal.App.4th 224, 254, disapproved on other
20 grounds, Hernandez v. Restoration Hardware, Inc. (2018) 4 Cal.5th 260. The California
21 Supreme Court recently recognized the advantages and equities of calculating attorney's fees
22 using the percentage-of-the-common-fund method in another wage-and-hour case:

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

29 Laffitte, 1 Cal.5th at 503 (citations omitted).

30 Indeed, both California and federal courts have long recognized an appropriate method
31 for determining the award of attorney's fees is based on a percentage of the total value of

1 benefits afforded to class members by the settlement. Serrano v. Priest (1977) 20 Cal.3d 25,
2 34; Boeing Co. v. Van Gernert (1980) 444 U.S. 472, 478; Vincent v. Hughes Air West, Inc.
3 (9th Cir. 1977) 557 F.2d 759, 769. Awarding a fee based on a percentage of the common fund
4 recovered operates to "spread litigation costs proportionately among all the beneficiaries so
5 that the active beneficiary does not bear the entire burden alone." Vincent, 557 F.2d at 769.

6 In determining a reasonable common fund fee award, courts should also consider the
7 fact that fees serve as an economic incentive for lawyers to bring class action litigation to
8 achieve increased access to the judicial system for meritorious claims and to enhance
9 deterrents to wrongdoing. Conte, Attorney Fee Awards (2d ed. 1993) § 104. Without
10 prosecution on a contingent basis and use of the class action mechanism, the courthouse door
11 would effectively be closed to most class members due to the relatively small size of their
12 individual claims in relation to the enormous time and cost associated with class action
13 litigation.

14 Here, Class Counsel seek a fee award for their successful prosecution and resolution of
15 this action of no more than 33.33% of the GSA, and specifically \$641,666.00. The percentage
16 requested is justified for the reasons set forth further below, and comports with fee awards
17 calculated on a percentage-of-the-benefit basis. Indeed, review of class action settlements
18 shows that courts have historically awarded fees in the range of 20 to 50 percent, depending
19 upon the circumstances of the case. In re Warner Communications Sec. Litig. (S.D.N.Y.
20 1985) 618 F.Supp. 735, 749-50 (concluding that percentage fees in common fund cases range
21 from 20 to 50 percent); Newberg, Newberg on Class Actions (3d ed.) § 14.03, pp. 13-14
22 ("Usually 50% of the fund is the upper limit on a reasonable fee award from a common fund
23 in order to assure that the fees do not consume a disproportionate part of the recovery
24 obtained for the class, although somewhat larger percentages are not unprecedented.").

25 **D. A Lodestar Cross-Check Also Supports Class Counsel's Fee Request**

26 To ensure the fairness of an attorney's fee award, courts frequently conduct a lodestar
27 cross check of counsel's fees. "A lodestar cross-check thus provides a mechanism for bringing
28 an objective measure of the work performed into the calculation of a reasonable attorney fee."

1 Laffitte, 1 Cal.5th at 504. Here, Class Counsel spent 429.4 hours of time on this matter,
2 resulting in a modest and very reasonable lodestar of \$336,312.50.

3 As is fully detailed in the Trenner Declaration, Class Counsel's efforts included: (1)
4 extensive pre-lawsuit investigation of the claims of Plaintiff and the putative class, including legal
5 research, research into similar claims and claims against other employers in the same industry, and
6 attempts to locate and contact other employees of the Defendant; (2) drafting a PAGA notice
7 letter; (3) drafting the initial complaint and related documents; (4) case management, including
8 communications with defense counsel, meeting and conferring/preparing case management
9 statements, etc.; (5) lengthy discussions with defense counsel regarding settlement/mediation and
10 informal discovery needed for meaningful settlement discussions; (6) engaging in substantial
11 informal discovery, including propounding informal discovery "requests" and reviewing
12 documents and other information produced; (7) working with a consulting expert on the analysis
13 of Defendant's production; (8) drafting mediation briefs and accompanying damages model after
14 review and analysis of defendant's formal and informal discovery production; (9) attending two
15 all-day mediations; (10) negotiating and drafting the settlement agreement and related documents;
16 (11) drafting the motion for preliminary approval, and attending the hearing; (12) administration
17 of the settlement, including communications with the Settlement Administrator and settlement
18 class members; (13) drafting the motion for reconsideration as to the enhancement award, (14)
19 final approval and attorney's fees, and attending the final approval hearing; and (15) extensive
20 communications with the Plaintiff regarding case status, case investigation and document review,
21 mediation, and settlement terms. Additionally, Class Counsel will incur additional time following
22 final approval to, inter alia, respond to class member inquiries, work with the Settlement
23 Administrator on the distribution of settlement funds, and on the compliance hearing. [Trenner
24 Decl., ¶ 24, Exh. 2.]

25 In pursuing this matter, Class Counsel incurred total attorney's fees of \$336,312.50,
26 and the lodestar is based on an eminently reasonable number of hours worked to litigate this
27 matter to a successful conclusion (429.4) attorney hours, and the requested attorney hourly rates
28 are reasonable and comport with hourly rates charged by other attorneys with similar experience in

1 this practice area in California. [Trenner Decl., ¶¶ 25-38.] On a lodestar basis, the fee request of
2 \$641,666.00 results in a multiplier of 1.91, which is a modest enhancement entirely in line
3 with California law. [Trenner Decl., ¶¶ 39-40.] Indeed, California courts routinely approve
4 multipliers in the in the 2-4 range to compensate for the time and risk of class action cases.
5 Chavez v. Netflix, Inc. (2008) 162 Cal.App.4th 43, 66 (affirming attorneys' fee award
6 including an upward multiplier of 2.5); Wershba, 91 Cal.App.4th at 255 ("Multipliers can
7 range from 2 to 4 or even higher."); City of Oakland Oakland Raiders (1988) 203 Cal.App.3d
8 78, 85 (affirming a multiplier of 2.34.) Class Counsel submits that the requested 1.91
9 multiplier effectively operates to show that the percentage fee request is reasonable
10 considering the challenges presented in this contingency fee matter, and appropriately
11 compensates Class Counsel for the contingent risk assumed and delay in payment during the
12 2.5 plus years counsel has been representing Plaintiff. [Trenner Decl., ¶¶ 39-40.] Thus, the
13 multiplier results in a fee constituting a fair return on the contingency.

14 **E. The Award is Supported By 1) the Results Achieved; 2) the Risk, 3) the Skill**
15 **Required, 4) the Contingent Nature of the Fee and 5) Awards in Similar**
16 **Cases.**

17 What has now emerged in most fee award decisions is the recognition that fee
18 determinations in both common fund and statutory fee situations are incapable of
19 mathematical precision because of the intangible factors that must be resolved in the court's
20 discretion based on the circumstances of each particular case. Conte, § 207, p. 44. In
21 determining an appropriate fee in a common fund case, a Court must decide, based on the
22 unique posture of each case, what percentage of the common fund would most reasonably
23 compensate Class Counsel given the nature of the litigation and the performance of counsel.
24 Paul, Johnson, Alston & Hunt v. Graulity (9th Cir. 1989 886 F.2d 268, 272) (the percentage
25 fee may be adjusted to account for the circumstances involved in a case).

26 Courts apply a five-part test in calculating a reasonable percentage fee in common
27 fund cases: (1) the results achieved; (2) the risk of litigation; (3) the skill required and the
28

1 quality of work; (4) the contingent nature of the fee and the financial burden carried by the
2 plaintiffs; and (5) awards made in similar cases. Laffitte, 1 Cal.5th at 489.

3 **1. The Results Achieved.**

4 Class Counsel obtained an excellent result in this case for the Class Members. The
5 Settlement provides real monetary benefits to the Class Members, and the Settlement is
6 particularly advantageous to the Class Member because the proceeds will be distributed
7 shortly as opposed to waiting additional years for a similar, or possibly, less favorable result.
8 Considering many individual claims would be very modest and would not be cost-effective to
9 pursue successfully, the Settlement provided them with fair compensation for their claims.
10 Moreover, the absence of any objection to either the Settlement or the attorney's fee request
11 bolsters the excellent results. Indeed, the approval of the Class is overwhelming as indicated
12 by the fact that not only one class member opted out. Additionally, the settlement amounts to
13 a substantial percentage of the maximum value of the amount the Class might have obtained if
14 it had tried the case and recovered on all theories seeking recovery of wages and penalties.
15 "It is well-settled law that a cash settlement amounting to only a fraction of the potential
16 recovery does not per se render the settlement inadequate or unfair." In re Omnivision Techs.,
17 Inc. (N.D. Cal. 2008) 559 F.Supp.2d 1036, 1042.

18 **2. Class Counsel Bore Considerable Risk.**

19 At the time of filing the complaint, Class Counsel recognized that they would have to
20 expend a substantial amount of time and advance significant costs to prosecute a statewide
21 class action suit with no guarantee of compensation or reimbursement, in the hope of
22 prevailing against a sophisticated company represented by first-rate attorneys. Despite
23 their belief in the validity of Plaintiff's claims, they also knew they faced substantial risks
24 of class certification and the ability to prove class-wide and individual damages. In light of
25 the highly uncertain nature of this suit, Class Counsel also bore the risk that Defendant would
26 dig in and attempt to bury their small firm in work. Given the small size of Class Counsel's
27 firm, not receiving any compensation for several years while simultaneously advancing
28 litigation costs posed considerable risk and difficulty. [Trenner Decl., ¶¶ 41-42.]

1 **3. The Skill Required and the Quality of Work.**

2 Practice in the narrow area of wage and hour litigation requires skill, knowledge and
3 experience. The issues presented in this case required more than just a general appreciation of
4 wage and hour law and class action procedure. This Settlement was possible only because
5 counsel persuaded Defendant that Plaintiff and the putative class had a realistic chance of
6 prevailing on their claims despite Defendant's contrary arguments, and that the case
7 would be pursued through class certification and trial if necessary. In successfully
8 navigating these hurdles, Class Counsel displayed appropriate skill while pursuing a risky
9 and difficult case.

10 **4. The Contingent Nature of the Fee and Risk Assumed**

11 There is a substantial difference between the risk assumed by attorneys being paid
12 by the hour and attorneys working on a contingent fee basis. The attorney being paid by
13 the hour can go to the bank with his fee. Powers v. Eichen (9th Cir. 2000) 229 F.3d 1249,
14 1256. The attorney working on a contingent basis can only log hours while working
15 without pay towards a result that will hopefully entitle him to a market fee considering
16 the risk and other factors of the undertaking. Id. at 1257. Otherwise, the contingent fee
17 attorney receives nothing. Id. In this case, Class Counsel subjected themselves to this
18 risk in this all or nothing contingent fee case wherein the necessity and financial burden
19 of private enforcement makes the requested award appropriate.

20 Counsel retained on a contingency fee basis, whether in private matters or in class
21 action litigation, is entitled to a premium beyond their standard, hourly, non-contingent
22 fee schedule to compensate for both the contingent risk assumed and the delay in
23 payment. The simple fact is that despite the most vigorous and competent of efforts,
24 success is never guaranteed. McKittrick v. Gardner (4th Cir. 1967) 378 F.2d 872, 875.
25 Indeed, if counsel is not adequately compensated for the risks inherent in difficult class
26 actions, competent attorneys will be discouraged from prosecuting similar cases.
27 Ketchum v. Moses (2001) 24 Cal.4th 1122, 1132-33; Cazares v. Saenz (1989) 208
28 Cal.App.3d 279, 287.

1 Here, the contingent fee practices of Plaintiff's counsel simply do not accommodate
2 the investment of unnecessary time in a case, and the adverse resolution of any one of several
3 difficult issues present in this matter could have doomed the entire effort. As discussed, the
4 attorney's fees in this case were not only contingent but fairly risky, and there was always a
5 distinct possibility Plaintiff's counsel would receive nothing for any number of reasons.
6 [Trenner Decl., ¶¶ 41-42.] Accordingly, the contingent nature of the fee and the financial
7 burdens on Class Counsel also support the fee requested.

8 **5. Awards in Other Cases**

9 As discussed, the attorney's fees requested by Class Counsel are within the range of
10 fees awarded in comparable cases, as California courts regularly approve class action fee
11 awards amounting to 1/3 of a common fund, as approved by the California Supreme Court in
12 Lafitte. Additionally, review of class action settlements over the past 10 years shows that the
13 courts have historically awarded fees in the range of 20 to 50 percent, depending upon the
14 circumstances of the case. In re Warner Communications Sec. Litig. (S.D.N.Y. 1985) 618
15 F.Supp. 735, 749-50 (concluding that percentage fees in common fund cases range from 20 to
16 50 percent); Newberg, Newberg on Class Actions (3d ed.) § 14.03, pp. 13-14 ("Usually 50%
17 of the fund is the upper limit on a reasonable fee award from a common fund in order to
18 assure that the fees do not consume a disproportionate part of the recovery obtained for the
19 class, although somewhat larger percentages are not unprecedented."). Class Counsel's
20 requested fees equal to 1/3 the gross amount recovered on behalf of the class and are well
21 within the range of reasonableness under either the percentage of the recovery or the lodestar
22 method in light of the contingent risk assumed, the delay in payment, the result achieved, and
23 the overall quality of the representation.

24 **F. Class Counsel's Costs and Expenses are Reasonable**

25 Plaintiff's counsel also requests reimbursement of actual out-of-pocket expenses incurred
26 to prosecute this action. These expenses were incidental and necessary to the effective
27 representation of the employees, and Plaintiffs' counsel is permitted to recover litigation costs and
28 expenses under the common fund doctrine and the Settlement Agreement. Serrano, 20 Cal.3d at 35

1 (common fund doctrine permits recovery of fees and costs from the fund); Rider v. County of San
2 Diego (1992) 11 Cal.App.4th 1410, 1424 n.6 (costs are recoverable from the common fund “[o]f
3 necessity, and for precisely the same reasons discussed above with respect to the recovery of
4 attorneys’ fees by ... [Plaintiffs’] attorneys”). Plaintiff’s counsel also is entitled to recover “those
5 out-of-pocket expenses that would normally be charged to a fee-paying client.” Harris v.
6 Marhoefer (9th Cir. 1994) 24 F.3d 16, 19.

7 As explained in the Trenner Declaration, Class Counsel incurred a total of
8 \$20,444.87 in expenses incurred in connection with this litigation. These expenses include
9 the amounts paid for court filing fees, Case AnyWhere charges, service of process, expert
10 fees, postage, and mediation fees, all of which are costs normally billed to and paid by
11 the client. These costs were reasonably incurred in the prosecution of this matter. These
12 costs were necessary for the successful prosecution of the case and are in reasonable in
13 amount, and Class Counsel accordingly requests they be reimbursed in full. [Trenner
14 Decl., ¶¶ 43-44.]

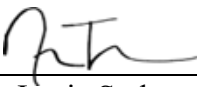
15 **VIII. CONCLUSION**

16 For all the foregoing reasons, Plaintiff Va Pau Lo respectfully requests that the Court grant
17 this motion and grant final approval of the proposed class action settlement and approve the
18 payment of PAGA penalties to the State. Plaintiff further requests the Court approve payment of
19 the Settlement Administrator’s fees and expenses, approve the requested class representative
20 enhancement payment, approve the award of attorney’s fees and costs as requested, and enter
21 judgment in this action. Finally, Plaintiff request the Court set a final compliance hearing for
22 April 29, 2025, or a later date convenient for the Court.

23
24 March 7, 2024

CROSNER LEGAL, P.C.

25
26 By: _____



Jamie Serb

Nikki Trenner

Zach Crosner

Attorneys for Plaintiff Va Pau Lo