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*Attorneys for Plaintiffs,
DENISE LAI and ELIM YEE
and the putative Class*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA BARBARA – SOUTH COUNTY**

DENISE LAI, an individual, on behalf of
herself, on behalf of all persons similarly
situated, and on behalf of all aggrieved
employees; and ELIM YEE, an individual,
on behalf of herself, on behalf of all persons
similarly situated, and on behalf of all
aggrieved employees

Plaintiffs,

vs.

SAN ROQUE PET HOSPITAL, INC., a
California corporation; GOLETA AIRPORT
PET HOSPITAL, INC., a California
corporation; MONTECITO PET
HOSPITAL, INC., a California corporation;
PETVET CARE CENTERS
(CALIFORNIA), INC., a Delaware
corporation; DAVID P. DAWSON, an
individual; and DOES 1 through 50 inclusive

Defendants.

ELECTRONICALLY FILED
Superior Court of California
County of Santa Barbara
Darrel E. Parker, Executive Officer
3/16/2023 11:19 AM
By: Narzralli Baksh , Deputy

Case No. 22CV00150

CLASS ACTION

**NOTICE OF MOTION AND MOTION
FOR:**

- 2. ATTORNEYS' FEES, COSTS, AND
EXPENSES;**
- 3. REPRESENTATIVE
ENHANCEMENT PAYMENTS**

Filed concurrently with:

- 1. Motion for Final Approval of Class
Action and PAGA Settlement**
- 2. Declaration of David R. Greifinger,
Esq.**
- 3. Declaration of Denise Lai**
- 4. Declaration of Elim Yee**
- 5. Declaration of Kaylie O'Connor on
behalf of CPT Group, Inc.**
- 6. [Proposed] Order Granting Final
Approval of Class Action Settlement**
- 7. [Proposed] Judgment**

Date: April 12, 2023
Time: 10:00 a.m.
Dept.: SB Dept. 3

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

2 **PLEASE TAKE NOTICE** that on April 12, 2023, at 10:00 a.m., or as soon
3 thereafter as counsel may be heard, in SB Dept. 3 of the above-captioned court, located at
4 1100 Anacapa St., Santa Barbara, California 93101, the Honorable Thomas P. Anderle
5 presiding, Plaintiffs Denise Lai and Elim Yee (“Plaintiffs”) will, and hereby do, move this
6 Court to award:

- 7 1. \$291,667 in attorneys’ fees and \$17,227.91 in litigation costs and expenses to
8 the Law Offices of David R. Greifinger.
- 9 2. A \$7,500.00 Class Representative Enhancement Payment to Plaintiff Denise Lai
10 and a \$7,500.00 Class Representative Enhancement Payment to Plaintiff Elim
11 Yee for their services on behalf of the Settlement Class and for their general
12 release of all claims they may have against Defendants, arising out of their
13 employment.

14 This Motion should be granted because: (1) no action would likely have been taken
15 by Class Members individually, and no compensation would have been recovered for them,
16 but for Plaintiffs’ service on their behalf; (2) the requested attorneys’ fees and costs are fair
17 and reasonable under California law based on the work performed and the results obtained
18 for the class; (3) California public policy recognizes that attracting competent counsel to
19 litigate cases on behalf of clients unable to pay hourly fees requires attorney fee awards
20 commensurate with such risks; and (4) the Class’ response confirms that the requested
21 attorneys’ fees and costs/expenses and Class Representative Enhancement Payments should
22 be approved.

23 This Motion is based upon: (1) this Notice of Motion and Motion; (2) the
24 Memorandum of Points and Authorities in Support of Motion for Attorneys’ Fees, Costs
25 and Expenses, and Class Representative Enhancement Payments; (3) the concurrently Filed
26 Motion for Approval of Class Action and PAGA Settlement, (4) the Declaration of David
27 R. Greifinger; (5) the Declarations of Denise Lai and Elim Yee; (6) the Declaration of
28 Kaylie O’Connor on behalf of CPT Group, Inc., the settlement administrator; (7) the

1 [Proposed] Order Granting Final Approval of Class Action and PAGA Settlement; (8) the
2 [Proposed] Judgment; (9) the records, pleadings, and papers filed in this action; and (10)
3 upon other documentary and oral evidence or argument that may be presented to the Court
4 at or prior to the hearing of this Motion.

5 Dated: March 16, 2023

LAW OFFICES OF DAVID R. GREIFINGER

7
8 By: 
9 DAVID R. GREIFINGER
10 CALVIN A. MARSHALL
11 *Attorneys for Plaintiffs, DENISE LAI,*
12 *ELIM YEE, and the putative Class*

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 Plaintiffs Denise Lai and Elim Yee (“Plaintiffs”) move for attorneys’ fees in the
4 amount of one-third of the \$875,000 non-reversionary settlement fund, or \$291,667, and
5 litigation costs and expenses of \$17,227.91. The requested award of attorneys’ fees is
6 reasonable and consistent with the prevailing California practice of awarding attorneys’
7 fees in the amount of one-third of the settlement fund. California policy strongly favors use
8 of the percentage method of calculating fees for class action settlements, as it “distributes
9 the cost of hiring an attorney among all the parties benefited,” namely, Class Members.
10 (*Laffitte v. Robert Half International Inc.* (2016) 1 Cal.5th 480, 489 (“*Laffitte II*”). The
11 percentage method also incentivizes competent counsel to achieve the best results as
12 efficiently as possible by giving them a stake in the outcome, rather than incentivizing
13 counsel to drive up hours through protracted litigation. Furthermore, because none of the
14 Class Members have paid fees to Plaintiffs’ Counsel for their effort during the litigation,
15 equity dictates that they pay a fair and reasonable fee for the valuable benefits obtained—
16 not less than if they had hired private counsel to litigate their cases individually.

17 Plaintiffs also move for Class Representative Enhancement Payments of \$7,500.00
18 to Denise Lai and \$7,500.00 to Elim Yee, for their service on behalf of the Settlement Class
19 and for agreeing to broader releases than those required of other Class Members.

20 **ARGUMENT**

21 **I. The Court should award the requested attorneys’ fees, which amount to one-third of the Class Settlement Amount.**

22 **A. The attorneys’ fees are reasonable as a percentage of the common fund.**

23 Plaintiffs move for an award of attorneys’ fees in the amount of \$291,667, or one-
24 third of the gross settlement fund. This request for attorneys’ fees is supported by
25 California law under the common-fund doctrine. The common-fund doctrine applies where,
26 as here, attorneys have been instrumental in creating a settlement fund that benefits all
27 class members. A percentage calculation with lodestar cross-check is permitted in a
28

1 common-fund case. (*Laffitte II*, *supra*, 1 Cal.5th at p. 503.) Our Supreme Court explained,
2 “We join the overwhelming majority of courts in holding that when class action litigation
3 establishes a monetary fund for the benefit of the class members...the court may determine
4 the amount of a reasonable fee by choosing an appropriate percentage of the fund created.”
5 (*Ibid.*)

6 In *Laffitte II*, the Supreme Court encouraged California courts to exercise their
7 discretion to use the common fund—or “percentage method”—to calculate fees when a
8 discrete fund is created for the benefit of a large group of beneficiaries. (*Laffitte II*, *supra*,
9 1 Cal.5th at p. 503.) The court explained that the percentage method has “recognized
10 advantages” over the lodestar-multiplier method, “including relative ease of calculation,
11 alignment of incentives between counsel and the class, a better approximation of market
12 conditions in a contingency case, and the encouragement it provides counsel to seek an
13 early settlement and avoid unnecessarily prolonging the litigation.” (*Ibid.*)

14 By awarding counsel a percentage of the total recovery, rather than fees based on
15 hours worked, the percentage method encourages attorneys to efficiently litigate to achieve
16 the best results possible for the class rather than to accumulate billable hours. (See *Laffitte*
17 *II*, *supra*, 1 Cal.5th at pp. 492-494.) Indeed, “[t]he percentage method is generally favored
18 in common fund cases because it allows courts to award fees from the fund in a manner that
19 rewards counsel for success and penalizes it for failure.’ [Citation.]” (*Id.* at p. 493.) The
20 percentage method fairly “distributes the cost of hiring an attorney among all the parties
21 benefited[.]” (*Id.* at p. 489.) The common-fund doctrine “‘rests squarely on the principle of
22 avoiding unjust enrichment’ [citations], attorney fees awarded under this doctrine are not
23 assessed directly against the losing party (fee shifting), but come out of the fund
24 established by the litigation, so that the beneficiaries of the litigation bear this cost (fee
25 spreading).” (*Lealao v. Beneficial California Inc.* (2000) 82 Cal.App.4th 19, 27.)

26 Here, the parties’ November 17, 2022, Joint Stipulation of Class Action and PAGA
27 Settlement and Release (“Settlement Agreement”) have created a non-reversionary fund.
28

Under *Laffitte II*, this Court should grant Plaintiffs’ request to award attorneys’ fees as a percentage of the common fund.

B. California’s state and federal courts routinely award attorneys’ fees in the amount of one-third of the common fund.

California state and federal courts routinely award attorneys’ fees equaling one-third of the common fund. (See *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, fn.11 [“Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.” [Citation.]”; Eisenberg & Miller, *Attorney Fees in Class Action Settlements: An Empirical Study* (March 2004) 1 Journal of Empirical Legal Studies, Issue 1, 27, 35 [independent studies of class action litigation nationwide conclude that fees representing one-third of the total recovery is consistent with market rates].) Notably, the Supreme Court in *Laffitte II* affirmed a fee award representing one-third of the fund. (*Laffitte II, supra*, 1 Cal.5th at pp. 487, 503-504.)

A fee award in the amount of one-third of the common fund is also reasonable because it best reflects the market rate for contingency fees. (See *Lealao v. Beneficial California Inc., supra*, 82 Cal.App.4th at p. 47 [“attorneys providing the essential enforcement services must be provided incentives roughly comparable to those negotiated in the private bargaining that takes place in the legal marketplace”].) Fees representing one-third of the recovery reflect the rate negotiated in “typical contingency fee agreements [which] provide that class counsel will recover 33 % if the case is resolved before trial and 40% if the case is tried.” (*Fernandez v. Victoria Secret Stores, LLC* (C.D Cal. July 21, 2008, No. CV 06-04149 MMM SHX) 2008 WL 8150856, at *16, fn. 59 [finding that a fee award constituting 34 percent of the common fund to be reasonable].). The requested fee structure in this case reflects the marketplace and should be approved.

Courts have recognized that the negotiated fee is the best indication of the market price for fees. The object “is to give the lawyer what he would have gotten in the way of a fee in an arm’s-length negotiation, had one been feasible.” (*Matter of Continental Illinois Securities Litigation* (7th Cir. 1992) 962 F.2d 566, 572. The court should determine what

1 the attorneys' fees would be if a similar suit were handled on a contingent fee basis with a
2 similar outcome. (*Id.* at pp. 572-573.) The negotiated fees here—one-third of the overall
3 settlement value—are reasonable.

4 **C. The reasonableness of the percentage-based fee award is supported by other**
5 **factors.**

6 The lodestar may be adjusted by the court based on factors as relevant here including
7 the results obtained, the quality of the representation, and the contingent nature of the fee award.
8 (See *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132; *Lealao v. Beneficial California, Inc.*,
9 *supra*, 82 Cal.App.4th at p. 26.)

10 **1. The attorneys' fees are merited by the results achieved on behalf of the**
11 **Settlement Class.**

12 As set forth more fully in the accompanying Memorandum of Points and Authorities
13 in Support of the Motion for Final Approval of Class Action and PAGA Settlement,
14 Plaintiffs' Counsel negotiated a total settlement valued at \$875,000 despite significant
15 obstacles. As a result of Plaintiffs' Counsel's efforts, participating Subclass A Members
16 stand to receive an average settlement payment of approximately \$3,022.03, participating
17 Subclass B Members stand to receive an average settlement payment of approximately
18 \$7,091.86, with the highest settlement payment in Subclass A being \$7,091.86 and \$180.67
in Subclass B.¹

19 By delivering this substantial benefit to class members, Plaintiffs' Counsel have
20 achieved excellent results by any measure, but particularly in comparison to the typical
21 recovery in a wage-and hour action involving retail workers. (See, e.g., *Sandoval v. Nissho*
22 *of California., Inc.* (Super. Ct. San Diego, Dec. 3, 2010, No. 37-2009-00091861) [average
23 net recovery of approximately \$145.00]; *Fukuchi v. Pizza Hut* (Super. Ct. L.A. County,
24 Sept. 29, 2006, No. BC302589) [average net recovery of approximately \$120.00];
25 *Contreras v. United Food Group, LLC* (Super. Ct. L.A. County, Sept. 10 2009, No.
26 BC389253) [average net recovery of approximately \$120.00]; *Ressler v. Federated*
27

28 ¹ Declaration of Kaylie O'Connor on behalf of CPT Group, Inc. ["CPT Decl."] ¶¶ 14-17.

1 *Department Stores, Inc.* (Super. Ct. L.A. County, Jan. 2, 2009, Case No. BC335018)
2 [average net recovery of approximately \$90.00]; *Doty v. Costco Wholesale Corporation*
3 (C.D.Cal. May 14, 2007, No. CV05-3241 FMC-JWJx) [average net recovery of
4 approximately \$65.00]; *Sorenson v. PetSmart, Inc.* (E.D.Cal. Dec. 17, 2018, No. 2:06-CV-
5 02674-JAM-DAD [average net recovery of approximately \$60.00]; *Lim v. Victoria's Secret*
6 *Stores, Inc.* (Super. Ct. Orange County, Jan. 20, 2006, No. 04CC00213) [average net
7 recovery of approximately \$35.00]; *Gomez v. Amadeus Salon, Inc.* (Super. Ct. L.A. County,
8 July 23, 2010, No. BC392297) [average net recovery of approximately \$20.00]; *Jones v.*
9 *Bath & Body Works, Inc.* (C.D.Cal. July 11, 2016, No. 2:13-cv-05206-FMO-AJW) [average
10 net recovery of approximately \$50.00]; *Palencia v. 99 Cents Only Stores* (Super. Ct.
11 Sacramento County, Nov. 5, 2012, No. 34-2010-00079619) [average net recovery of
12 approximately \$80.00].)

13 The Class' response to date—less than .2 percent of the Settlement Class opted out,
14 one class member disputed their workweek calculation, and not a single Class Member
15 objected to the Settlement²—confirms the fairness and desirability of the Settlement to
16 Class members. (See *7-Eleven Owners for Fair Franchising v. Southland Corporation*
17 (2000) 85 Cal.App.4th 1135, 1152-1153 [response to proposed settlement overwhelmingly
18 positive where 80 out of 5,454 class members elected to opt out and nine class members
19 objected]; *Chun-Hoon v. McKee Foods Corporation* (N.D.Cal. 2010) 716 F.Supp.2d 848,
20 852 [zero objections and 16 opt-outs (4.86 percent of the class) from 329 class members
21 “strongly” support settlement]; *Garner v. State Farm Mutual Automobile Insurance Co.*
22 (N.D.Cal. Apr. 22, 2010, No. CV 08 1365 CW EMC) 2010 WL 1687832, at *15 [opt-outs
23 of 101 out of 24,000 settlement class members (about 0.4 percent)] indicated fairness of
24 settlement].) The terms of the settlement and the class response clearly justify the fee
25 request.

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28 ² CPT Decl. ¶¶ 10-13.

1 2. *The attorneys' fees are merited by the contingent risk assumed by*
2 *Plaintiffs' counsel.*

3 Plaintiffs' Counsel took this case on a pure contingency basis and had no guarantee
4 that they would receive any remuneration for the many hours they spent litigating the
5 Class's claims, or for the out-of-pocket costs they incurred. When representing large
6 numbers of employees in wage-and-hour actions, attorneys like Plaintiffs' Counsel
7 inevitably must be prepared to make a significant investment of time, energy, and
8 resources. "[C]ourts have routinely enhanced the lodestar to reflect the risk of non-payment in
9 common fund cases.' [Citation.] This mirrors the established practice in the private legal market
10 of rewarding attorneys for taking the risk of nonpayment by paying them a premium over their
11 normal hourly rates for winning contingency cases. [Citation.] In common fund cases, 'attorneys
12 whose compensation depends on their winning the case[] must make up in compensation in the
13 cases they win for the lack of compensation in the cases they lose.' [Citation.]" (*Vizcaino v.*
14 *Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051; accord, *In re Washington Public Power*
15 *Supply Systems Securities Litigation* (9th Cir. 1994) 19 F.3d 1291, 1299.)

16 Attorneys accepting contingency fee cases should be compensated in amounts
17 greater than those earned by attorneys who bill and receive payment by the hour. If a
18 contingency fee attorney were awarded fees at the same level as an hourly-fee attorney, it
19 would be economically irrational for any attorney to accept the risks of contingency fee
20 cases.³ Without the application of a multiplier in cases where they prevail, attorneys would
21 be unable to represent employees and consumers on contingency. This would in turn
22 undermine California's strong policy of encouraging attorneys to represent low-income

23 ³ See Richard A. Posner, *Economic Analysis of Law* (4th ed. 1992) pp. 534, 567 ["A contingent
24 fee must be higher than a fee for the same legal services paid as they are performed. The contingent fee
25 compensates the lawyer not only for the legal services he renders but for the loan of those services. The
26 implicit interest rate on such a loan is higher because the risk of default (the loss of the case, which
27 cancels the debt of the client to the lawyer) is much higher than that of conventional loans."]; John
28 Leubsdorf, *The Contingency Factor in Attorney Fee Awards* (1981) 90 Yale L.J. 473, 480 ["A lawyer
 who both bears the risk of not being paid and provides legal services is not receiving the fair market
 value of his work if he is paid only for the second of these functions. If he is paid no more, competent
 counsel will be reluctant to accept fee award cases."]; ABA Model Code of Professional Responsibility, DR
 2-106(B)(8) [contingent nature of attorney representation as an appropriate component in
 considering whether fee is reasonable].

1 individuals seeking unpaid back wages and other employment-related redress. Accordingly,
2 the high contingent risk taken by Plaintiffs' Counsel in this case supports the fee request.

3 **D. A lodestar cross-check confirms that the attorneys' fees are fair and**
4 **reasonable.**

5 The trial court may use an abbreviated lodestar "cross-check" for common fund
6 awards if the court considers it useful. (*Laffitte II, supra*, 1 Cal.5th at pp. 504-505.) In
7 conducting a lodestar cross-check, the Court first determines a lodestar value for the fees
8 by multiplying the time reasonably spent by plaintiffs' counsel on the case by a reasonable
9 hourly rate. (*In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 556.) To
10 determine whether the requested rate is reasonable, courts look to the prevailing rate for
11 similar work in the pertinent geographic region. (*PLCM Group v. Drexler* (2000) 22
12 Cal.4th 1084, 1094-1098.)

13 The lodestar cross-check "does not override the trial court's primary determination
14 of the fee as a percentage of the common fund and thus does not impose an absolute
15 maximum or minimum on the fee award." (*Id.* at p. 505.) "If the multiplier calculated by
16 means of a lodestar cross-check is extraordinarily high or low, the trial court should consider
17 whether the percentage used should be adjusted so as to bring the imputed multiplier within a
18 justifiable range, but the court is not necessarily required to make such an adjustment." (*Ibid.*)
19 Courts conducting lodestars cross-check to the percentage method need not closely scrutinize
20 each attorney-hour. (*Ibid.*) An evaluation may be done by reviewing counsel declarations
21 summarizing overall time spent. (*Ibid.*)

22 Here, Plaintiffs' Counsel billed a total of approximately 263.8 hours, as detailed in
23 the below chart.⁴

Lawyer / Staff	CA Bar Yr.	Rate	Hours	Fees
David R. Greifinger	1982	\$725	75.6	\$54,810.00
Calvin A. Marshall	2017	\$500	188.2	\$94,100.00
Total				\$148,910.00

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28 ⁴ Greifinger Decl. ¶ 29.

1 The total attorney hours expended on this action are reasonable and in line with
2 comparable cases. “By and large, the court should defer to the winning lawyer’s
3 professional judgment as to how much time he was required to spend on the case; after all,
4 he won, and might not have, had he been more of a slacker.’ [Citation.]” (*Kerkeles v. City*
5 *of San Jose* (2015) 243 Cal.App.4th 88, 104).

6 Multiplying the total hours billed by their reasonable hourly rates yields a lodestar
7 of \$148,910.00.⁵ Plaintiffs’ Counsel’s hourly rates are comparable to, or less than, those
8 charged by other class action plaintiffs’ counsel and the firms defending class actions, and
9 have been approved by numerous federal and state courts. (See *Aarons v. BMW of North*
10 *America* (C.D.Cal. Apr. 29, 2014 No. 11-7667-PSG) 2014 U.S. Dist. LEXIS 118442, *40-
11 41.) Other courts have approved hourly rates in this range for plaintiff’s side law firms in
12 the Southern California area. (E.g., *Kearney v. Hyundai Motor Am.* (C.D.Cal. June 28,
13 2013) 2013 U.S. Dist. LEXIS 91636, *24 [approving hourly rates of \$650-\$800 for senior
14 attorneys in consumer class action]; *Parkinson v. Hyundai Motor America* (C.D.Cal. 2010)
15 796 F.Supp.2d 1160, 1172 [approving hourly rates between \$445 and \$675]; *Faigman v.*
16 *AT&T Mobility LLC* (N.D.Cal. Feb. 15, 2011) 2011 U.S. Dist. LEXIS 15825, * 2
17 [approving hourly rates of \$650 for partner and \$500 for associate]; *Richard v. Ameri-*
18 *Force Management Service., Inc.* (Super. Ct. San Diego County, Aug. 27, 2010, No. 37-
19 2008-00096019 [\$695 to \$750 an hour for partners; \$495 an hour for associates]; *Barrera*
20 *v. Gamestop Corporation* (C.D.Cal. Nov. 29, 2010, No. CV 09-1399) [\$700 an hour for
21 partners; \$475 an hour for associates]; *Anderson v. Nextel Retail Stores LLC* (C.D.Cal. June
22 20, 2010, No. CV 07-4480) [\$655 to \$750 an hour for partners; \$300 to \$515 an hour for
23 associates]; *Luquetta v. The Regents of the University of California* (Super. Ct. S.F.
24 County, Oct. 31, 2012, No. CGC-05-443007 [approving 2012 partner rates between \$550
25 and \$850 per hour]; and *Holloway v. Best Buy Co.* (N.D.Cal., Nov. 9, 2011, No. C-05-
26 5056-PJH (MEJ)) [approving 2011 partner hourly rates of \$700 to \$825 and associate
27 hourly rates of \$355 to \$405 per hour].)

28 ⁵ Greifinger Decl. ¶ 29.

1 Applying a modest 1.96 multiplier to the lodestar yields the requested fees of
2 \$291,667. A 1.96 multiplier is not “extraordinarily high”—to the contrary, can range from
3 two to four or even higher. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224,
4 255; *see also Vizcaino v. Microsoft Corporation* (9th Cir. 2002) 290 F.3d 1043, 1051, fn. 6
5 [multiplier of 3.65 approved with court observing that multipliers ranging from one to four
6 are frequently awarded when the lodestar method is applied]; *Sutter Health Uninsured*
7 *Pricing Cases* (2009) 171 Cal.App.4th 495, 512 [2.52 multiplier on a lodestar cross-check];
8 *Chavez v. Netflix, Inc.* (2008) 162 Cal.App. 4th 43, 66 [2.5 multiplier in a consumer class
9 action]; *Willner v. Manpower Inc.* (N.D.Cal. June 22, 2015, No. 11-CV-02846-JST) 2015
10 WL 3863625, at *7 [2.10 multiplier in settlement of class action for Labor Code
11 violations]; *Dyer v. Wells Fargo Bank, N.A.* (N.D.Cal. 2014) 303 F.R.D. 326, 334
12 [multiplier of 2.83]; *Hopkins v. Stryker Sales Corp.* (N.D.Cal. Feb. 6, 2013, No. 11-CV-
13 02786-LHK) 2013 WL 496358, at *5 [multiplier of 2.76 in settlement of class action for
14 Labor Code violations]; *Spann v. J.C. Penney Corp.* (C.D.Cal. 2016) 211 F. Supp. 3d
15 1244, 1265 [3.07 multiplier is well within the range for reasonable multipliers in lodestar
16 cross-check]; *Beaver v. Tarsadia Hotels* (S.D.Cal. Sept. 28, 2017, No. 11- CV-01842-GPC-
17 KSC) 2017 WL 4310707, at *13 [one-third fee reflecting a multiplier of 2.89 on the
18 lodestar reasonable for a complex class action case].)

19 The lodestar cross-check confirms that Plaintiffs’ fee request is fair and reasonable
20 and should be approved.

21 **E. The requested litigation expense recovery is reasonable and should receive final approval.**

22 Plaintiffs’ Counsel are also entitled to reimbursement of their litigation costs. (Lab.
23 Code, §§ 1194, subd. (a) & 2699, subd. (g)(1).) Plaintiffs’ Counsel seek an award of
24 \$17,227.91 for reasonably incurred costs and expenses, including court filing fees, attorney
25 services fees, service of process fees, mediation fees, consultancy fees, research fees,
26 postage, software related expenses, and Labor and Workforce Development Agency PAGA
27 filing fees.⁶ These are costs of precisely the sort that are reimbursable because they are

28 ⁶ Greifinger Decl. ¶ 30.

1 reasonable and were necessarily incurred during the case's pendency. Final approval of the
2 cost reimbursement of \$17,227.91 is thus warranted.

3 **F. The Class Representatives' proposed enhancement payments are fair and**
4 **reasonable.**

5 Enhancement payments "are fairly typical in class action cases." (*Cellphone*
6 *Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1393, citing *Rodriguez v. West*
7 *Publishing Corporation*, 563 F.3d 948, 958 (9th Cir. 2009), 4 Newberg on Class Actions
8 (4th ed. 2002) § 11:38, and Eisenberg & Miller, *Incentive Awards to Class Action*
9 *Plaintiffs: An Empirical Study* (2006) 53 UCLA L. Rev. 1303.) Enhancement payments
10 "are intended to compensate class representatives for work done on behalf of the class, to
11 make up for financial or reputational risk undertaken in bringing the action, and,
12 sometimes, to recognize their willingness to act as a private attorney general." (*Cellphone*
13 *Termination Fee Cases*, *supra*, 186 Cal.App.4th at p. 1393, citing *Rodriguez v. West*
14 *Publishing Corporation*, *supra*, 563 F.3d at p. 958.)

15 The Class Representative Enhancement Payments proposed in this case are
16 reasonable in light of Plaintiffs' service as class representatives. Indeed, but for Plaintiffs'
17 service, Class Members would have recovered nothing for their claims, and with the
18 passage of time, the claims in controversy would have been barred. The requested Class
19 Representative Enhancement Payments of \$7,500.00 to Plaintiff Denise Lai and \$7,500.00
20 to Plaintiff Elim Yee are more than fair and reasonable compensation for Plaintiffs' effort
21 in prosecuting the action on behalf of the class, assisting counsel with discovery, regularly
22 conferring with counsel on the status of the case and the strategies for prosecuting the
23 claims, participating in the mediation, and reviewing the proposed settlement to ensure that
24 its terms are fair and provide adequate relief for the Class. At the outset of the litigation,
25 Plaintiffs provided Plaintiffs' Counsel with a detailed summary of their experiences
26 working for Defendants, and the circumstances that gave rise to the alleged Labor Code
27 violations.⁷ Plaintiffs were able to share with Plaintiffs' Counsel their intimate knowledge
28 of Defendants' policies and practices, and how these policies and practices were

⁷ Greifinger Decl. ¶ 10.

1 implemented on a daily basis.⁸ In addition to establishing Plaintiffs’ Counsel’s initial
2 evaluation of the lawsuit, the information that Plaintiffs provided also influenced Plaintiffs’
3 Counsels’ discovery efforts.⁹ Plaintiffs introduced Plaintiffs’ Counsel to various other
4 employees of Defendants.¹⁰ Plaintiffs meaningfully participated in the mediation and in the
5 settlement negotiation process.¹¹

6 Plaintiffs deserve the requested Class Representative Enhancement Payments
7 because they “remained fully involved and expended considerable time and energy during
8 the course of the litigation. [Citation.]” (See *Schaffer v. Litton Loan Servicing, LP*,
9 (C.D.Cal. Nov. 13, 2012, No. CV 05-07673 MMM JCX) 2012 WL 10274679, at *19. The
10 amount of the requested Class representative Enhancement Payment is also reasonable by
11 reference to the amounts the California Superior Court has awarded for similar wage and
12 hour settlements.¹²

13 The Class Representative Enhancement Payments are also appropriate because
14 Plaintiffs would otherwise “not gain any benefit beyond that [they] would receive as
15 [ordinary class members].” (*In re Toys R Us-Delaware, Inc.--Fair & Accurate Credit*

16 ⁸ *Id.*

17 ⁹ *Id.*

18 ¹⁰ Greifinger Decl. ¶ 11.

19 ¹¹ *Id.*

20 ¹² See, e.g., *Rodriguez v. La-Z-Boy Inc.* (Super. Ct. San Bernardino County, Nov. 4, 2019, No.
21 CIVDS1615392) [\$10,000.00 enhancement payment]; *Harris v. Mr. C Manager, LLC* (Super. Ct. San
22 Bernardino County, Aug. 4, 2019, No. CIVDS1721484) [\$10,000.00 enhancement payment]; *Alvarez v.*
23 *MAC Cosmetics Inc.* (Super. Ct. San Bernardino County, July 29, 2016, No. CIVDS1513177) [\$10,000.00
24 enhancement payments]; *Carter v. GMRI Inc.* (Super. Ct. Riverside County, Jan. 10, 2017, No. RIC
25 1506085) [\$10,000.00 enhancement payments]; *Crook v. Barton Healthcare System* (Super. Ct. El Dorado
26 County, Dec. 9, 2016, No. SC20150146) [\$10,000.00 enhancement payment]; *Singh v. American Building*
27 *Supply, Inc.* (Super. Ct. Sacramento County, Oct. 3, 2016, No. 34-2015-00179889-CU-OE-GDS)
28 [\$10,000.00 enhancement payment]; *Alvarez v. MAC Cosmetics Inc.* (Super. Ct. San Bernardino County,
July 29, 2016, No. CIVDS1513177) [\$10,000.00 enhancement payments]; *Coffey v. Beverages & More, Inc.*
(Super. Ct. L.A. County, July 26, 2016, No. BC477269) [\$10,000.00 enhancement payment]; *Restoration*
Hardware Wage and Hour Cases, No. JCCP4794 (L.A. County Super. Ct. April 28, 2016) [\$10,000.00
enhancement payments]; *Cook v. United Insurance Co. of Amer.* (Super. Ct. Contra Costs County, April 15,
2016, No. CIVMSC10-00425) [\$10,000.00 enhancement payments]; *Paredes v. American Family Care, Inc.*
(Super. Ct. Sacramento County, Nov. 17, 2015, No. 34-2014-00167060-CU-OE-GDS) [\$10,000.00
enhancement payment]; *Hoagland v. Brooks Brothers Group, Inc.* (Super. Ct. L.A. County, July 16, 2015,
No. BC511534) [\$10,000.00 enhancement payment]; *Baker v. L.A. Fitness Int’l, LLC* (Super. Ct. L.A.
County, Dec. 12, 2012, No. BC438654) [\$10,000.00 enhancement payments]; *Blue v. Coldwell Banker*
Residential Brokerage Co. (Super. Ct., L.A. County, Mar. 21, 2011, No. BC417335) [\$10,000.00
enhancement payment].)

1 *Transactions Act (FACTA) Litigation* (C.D.Cal. 2014) 295 F.R.D. 438, 472. Absent the
2 Class Representative Enhancement Payments, Plaintiffs will recover no more than other
3 Class Members, despite undergoing personal sacrifice and reputational risk in pursuing this
4 litigation on behalf of the Class.

5 The Enhancement Payments are also justified in light of the Civil Code section 1542
6 general releases that Plaintiffs provided Defendant as a condition of settlement. Under
7 section 1542, Plaintiffs will release any and all claims they may have against Defendant
8 arising out of their employment. These general releases are considerably broader than the
9 separate, narrower release required of the Class. (See *La Fleur v. Medical Management*
10 *International, Inc.*, *supra*, (C.D.Cal. June 25, 2014, No. 13-00398-VAP) 2014 WL
11 2967475, *8 [\$15,000 enhancement payments warranted in part because named plaintiffs
12 released all claims against the defendant, unlike the remainder of the class].)

13 The Enhancement Payments are further justified in light of the reputational risk that
14 Plaintiffs have assumed in bringing an action against their former employer. (*Cellphone*
15 *Termination Fee Cases*, *supra*, 186 Cal.App.4th at p. 1393, citing *Rodriguez v. West*
16 *Publishing Corporation*, *supra*, 563 F.3d at p. 958.) By bringing suit, Plaintiffs jeopardized
17 their future job prospects, particularly in the internet age where web sites and third-party
18 services can disclose a job applicant's litigation history to a prospective employer. (See *La*
19 *Fleur v. Medical Management International, Inc.*, *supra*, 2014 WL 2967475, at *8 [\$15,000
20 enhancements to named plaintiffs justified in part due to attestations of their fear that future
21 job prospects in veterinary industry may be harmed after being named plaintiffs in class
22 action for Labor Code violations].) In fact, an entire industry has developed for providing
23 employers with background information on employee candidates, and the companies that
24 provide these services actually promote themselves by touting their ability to identify and
weed out potentially litigious employee candidates.¹³

25 By bringing this action, Plaintiffs have assumed reputational risk that may impact
26 their ability to find employment in the near and distant future. Long after this action is

27 ¹³ "In today's litigious culture, you simply cannot afford to hire employees who will put your company at
28 risk." (Credit Technologies, Inc., <https://www.credittechnologies.com/employment-screening/>.)

1 forgotten by Class Members, Plaintiffs will have to endure the risk of possibly being
2 branded “litigious” by prospective employers, and may have employment applications
3 rejected on that basis alone. As demonstrated by the Class Representatives’ declarations,
4 the requested Enhancement Payments are fair, adequate, and reasonable compensation for
5 Plaintiffs’ services on behalf of the Class and for the risks and personal sacrifice they
6 assumed, and for their general release of claims.

7 **CONCLUSION**

8 For the foregoing reasons, Plaintiffs respectfully request that this Court grant the
9 Motion for Attorneys’ Fees, Costs and Expenses, and Class Representative Enhancement
10 Payments.

11
12 Dated: March 16, 2023

LAW OFFICES OF DAVID R. GREIFINGER

13
14 By: 
15 DAVID R. GREIFINGER
16 CALVIN A. MARSHALL
17 *Attorneys for Plaintiffs, DENISE LAI,*
18 *ELIM YEE, and the putative Class*

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3 I am employed in the State of California, County of Los Angeles. I am over the age of 18
4 and not a party to the within lawsuit; my business address is 15515 W. Sunset Boulevard,
Unit 214, Pacific Palisades, CA 90272.

5 On **March 16, 2023** I served the foregoing document described as **NOTICE OF**
6 **MOTION AND MOTION FOR: 1. ATTORNEYS' FEES, COSTS, AND EXPENSES;**
7 **2. REPRESENTATIVE ENHANCEMENT PAYMENTS** on the interested parties in this
action by placing **[X]** a true copy thereof on:

8 Nancy Yaffe
9 Daniel Kitzes
10 FOX ROTHSCHILD LLP
10250 Constellation Blvd., Suite 900
11 Los Angeles, CA 90067
nyaffe@foxrothschild.com
dkitzes@foxrothschild.com
12 *Attorneys for Defendants*
San Roque Pet Hospital, Inc., Goleta
13 *Airport Pet Hospital, Inc., Montecito Pet*
Hospital, Inc., PetVet Care Centers
14 *(California), Inc., and David P. Dawson*

- 15
16 **[]** (BY MAIL): as follows: I deposited the envelopes for mailing in the ordinary
17 course of business at Los Angeles County, California. I am "readily familiar" with
18 this firm's practice of collection and processing correspondence for mailing. Under
that practice, the sealed envelopes are deposited with the U.S. Postal Service that
19 same day in the ordinary course of business, with postage thereon fully prepaid at
Los Angeles County, California.
20 **[]** (BY OVERNIGHT DELIVERY): as follows: I am "readily familiar" with this
21 firm's practice of collection and processing correspondence for overnight delivery.
Under that practice, overnight packages are enclosed in a sealed envelope with a
22 packing slip attached thereto fully prepaid. The packages are picked up by the
carrier at our offices or delivered by our office to a designated collection site.
23 **[X]** BY E-MAIL ONLY PER AGREEMENT: I hereby certify that this document was
24 served from Los Angeles County, California, by e-mail delivery on the parties
25 listed herein at their most recent known e-mail address or e-mail of record in this
26 action.

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

Executed on **March 16, 2023** at Los Angeles County, California.

27 Calvin A. Marshall, Esq.

Type or Print Name



Signature