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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO**

THERESA BENDORF, JAVIER MARIN, and
KRISTY PRATHER, on behalf of themselves
and others similarly situated, and on behalf of
other aggrieved employees pursuant to the
California Private Attorneys General Act;

Plaintiffs,

v.

SEA WORLD LLC, a Delaware limited liability
company doing business as SEAWORLD SAN
DIEGO or AQUATICA SAN DIEGO;
SEAWORLD PARKS & ENTERTAINMENT,
INC., a Delaware corporation; and DOES 1
through 25, inclusive,

Defendants.

Lead Case No. 37-2021-00034922-CU-OE-CTL

Other Included Actions:

Case No. 37-2021-00036521-CU-OE-CTL
Case No. 37-2021-00049040-CU-OE-CTL
Case No. 37-2021-00047859-CU-OE-CTL
Case No. 37-2022-00001083-CU-OE-CTL

CLASS AND REPRESENTATIVE ACTION

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

Date: September 13, 2024
Time: 1:30 P.M.
Department: C-69
Judge: Hon. Katherine A. Bacal

Complaint Filed: August 16, 2021
FAC Filed: October 26, 2023
Trial Date: Not Set

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Attorneys for Plaintiff JAVIER MARIN

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

2 **PLEASE TAKE NOTICE** that on September 13, 2024, at 1:30 P.M., or as soon thereafter as this
3 matter may be heard, before the Honorable Katherine A. Bacal, judge presiding, in Department C-69 of
4 the above referenced Court, located at 330 W. Broadway, San Diego, California 92101, Plaintiffs Theresa
5 Bendorf, Kristy Prather, and Javier Marin (collectively, “Plaintiffs”), by and through their counsel of
6 record, will and hereby do, move the Court for an Order:

7 1. Granting final approval to the Class Action and PAGA Settlement Agreement
8 (“Settlement” or “Settlement Agreement”) in this action;

9 2. Approving distribution of the settlement funds to the Participating Class Members and
10 Aggrieved Employees pursuant to the terms of the Settlement Agreement;

11 3. Approving Plaintiffs’ request for an award of the Class Representative Service Payments
12 to Plaintiffs pursuant to the terms of the Settlement Agreement;

13 4. Approving Class Counsel’s request for an award of the Class Counsel Fees Payment of
14 one-third of the Gross Settlement Amount, or \$1,166,666.67, and reimbursement of actual litigation
15 expenses of \$22,069.56 pursuant to the terms of the Settlement Agreement;

16 5. Approving Plaintiffs’ request for payment of the Administration Expenses Payment to CPT
17 Group, Inc. in the amount of \$50,000.00, pursuant to the terms of the Settlement Agreement;

18 6. Approving Plaintiffs’ request for payment to the California Labor & Workforce
19 Development Agency (“LWDA”) of \$75,000.00, pursuant to the Private Attorneys General Act and the
20 terms of the Settlement Agreement; and

21 7. Entering final judgment as to all Participating Class Members in this action.

22 This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which provides for
23 court approval of the settlement of a purported class action and allows the Court to grant final certification
24 of a class for settlement purposes. In light of the overwhelmingly positive response, as shown by the
25 minimal number of opt-outs and the lack of any objections to the settlement, there is no question that the
26 settlement is fair, reasonable, and adequate and thus should be granted final approval.

27 This Motion will be based on the attached Memorandum of Points and Authorities and the
28 supporting Declarations of Jonathan M. Genish, Christina Lucio, James Hawkins, Bill Marder, Edward

1 W. Choi, Larry Lee, Theresa Bendorf, Kristy Prather, Javier Marin, and William Argueta of CPT Group,
2 Inc., upon the oral arguments of counsel (should there be any), and on the complete records and file herein.

3
4 Dated: August 21, 2024

BLACKSTONE LAW, APC

5
6 By: /s/ Jonathan M. Genish
Jonathan M. Genish
7 Miriam L. Schimmel
Joana Fang
8 Alexandra Rose
Attorneys for Plaintiff THERESA BENDORF

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10 Dated: August 21, 2024

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18 Attorneys for Plaintiff KRISTY PRATHER

19 Dated: August 21, 2024

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21 By: /s/ Larry W. Lee
Larry W. Lee
22 Christine S. Lee
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TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION.....	10
II. CLASS MEMBERS WERE PROVIDED PROPER NOTICE OF THE SETTLEMENT.....	11
III. THE SETTLEMENT TERMS ARE FAIR, ADEQUATE, AND REASONABLE, AND THE SETTLEMENT SHOULD BE GIVEN FINAL APPROVAL.....	12
A. Strength of Plaintiffs' Case and Likelihood of Certifying the Class.....	12
1. The Class is Ascertainable.....	12
2. There is a Community of Interest.....	13
a. There are Predominant Common Questions of Law and Fact.....	13
b. Plaintiffs' Claims are Typical of the Class Claims	14
c. Plaintiffs Adequately Represented the Class.....	15
B. Risks, Expenses, and Complexity of Further Litigation	16
C. The Terms of the Settlement, Negotiation of Settlement, and Reception of the Settlement by Class Members All Strongly Support the Conclusion that the Settlement is Fair, Adequate, and Reasonable.....	16
D. Under Well-Established Legal Principles, the Court Should Grant Final Approval of the Settlement	17
1. Standard of Review.....	17
2. The Settlement is Presumed to Be Fair.....	18
3. Two-Way Costs and Other Risks Inherent in Continued Litigation Favor Final Approval	19
4. The Complexity, Expense, and Likely Duration of Continued Litigation Against Defendants Favor Final Approval.....	20
5. The Opinion of Experienced Counsel Favors Final Approval	21
IV. THE PROPOSED PROCEDURE FOR UNCASHED SETTLEMENT CHECKS SHOULD BE APPROVED	21
V. THE REQUESTED CLASS REPRESENTATIVE SERVICE PAYMENTS SHOULD BE APPROVED	21
VI. THE REQUESTED ATTORNEYS' FEES SHOULD BE APPROVED.....	22
VII. THE COURT SHOULD APPROVE THE REQUEST FOR REIMBURSEMENT OF COSTS.....	27

VIII. THE ADMINISTRATION EXPENSES PAYMENT SHOULD BE APPROVED28

IX. CONCLUSION28

TABLE OF AUTHORITIES

Page(s)

Federal Cases

<i>Ackerman v. Kassar</i> (9th Cir. 1993) 1993 WL 326453	18
<i>Boeing Co. v. Van Gemert</i> (1980) 444 U.S. 472.....	22
<i>Boyd v. Bechtel Corp.</i> (N.D. Cal. 1979) 485 F. Supp. 610.....	19, 21
<i>Brotherton v. Cleveland</i> (S.D. Ohio 2001) 141 F. Supp. 2d 907.....	22
<i>Byrd v. Civil Serv. Comm’n</i> (1983) 459 U.S. 1217.....	17
<i>Chavez v. Netflix, Inc.</i> (2008) 162 Cal. App. 4th 43	24
<i>Church v. Consolidated Freightways, Inc.</i> (N.D. Cal. 1993) 1993 WL 149840	18
<i>City of Detroit v. Grinnell Corp</i> (2d Cir. 1974) 495 F.2d 448.....	23
<i>City of Oakland v. Oakland Raiders</i> (1988) 203 Cal. App. 3d 78.....	24
<i>Class Plaintiffs v. City of Seattle</i> (9th Cir. 1992) 955 F.2d 1268	17, 18
<i>Cook v. Niedert</i> (7th Cir. 1998) 142 F.3d 1004	22
<i>Eisen v. Carlisle & Jacquelin</i> (1974) 417 U.S. 156.....	12
<i>Ellis v. Naval Air Rework Facility</i> (N.D. Cal. 1980) 87 F.R.D. 15	18, 20
<i>Enter. Energy Corp. v. Columbia Gas Transmission Corp.</i> (S.D. Ohio 1991) 137 F.R.D. 240	22
<i>Flannery v. California Highway Patrol</i> (1998) 61 Cal. App. 4th 629.....	25
<i>Gaskill v. Gordon</i> (7th Cir. 1998) 160 F.3d 361.....	23
<i>Girsh v. Jepson</i> (3d Cir. 1975) 521 F.2d 153.....	19, 20
<i>Glass v. UBS Fin. Servs.</i> (N.D. Cal. Jan. 27, 2007) No. C-06-4068, 2007 U.S. Dist. LEXIS 8476	22
<i>Hanon v. Dataproducts Corp.</i> (9th Cir. 1992) 976 F.2d 497	14, 15
<i>In re Dun & Bradstreet Credit Servs. Customer Litig.</i> (S.D. Ohio 1990) 130 F.R.D. 366	22
<i>In re General Motors Corp.</i> (3d Cir. 1995) 55 F.3d 768.....	19
<i>In re Rite Aid Corp. Secs. Litig.</i> (3d Cir. 2005) 396 F.3d 294.....	24
<i>In re Wash. Pub. Power Supply Sys. Sec. Litig.</i> (D. Ariz. 1989) 720 F. Supp. 1379.....	18
<i>Ketchum v. Moses</i> (2001) 24 Cal. 4th 1122	26
<i>Laffitte v. Robert Half International, Inc.</i> (2014) 231 Cal. App. 4th 860.....	25

1	<i>Lealao v. Beneficial California, Inc.</i> (2000) 82 Cal. App. 4th 19	24, 26
2	<i>Linney v. Cellular Alaska P'ship</i> (9th Cir. 1998) 151 F.3d 1234	18, 21
3	<i>Martin v. AmeriPride Servs.</i> (S.D. Cal. 2011) 2011 U.S. Dist. LEXIS 61796	23
4	<i>Martino v. Denevi</i> (1986) 182 Cal. App. 3d 553	25
5	<i>Mullane v. Central Hanover Bank & Trust Co.</i> (1950) 339 U.S. 306	12
6	<i>New York Gaslight Club, Inc. v. Carey</i> (1980) 447 U.S. 54	25
7	<i>Officers for Justice v. Civil Serv. Comm'n</i> (9th Cir. 1982) 688 F.2d 615	17, 18, 20
8	<i>Phillips Petroleum Co. v. Shutts</i> (1985) 472 U.S. 797	12
9	<i>PLCM Group, Inc. v. Drexler</i> (2000) 22 Cal. 4th 1084	25
10	<i>Serrano v. Unruh</i> (1982) 32 Cal. 3d 621	25
11	<i>Sutter Health Uninsured Pricing Cases</i> (2009) 171 Cal. App. 4th 495	24
12	<i>Swedish Hospital v. Shalala</i> (D.C. Cir. 1993) 1 F.3d 1261	23
13	<i>Van Bronkhorst v. Safeco Corp.</i> (9th Cir. 1976) 529 F.2d 943	17, 20
14	<i>Van Vranken v. Atlantic Richfield Co.</i> (N.D. Cal. 1995) 901 F. Supp. 294	22
15	<i>Vincent v. Hughes Air West, Inc.</i> (9th Cir. 1997) 557 F.2d 759	22
16	<i>Wershba v. Apple Computer, Inc.</i> (2001) 91 Cal. App. 4th 224	24, 27
17	<i>Young v. Katz</i> (5th Cir. 1971) 447 F.2d 431	20
18	State Cases	
19	<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> (2000) 85 Cal. App. 4th 1135	18
20	<i>Boyd v. Bank of Am. Corp.</i> (C.D. Cal. Nov. 18, 2014) 2014 U.S. Dist. LEXIS 162880	27
21	<i>Classen v. Weller</i> (1983) 145 Cal. App. 3d 27	14
22	<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal. App. 4th 1794	18
23	<i>Duran v. U.S. Bank Nat'l Ass'n</i> (2014) 59 Cal. 4th 1	16
24	<i>Laffitte v. Robert Half Int'l</i> (2016) 1 Cal. 5th 480	22, 24
25	<i>Lockheed Martin Corp. v. Superior Court</i> (2003) 29 Cal. 4th 1096	13
26	<i>Reese v. Wal-Mart Stores, Inc.</i> (1999) 73 Cal. App. 4th 1225	13
27	<i>Reyes v. San Diego County Board of Supervisors</i> (1987) 196 Cal. App. 3d 1263	13
28	<i>Richmond v. Dart Industries, Inc.</i> (1987) 29 Cal. 3d 469	13

1	<i>Serrano v. Priest</i> (1977) 20 Cal. 3d 25	22, 26
2	<i>Simons v. Horowitz</i> (1984) 151 Cal. App. 3d 834	15
3	<i>Vandervort v. Balboa Capital Corp.</i> (C.D. Cal. 2014) 8 F. Supp. 3d 1200.....	27
4	<i>Wershba v. Apple Computer, Inc.</i> (2001) 91 Cal. App. 4th 224.....	22
5	Other Authorities	
6	Alba Conte & Herbert B. Newberg (4th ed. 2002) <i>4 Newberg on Class Actions</i> § 11.41.....	17, 20
7	Eisenberg & Miller, <i>Attorney Fees in Class Action Settlements: An Empirical Study: 1993-2008</i> (2010) 7 J. of Empirical Leg. Stud. 248.....	23
8	<i>Manual for Complex Litigation, Fourth</i> (Fed. Jud. Ctr., 4th ed. 2004) § 21.6	17, 18
9	<i>Report of the Third Circuit Task Force, Court Awarded Attorney Fees</i> (1958) 108 F.R.D. 237.....	24
10	Rules	
11	California Rule of Court 3.769	17
12	Statutes	
13	Cal. Bus. & Prof. Code §§ 17200, et seq.	14
14	Code of Civil Procedure § 382.....	12, 17
15	Code of Civil Procedure § 384(b).....	21
16	Labor Code § 204.....	14
17	Labor Code § 226(a)	14
18	Labor Code § 227.3.....	14
19	Labor Code §§ 201, 202, 203.....	14
20	Labor Code §§ 2698, et seq.	14

1 **I. INTRODUCTION**

2 Plaintiffs Theresa Bendorf, Kristy Prather, and Javier Marin (collectively, “Plaintiffs” or “Class
3 Representatives”) now seek the Court’s final approval of the Class Action and PAGA Settlement
4 Agreement (“Settlement” or “Settlement Agreement”). The Settlement Agreement provides for a
5 \$3,500,000.00 **non-reversionary** fund to be created for the benefit of the Class, from which attorneys’
6 fees, litigation costs, service payment to the named Plaintiffs, payment to the California Labor and
7 Workforce Development Agency (“LWDA”), and costs of settlement administration are to be paid. The
8 entire Net Settlement Amount after these deductions will be paid to all Class Members who did not opt-
9 out of the Settlement and the Aggrieved Employees.

10 The history of this litigation was previously detailed in Plaintiffs’ Motion for Preliminary Approval
11 of Class Action and PAGA Settlement. The Court preliminary approved the Settlement on June 11, 2024,
12 directing distribution of the class notice and scheduling the hearing for final approval of the Settlement
13 (the “Preliminary Approval Order”).

14 As directed by the Court, the Settlement Administrator selected by the Parties – CPT Group, Inc.
15 – distributed the Class Notice to 9,566 Class Members. (Declaration of William Argueta on behalf of CPT
16 Group, Inc. (“Admin. Decl.”) ¶ 5.) To date, **there have been only nine (9) Requests for Exclusions and**
17 **a complete lack of any objections to the Settlement.** (*Id.* ¶¶ 13-14.) As such, there is a 99.9%
18 participation rate. Thus, in light of the lack of objections and the minimal opt-outs, an inference can be
19 made that the Class supports the Court’s Preliminary Approval Order finding that the Settlement
20 Agreement is fair and reasonable.

21 In addition to the results of the notice process, for the same reasons as set forth earlier in Plaintiffs’
22 Motion for Preliminary Approval of Class Action and PAGA Settlement, the following represents the
23 basic points supporting final approval of the Settlement:

24 ▪ The Settlement provides a total settlement sum of \$3,500,000.00, which is **non-**
25 **reversionary**;

26 ▪ The Settlement is fair given that Participating Class Members will receive (*after deductions*
27 *for fees, costs, etc.*) a substantial amount of money – an average of \$224.52 to each Participating Class
28 Member (*See Admin. Decl.* ¶ 17);

1 ▪ Class Members did not need to submit claim forms to participate in the settlement, but are
2 being paid automatically;

3 ▪ Plaintiffs conducted significant investigation in this case, including formal and informal
4 discovery and exchanges of information by Plaintiffs and Defendants of class data;

5 ▪ A highly regarded settlement administrator, CPT Group, Inc., was retained to administer
6 the settlement for approximately \$50,000.00 (*See* Admin. Decl. ¶ 19); and

7 ▪ The State of California’s LWDA will also be the beneficiary of this settlement, as it will
8 receive \$75,000.00 pursuant to the PAGA, should this settlement be granted final approval.

9 Accordingly, the Court should grant final approval consistent with the Preliminary Approval
10 Order.

11 **II. CLASS MEMBERS WERE PROVIDED PROPER NOTICE OF THE SETTLEMENT**

12 The notice procedures required by the Preliminary Approval Order have been followed and satisfy
13 all due process rights of Class Members. Specifically, the Preliminary Approval Order contemplated that
14 the Court Approved Notice of Class Action Settlement and Hearing Date for Final Court Approval (“Class
15 Notice”), as approved in the Preliminary Approval Order, be sent to all Class Members by U.S. first class
16 mail, as specified in the Settlement Agreement. As agreed by the Parties, CPT Group, Inc. would serve as
17 the Settlement Administrator for this case.

18 As clearly stated in the Declaration of William Argueta on behalf of CPT Group, Inc., notice was
19 provided to Class Members, as required by the Preliminary Approval Order. On June 27, 2024, the
20 Settlement Administrator received a Class Member mailing list from Defense Counsel that included 9,566
21 Class Members. (Admin. Decl. ¶ 5.) Prior to mailing the Class Notice, the Settlement Administrator
22 conducted a National Change of Address (“NCOA”) search to correct and/or update the class list in case
23 of any address changes. (*Id.* ¶ 6.) On July 11, 2024, the Settlement Administrator mailed the Class Notice
24 to all Class Members on the mailing list via U.S. first class mail. (*Id.* ¶ 8.) On July 17, 2024, Class Counsel
25 alerted CPT that thirty-six (36) individuals were inadvertently included in the Failure to Recall Class and
26 should be excluded from the Failure to Recall Class only. (*Id.* ¶ 11.) After excluding these individuals
27 from the Failure to Recall Class, thirty-one (31) individuals were removed from the class list altogether
28 due to having zero work weeks, bringing the class size to 9,535. (*Id.*) As of the date of this filing, one

1 hundred seventy-four (174) Class Notices remain undeliverable. (*Id.* ¶ 10.)

2 Further, the Class Notice provided Class Members with Class Counsel’s and the Settlement
3 Administrator’s contact information, where they could further seek information regarding the settlement,
4 ask questions, and update their address.

5 The provision of sending the notice to class members as described above meets the requirements
6 for the “best notice practicable” in this case as necessary to protect the due process rights of class members.
7 (*See, Phillips Petroleum Co. v. Shutts* (1985) 472 U.S. 797, 811-12 (provision of “best notice practicable”
8 with description of the litigation and explanation of opt-out rights satisfies due process); *Eisen v. Carlisle*
9 *& Jacquelin* (1974) 417 U.S. 156, 174-75 (individual notice must be sent to class members who can be
10 identified through reasonable means); *Mullane v. Central Hanover Bank & Trust Co.* (1950) 339 U.S.
11 306, 314 (best practicable notice is that which is “reasonably calculated, under all the circumstances, to
12 apprise interested parties of the pendency of the action and afford them an opportunity to present their
13 objections”).)

14 Here, all Class Members were provided with a mailing that explained the settlement and allowed
15 Class Members to seek information, ask questions, and exclude themselves and/or object to the settlement,
16 if so desired. As such, proper notice has been given to the Class. Thus, the Court may determine the
17 fairness and adequacy of the Settlement and enter its Order granting final approval, secure in the
18 knowledge that all absent Class Members have been given the opportunity to participate fully in the
19 settlement, exclusion, and the approval process.

20 **III. THE SETTLEMENT TERMS ARE FAIR, ADEQUATE, AND REASONABLE, AND THE**
21 **SETTLEMENT SHOULD BE GIVEN FINAL APPROVAL**

22 **A. Strength of Plaintiffs’ Case and Likelihood of Certifying the Class**

23 The Court already addressed the requirements for certifying a class for settlement purposes in its
24 Order granting preliminary approval. Plaintiffs briefly address the requirements again here.

25 **1. The Class is Ascertainable**

26 Whether a class is “ascertainable” within the meaning of Code of Civil Procedure § 382 “is
27 determined by examining (1) class definition, (2) the size of the class, and (3) the means available for
28 identifying the class members.” (*Reyes v. San Diego County Board of Supervisors* (1987) 196 Cal. App.

1 3d 1263, 1271.)

2 Here, the Class is comprised of: (1) a “Wage and Hour Class” of all current and former non-exempt
3 employees of Defendants in California during the Wage and Hour Class Covered Period (or if any such
4 person is incompetent, deceased, or unavailable due to military service, the person’s legal representative
5 or successor in interest evidenced by reasonable verification); and (2) a “Failure to Recall Class” of all
6 current and former employees of Defendants in California during the Failure to Recall Class Covered
7 Period who were temporarily or permanently furloughed in connection with the COVID-19 pandemic and
8 who Defendants subsequently failed to recall or reinstate to their prior employment status (or if any such
9 person is incompetent, deceased, or unavailable due to military service, the person’s legal representative
10 or successor in interest evidenced by reasonable verification), except those individuals who previously
11 entered into release agreements with Defendants. The “Aggrieved Employees” are comprised of all
12 current and former non-exempt employees of Defendants in California during the PAGA Period (or if any
13 such person is incompetent, deceased, or unavailable due to military service, the person’s legal
14 representative or successor in interest evidenced by reasonable verification). There are 9,535 individuals
15 that comprise the Class. (Admin. Decl. ¶ 11.) This is more than the minimum required to certify a class.

16 Within the context of manageability, the issue is whether there exists sufficient means for
17 identifying class members at the remedial stage. (*Reyes*, 196 Cal. App. 3d at pp. 1274-75.) Class Members
18 have already been identified by Defendants and notice was provided to all of the above Class Members.

19 **2. There is a Community of Interest**

20 The “community of interest” requirement embodies three separate factors: (1) predominant
21 common questions of law or fact; (2) class representatives whose claims are typical of the class; and (3)
22 class representatives who can adequately represent the class. (*Richmond v. Dart Industries, Inc.* (1987) 29
23 Cal. 3d 469, 470; *Reese v. Wal-Mart Stores, Inc.* (1999) 73 Cal. App. 4th 1225, 1234.)

24 **a. There are Predominant Common Questions of Law and Fact**

25 “The ultimate question in every case of this type [class actions] is whether...the issues which may
26 be jointly tried, when compared with those requiring separate adjudication, are so numerous and
27 substantial that the maintenance of a class action would be advantageous to the judicial process and to the
28 litigants.” (*Lockheed Martin Corp. v. Superior Court* (2003) 29 Cal. 4th 1096, 1104-05.)

For Plaintiffs' claims, Plaintiffs allege that Defendants, as a matter of corporate policy, practice, or procedure, failed to rehire, recall, or reinstate employees after layoffs and furloughs in connection with the COVID-19 pandemic, resulting in alleged: (1) violation of San Diego Municipal Code §§ 311.010, *et seq.*; (2) wrongful failure to hire in violation of public policy (failure to recall); (3) wrongful failure to hire in violation of public policy (age discrimination); (4) constructive discharge in violation of public policy; (5) wrongful termination in violation of public policy; (6) failure to pay vested vacation wages (Labor Code § 227.3); (7) breach of contract; and (8) breach of the implied covenant of good faith and fair dealing. In addition, Plaintiffs allege that Defendants, as a matter of corporate policy, practice, or procedure, unlawfully rounded employee start and stop times, failed to provide proper meal and rest periods, and failed to properly calculate the regular rate of pay for the purposes of paying meal and rest period premiums, resulting in alleged: (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide lawful meal periods; (4) failure to authorize and permit rest periods; (5) failure to timely pay wages during employment (Labor Code § 204); (6) failure to timely pay wages upon termination (Labor Code §§ 201, 202, 203); (7) failure to provide accurate itemized wage statements (Labor Code § 226(a)); (8) violation of unfair competition laws (Cal. Bus. & Prof. Code §§ 17200, *et seq.*); and (9) civil penalties under the Private Attorneys' General Act, Labor Code §§ 2698, *et seq.* As these are uniform corporate policies, practices, and procedures, the claims can be jointly tried and thus the predominance requirement is satisfied.

Defendants deny that liability could be established on a class-wide basis and contend instead that liability and damages would need to be conducted on a case-by-case basis.

b. Plaintiffs' Claims are Typical of the Class Claims

The purported class representative's claim must be "typical" but not necessarily identical to the claims of other class members; it is sufficient that the representative is similarly situated so that he or she will have the motive to litigate on behalf of the class. (*Classen v. Weller* (1983) 145 Cal. App. 3d 27, 45.) Courts look to whether class members have similar injuries, "whether the action is based on conduct which is not unique to the named Plaintiff," and whether other class members were injured by the same conduct. (*Hanon v. Dataproducts Corp.* (9th Cir. 1992) 976 F.2d 497, 508.) The purpose of the typicality requirement "is to assure that the interest of the named representative aligns with the interests of the class."

1 (*Id.* at p. 508.)

2 Plaintiffs were subjected to the same payroll and employment policies as all other Class Members.
3 In this regard, Plaintiffs Theresa Bendorf and Kristy Prather were employed by Defendants as hourly,
4 non-exempt employees. (Declaration of Theresa Bendorf (“Bendorf Decl.”) ¶ 2; Declaration of Kristy
5 Prather (“Prather Decl.”) ¶ 2.) Like other Failure to Recall Class Members, Ms. Bendorf and Ms. Prather
6 were laid off by Defendants in response to the COVID-19 pandemic in or about April 2020. (First
7 Amended Class and Representative Action Complaint (“FAC”) ¶ 36.) Once Defendants began the process
8 of reopening for business, however, Defendants did not offer Ms. Bendorf and Ms. Prather the opportunity
9 to return to their previous jobs. Instead, Ms. Bendorf and Ms. Prather were obliged to re-apply for
10 employment and saw their job applications either rejected or ignored by Defendants. (FAC ¶ 40.) As a
11 result of their constructive termination, Ms. Bendorf and Ms. Prather did not timely receive all vacation
12 wage wages, paid time off wages, minimum wages, overtime wages, and meal and rest period premiums
13 upon separation of employment. (FAC ¶ 54.)

14 Plaintiff Javier Marin was also hired as an hourly, non-exempt employee of Defendants.
15 (Declaration of Javier Marin (“Marin Decl.”) ¶ 2.) Like other Wage and Hour Class Members, Mr. Marin
16 and Ms. Prather were subject to Defendants’ unlawful rounding policy and worked schedules wherein
17 they were unable to take proper off-duty meal and rest periods and were forced to work hours without
18 proper pay. (Marin Decl. ¶ 3.) On occasions when a meal or rest period premium was paid to Mr. Marin
19 or Ms. Prather, the premium pay was paid at the base rate of pay rather than the higher regular rate of pay,
20 incorporating non-discretionary pay. (Marin Decl. ¶ 3.) As a result of the foregoing, Mr. Marin and Ms.
21 Prather did not timely receive all wages owed and received inaccurate wage statements. (FAC ¶¶ 69, 71.)

22 In other words, Plaintiffs were subjected to the same policies and practices as other Class
23 Members. Accordingly, Plaintiffs’ claims are aligned with the interests of the Class and typicality is
24 satisfied.

25 **c. Plaintiffs Adequately Represented the Class**

26 The class representative, through qualified counsel, must be capable of “vigorously and
27 tenaciously” protecting the interests of the class members. (*Simons v. Horowitz* (1984) 151 Cal. App. 3d
28 834, 846.)

1 Here, Plaintiffs do not have any interests adverse to the Class, nor have any such issues been raised
2 or presented. (Bendorf Decl. ¶ 10; Prather Decl. ¶ 12; Marin Decl. ¶ 4.) Plaintiffs have taken all necessary
3 steps to represent the interests of the Class, including meeting and conferring with their counsel, providing
4 information and documents to their counsel, and reviewing pleadings and the Settlement Agreement in
5 this case. (Bendorf Decl. ¶¶ 4-8; Prather Decl. ¶¶ 4-15; Marin Decl. ¶¶ 4-7.) For such reasons, Plaintiffs
6 have adequately represented the Class Members and will continue to do so.

7 **B. Risks, Expenses, and Complexity of Further Litigation**

8 Plaintiffs believe that a class can be certified; however, Plaintiffs also believe in the fairness of the
9 settlement that is based on factoring in the uncertainty and risks to Plaintiffs involved in not prevailing on
10 one or more of the causes of action or theories alleged in the operative Complaint, the possibility of non-
11 certification, and potential for appeals. These risks on class certification are compounded by the California
12 Supreme Court's holding in *Duran v. U.S. Bank Nat'l Ass'n* (2014) 59 Cal. 4th 1.

13 Defendants have consistently denied all material allegations in the operative Complaint and that
14 they violated any applicable laws. Defendants allege that the Class could not have been certified, given
15 their position that their policies are compliant with the Labor Code, and that any liability would need to
16 be determined on a case-by-case basis. Based on the foregoing, there were risks that Plaintiffs would not
17 have obtained the total amount of wages and penalties alleged, and a substantial amount of complex issues
18 that would have necessitated significant expenditure of time and expenses. Therefore, the risks, expenses,
19 and complexity of further litigation warrant granting of this Motion.

20 **C. The Terms of the Settlement, Negotiation of Settlement, and Reception of the**
21 **Settlement by Class Members All Strongly Support the Conclusion that the**
22 **Settlement is Fair, Adequate, and Reasonable**

23 Without reiterating the Parties' showing that the Settlement Agreement and the negotiation process
24 that led up to it was fair and adequate, as set forth in detail in the Motion for Preliminary Approval of
25 Class Action and PAGA Settlement and the subsequent briefings, the Parties highlight the following facts.
26 The Settlement Agreement was the product of negotiations between highly able and experienced attorneys
27 on both sides who possessed the relevant data and extensive legal research which they had carefully
28 analyzed. (Declaration of Jonathan M. Genish ("Genish Decl.") ¶¶ 2-7 & 18; Declaration of Christina
Lucio ("Lucio Decl.") ¶ 7-14; Declaration of James Hawkins ("Hawkins Decl.") ¶¶ 15, 25-28; Declaration

1 of Larry W. Lee (“Lee Decl.”) ¶¶ 4, 6-8; Declaration of Edward W. Choi (“Choi Decl.”) ¶¶ 3-5;
2 Declaration of William L. Marder (“Marder Decl.”) ¶¶ 2-10.) The Parties engaged in arm’s length
3 negotiations at mediation with Jeff Krivis, Esq., a well-experienced mediator. (Lucio Decl. ¶ 3; Hawkins
4 Decl. ¶ 32; Lee Decl. ¶ 4.)

5 The results after mailing of the Class Notice support confirmation of the Court’s preliminary
6 approval of the settlement with final approval of the settlement, as evidenced by the fact that **only nine**
7 **(9) Class Members opted out of the settlement and zero (0) objections were submitted.** (Admin. Decl.
8 ¶¶ 13-14.) The Court may appropriately infer that the class action settlement is fair, adequate, and
9 reasonable, given that not a single Class Member has submitted an objection. (*See Class Plaintiffs v. City*
10 *of Seattle* (9th Cir. 1992) 955 F.2d 1268, 1291.)

11 **D. Under Well-Established Legal Principles, the Court Should Grant Final Approval of**
12 **the Settlement**

13 **1. Standard of Review**

14 On a motion for final approval of a class action settlement under California Code of Civil
15 Procedure Section 382 and California Rule of Court 3.769, a court’s inquiry is whether the settlement is
16 “fair, adequate and reasonable.” (*Officers for Justice v. Civil Serv. Comm’n* (9th Cir. 1982) 688 F.2d 615,
17 625, *cert. denied subnom.*, *Byrd v. Civil Serv. Comm’n* (1983) 459 U.S. 1217.) A settlement is fair,
18 adequate, and reasonable, and therefore merits final approval, when “the interests of the class are better
19 served by the settlement than by further litigation.” (*See Manual for Complex Litigation, Fourth* (Fed.
20 *Jud. Ctr.*, 4th ed. 2004) § 21.6 at 309 (“MCL”).) The law favors settlement, particularly in class actions
21 and other complex cases, where substantial resources can be conserved by avoiding the time, cost, and
22 rigors of formal litigation. (*See Alba Conte & Herbert B. Newberg* (4th ed. 2002) *4 Newberg on Class*
23 *Actions* § 11.41 ; *Class Plaintiffs v. City of Seattle* (9th Cir. 1992) 955 F.2d 1268, 1276; *Van Bronkhorst*
24 *v. Safeco Corp.* (9th Cir. 1976) 529 F.2d 943, 950.)

25 Although the Court possesses “broad discretion” in determining that a proposed class action
26 settlement is fair, the Court’s role must be limited to the extent necessary to reach a reasoned judgment
27 that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating
28 parties, and that the settlement, taken as a whole, is fair, reasonable, and adequate to all concerned. (*See*

1 *Officers for Justice*, 688 F.2d at p. 625.) Accordingly, the Court should give due regard to what is
2 otherwise a “private consensual agreement” between the parties. (*Id.*; *see also Church v. Consolidated*
3 *Freightways, Inc.* (N.D. Cal. 1993) 1993 WL 149840; *In re Wash. Pub. Power Supply Sys. Sec. Litig.* (D.
4 Ariz. 1989) 720 F. Supp. 1379, *aff’d sub nom.*; *City of Seattle*, 955 F.2d 1268; MCL § 21.6 at 309 (“The
5 judicial role in reviewing a proposed settlement is critical, but limited to approving the proposed
6 settlement, disapproving it, or imposing conditions on it. The judge cannot rewrite the agreement”).)

7 A court’s approval of a class action settlement will only be reversed for a clear abuse of discretion.
8 (*See Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1801; *Officers for Justice*, 688 F.2d at p. 626
9 (“reverse only upon a strong showing that the district court’s decision was a clear abuse of discretion”);
10 *City of Seattle*, 955 F.2d at p. 1276; *Ackerman v. Kassar* (9th Cir. 1993) 1993 WL 326453; *Linney v.*
11 *Cellular Alaska P’ship* (9th Cir. 1998) 151 F.3d 1234, 1238.)

12 As the court cautioned in *7-Eleven Owners for Fair Franchising v. Southland Corp.*:

13 It cannot be overemphasized that neither the trial court in approving the
14 settlement nor this Court in reviewing that approval have the right or duty
15 to reach any ultimate conclusions on the issues of fact and law which
16 underlie the merits of the dispute. It is well settled that in the judicial
17 consideration of proposed settlements, ‘the [trial] judge does not try out or
attempt to decide the merits of the controversy,’ [citation] and the appellate
court ‘need not and should not reach any dispositive conclusions on the
admittedly unsettled legal issue.

18 (*7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal. App. 4th 1135, 1146.)

19 **2. The Settlement is Presumed to Be Fair**

20 The Court should begin its analysis with the presumption that the settlement is fair and should be
21 approved:

22 [A] presumption of fairness exists where: (1) the settlement is reached
23 through arm’s-length bargaining; (2) investigation and discovery are
24 sufficient to allow counsel and the court to act intelligently; (3) counsel is
experienced in similar litigation; and (4) the percentage of objectors is
small.

25 (*Dunk*, 48 Cal. App. 4th at p. 1802; *accord, Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D.
26 15, 18; *In re Wash. Pub Power Supply*, 720 F. Supp. at p. 1387.)

27 The settlement in the case at bar warrants approval and carries a presumption of fairness. As
28 previously noted in the application for Preliminary Approval, this current settlement was negotiated at

arm’s length after a full day of mediation and subsequent discussions with neutral Jeff Krivis, Esq. (Lucio Decl. ¶ 3; Hawkins Decl. ¶ 32; Lee Decl. ¶ 4; Choi Decl. ¶ 3; Marder Decl. ¶ 2.) Additionally, Class Counsel obtained significant class data prior to the mediation which allowed Class Counsel to perform a detailed analysis of the potential damages. (Lucio Decl. ¶ 3; Hawkins Decl. ¶ 15; Lee Decl. ¶ 3; Marder Decl. ¶ 2.)

Further, Class Counsel is highly experienced in this type of litigation. As shown in the supporting declarations, Class Counsel has significant experience in class actions and employment wage and hour matters. (Genish Decl. ¶¶ 2-7 & 18; Lucio Decl. ¶ 7-14; Hawkins Decl. ¶¶ 25-28; Lee Decl. ¶ 6-8; Choi Decl. ¶¶ 4-5; Marder Decl. ¶¶ 3-10.)

3. Two-Way Costs and Other Risks Inherent in Continued Litigation Favor Final Approval

To assess the fairness, adequacy, and reasonableness of a class action settlement, the Court also should weigh the immediacy and certainty of substantial settlement proceeds against the risks inherent in continued litigation. (*See also In re General Motors Corp.* (3d Cir. 1995) 55 F.3d 768, 806 (“present value of the damages plaintiffs would likely recover if successful, appropriately discounted for the risk of not prevailing, should be compared with the amount of the proposed settlement”) (internal citations omitted); *Girsh v. Jepson* (3d Cir. 1975) 521 F.2d 153, 157; *Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F. Supp. 610, 616-17.)

If Plaintiffs pursued this case without settlement and failed to prevail, Plaintiffs would have been potentially responsible for Defendants’ fees and costs. As such, should individual current or former employees of Defendants bring individual claims on the same causes of action, they would each face the uncertainty of prevailing and the possibility of paying fees and costs to Defendants. Accordingly, such claims likely would not be brought by many of these employees – thus, this lawsuit achieves a true benefit for the class that they might not otherwise get or seek as individuals. Here, given that a fair and reasonable settlement has been reached, neither Plaintiffs nor any of the Class Members will be required to pay for Defendants’ litigation fees and costs.

The risks of this case were weighed by Class Counsel and should be considered a significant factor by the Court in its determination of final approval. Class Counsel obtained a significant settlement for the

1 Class that resulted in a fair recovery which at the same time provides for finality and no risk of fees and
2 costs by Class Members or the Class Representatives.

3 The Settlement Agreement also affords the Class prompt, fair relief while avoiding significant
4 legal and factual battles that otherwise may have prevented the Class from obtaining any recovery at all.
5 While Class Counsel believe the Class Members' claims are meritorious and can be successfully litigated,
6 they are experienced and fully understand the inherent risks and uncertainty involved with such matters
7 as the resolution of class certification, the outcome of a potential trial, and the outcome of any appeals that
8 would inevitably follow should the Class prevail at trial. Class Counsel has also assessed the same risks
9 in connection with the current settlement. Because the settlement provides immediate and substantial
10 relief, without the attendant risks and delay of continued litigation – not to mention the threat of litigation
11 fees and costs – Class Counsel believe that the settlement warrants the Court's final approval.

12 **4. The Complexity, Expense, and Likely Duration of Continued Litigation**
13 **Against Defendants Favor Final Approval**

14 Another factor considered by courts in approving a settlement is the complexity, expense, and
15 likely duration of the litigation. (*See Officers for Justice*, 688 F.2d at p. 625; *Girsh*, 521 F.2d at p. 157.)
16 In applying this factor, the Court must weigh the benefits of the settlement against the expense and delay
17 involved in achieving an equivalent or more favorable result at trial. (*Young v. Katz* (5th Cir. 1971) 447
18 F.2d 431, 433-34.)

19 As noted above, continued litigation could have led to appeals on several issues. On the other hand,
20 the settlement that was reached provides to all Class Members – regardless of their means – fair relief in
21 a prompt and efficient manner. Were the Court to deny final approval, the Class Members would be left
22 without a remedy as a practical matter and courts across the State would have to address the issues
23 presented here in a piecemeal, costly, and time-consuming manner. The settlement in this case is therefore
24 consistent with the “overriding public interest in settling and quieting litigation” that is “particularly true
25 in class action suits.” (*See Van Bronkhorst*, 529 F.2d at p. 950 (footnote omitted); *see also 4 Newberg* at
26 § 11.41.) Here, this case could have involved years of litigation.

27 ///

28 ///

1 **5. The Opinion of Experienced Counsel Favors Final Approval**

2 Class Counsel supports the settlement as fair, reasonable, and adequate, and in the best interest of
3 the Class Members as a whole. (Lucio Decl. ¶ 17; Hawkins Decl. ¶ 32; Lee Decl. ¶ 4; Choi Decl. ¶¶ 2-3;
4 Marder Decl. ¶ 2.) Similarly, counsel for Defendants is in favor of this settlement. The endorsement of
5 qualified and well-informed counsel of a settlement as fair, reasonable, and adequate is entitled to
6 significant weight by the Court in its final approval determination. (*See Officers for Justice*, 688 F.2d at
7 p. 625; *Ellis*, 87 F.R.D. at p. 18; *Boyd*, 485 F. Supp. at p. 617; *Linney*, 151 F.3d at p. 1242.)

8 **IV. THE PROPOSED PROCEDURE FOR UNCASHED SETTLEMENT CHECKS SHOULD**
9 **BE APPROVED**

10 As referenced in the Motion for Preliminary Approval, to the extent any uncashed settlement funds
11 remain after 180 days of the mailing of the individual settlement checks, the Parties have agreed that all
12 such uncashed settlement funds shall be transmitted to the California State Controller’s Unclaimed
13 Property Fund in the name of the Participating Class Member and/or Aggrieved Employee to whom the
14 funds relate, such that no “unpaid residue” will remain. (*See* Code of Civ. Proc. § 384(b).)

15 **V. THE REQUESTED CLASS REPRESENTATIVE SERVICE PAYMENTS SHOULD BE**
16 **APPROVED**

17 Plaintiffs request that the service payment amounts be awarded. As set forth in their declarations,
18 Plaintiffs met with Class Counsel, had numerous discussions with Class Counsel and provided substantive
19 information regarding Defendants’ policies and practices at issue in this case. (Bendorf Decl. ¶¶ 3-5;
20 Prather Decl. ¶ 5; Marin Decl. ¶ 7.) Accordingly, Plaintiffs provided invaluable information, evidence,
21 and documents that resulted in this settlement.

22 In addition to the invaluable services that they provided, Plaintiffs also took significant risks, both
23 professionally and monetarily, in acting as Class Representatives, seeking benefits on behalf of the Class.
24 (Bendorf Decl. ¶ 7; Prather Decl. ¶ 6; Marin Decl. ¶ 6.) Because the claims alleged by the Class
25 Representatives involved the payment of fees and costs to the prevailing party, Plaintiffs could have
26 possibly faced paying the fees and costs of Defendants, had they not prevailed in this action. (Bendorf
27 Decl. ¶ 7; Prather Decl. ¶ 7; Marin Decl. ¶ 6.) Despite this, however, Plaintiffs agreed to pursue this case
28 on behalf of the Class.

1 Also, given that future employers are much less likely to hire individuals who have filed
2 employment-related lawsuits, particularly cases of this nature, the Class Representatives also faced
3 significant risk in not being able to find suitable employment and/or face retaliation from prospective
4 employers, all as a result of filing of this case against Defendants. Plaintiffs took these risks upon
5 themselves to the benefit of the Class. (Bendorf Decl. ¶ 7; Prather Decl. ¶ 7; Marin Decl. ¶ 6.) Class
6 Members did not have to file individual lawsuits and bear the risks of payment of fees/costs if they did
7 not prevail, nor did they have to face the potential for retaliation and not getting future employment had
8 they filed a lawsuit which is a public record. These are significant benefits that weigh in favor of granting
9 the requested enhancement.

10 Courts have routinely granted approval of settlements containing such enhancements. (*See Van*
11 *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F. Supp. 294, 299-300 (incentive award of
12 \$50,000); *In re Dun & Bradstreet Credit Servs. Customer Litig.* (S.D. Ohio 1990) 130 F.R.D. 366, 374
13 (two incentive awards of \$ 55,000, and three incentive awards of \$35,000); *Brotherton v. Cleveland* (S.D.
14 Ohio 2001) 141 F. Supp. 2d 907, 913-14 (granting a \$50,000 incentive award); *Enter. Energy Corp. v.*
15 *Columbia Gas Transmission Corp.* (S.D. Ohio 1991) 137 F.R.D. 240, 251-52 (\$50,000 awarded to each
16 class representative); *Glass v. UBS Fin. Servs.* (N.D. Cal. Jan. 27, 2007) No. C-06-4068, 2007 U.S. Dist.
17 LEXIS 8476, at *51-52 (awarding \$25,000 incentive award in FLSA overtime wages class action); *Cook*
18 *v. Niedert* (7th Cir. 1998) 142 F.3d 1004, 1016 (affirming \$25,000 incentive award to class representative
19 in ERISA case).)

20 **VI. THE REQUESTED ATTORNEYS' FEES SHOULD BE APPROVED**

21 California state and federal courts have recognized that an appropriate method for determining
22 award of attorneys' fees is based on a percentage of the total value of benefits to class members by the
23 settlement. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 254; *Serrano v. Priest* (1977)
24 20 Cal. 3d 25, 34 [*Serrano III*]; *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Vincent v. Hughes*
25 *Air West, Inc.* (9th Cir. 1997) 557 F.2d 759, 769.) The purpose of this equitable doctrine is to avoid unjust
26 enrichment to the class and to "spread litigation costs proportionally among all the beneficiaries so that
27 the active beneficiary does not bear the entire burden alone." (*Vincent v. Hughes Air West, Inc., supra*,
28 557 F.2d at p. 769.)

1 The California Supreme Court issued its ruling regarding the award of attorney's fees in wage and
2 hour class action settlements in *Laffitte v. Robert Half Int'l* (2016) 1 Cal. 5th 480. Under California law,
3 the award of attorneys' fees in common fund wage and hour class action settlements is proper under the
4 percentage method. (*See Laffitte v. Robert Half Int'l* (2016) 1 Cal. 5th 480, 503 ("We join the
5 overwhelming majority of federal and state courts in holding that when class action litigation establishes
6 a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards
7 class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing
8 an appropriate percentage of the fund created").) Under the percentage of the fund method, the Court's
9 objective remains to "mimic the market" in fixing a reasonable fee. (*See Gaskill v. Gordon* (7th Cir. 1998)
10 160 F.3d 361, 363 (J. Posner) ("When a fee is set by a court rather than by contract, the object is to set it
11 at a level that will approximate what the market will set.... The judge, in other words, is trying to mimic
12 the market in legal services.").)

13 Here, the fee award representing one-third of the fund clearly falls within that range and is
14 consistent with other rulings of other courts and comprehensive surveys of class action settlements and
15 fee awards. (*See Martin v. AmeriPride Servs.* (S.D. Cal. 2011) 2011 U.S. Dist. LEXIS 61796, 23
16 (recognizing that "courts may award attorney's fees in the 30-40% range in wage and hour class actions
17 that result in recovery of a common fund under \$10 million"); *see also* Eisenberg & Miller, *Attorney Fees*
18 *in Class Action Settlements: An Empirical Study: 1993-2008* (2010) 7 J. of Empirical Leg. Stud. 248, 262,
19 fn. 16 (independent studies of class action litigation nationwide conclude that fees in the range sought here
20 are consistent with market rates).)

21 Further, "the response of the class members to attorneys' fee notice, though not decisive, is relevant
22 to the...reasonable determination" regarding fees. (*Swedish Hospital v. Shalala* (D.C. Cir. 1993) 1 F.3d
23 1261, 1272.) A positive response rate tends to suggest that the court's "approximation of the market" for
24 fees is well supported. (*Id.* at p. 1269.) In this case, the Class Notice specifically notified Class Members
25 that Class Counsel would be seeking up to \$1,166,666.67 in attorneys' fees. To date, no Class Member
26 has objected to the settlement. This strong favorable response also supports the requested fees.

27 In addition, it is recognized that one of the primary factors justifying an enhanced attorney's fees
28 reward is the attendant risks inherent in the litigation. As observed in *City of Detroit v. Grinnell Corp.*:

1 No one expects a lawyer whose compensation is contingent upon his
2 success to charge, when successful, as little as he would charge a client who
3 had agreed to pay for his services, regardless of success. Nor, particularly
4 in complicated cases producing large recoveries, is it just to make a fee
depend solely on the reasonable amount of time expended.

5 (*City of Detroit v. Grinnell Corp* (2d Cir. 1974) 495 F.2d 448, 470.) Here, it is clear that a settlement fund
6 of \$3,500,000.00 has been created as the entire amount is to be paid out without any reversions. For Class
7 Counsel, the fees here were wholly contingent in nature and the case presented far more risk than the usual
8 contingent fee case. Among the risks was the cost inherent in class action litigation, as well as a potentially
9 drawn-out battle with corporate Defendants.

10 As a secondary support for the percentage of the fund method, when fees are allocated by
11 percentage method, courts have discretion to “cross-check” the fees awarded through the lodestar method.
12 However, the *Laffitte* Court “emphasize[d] [that] the lodestar calculation, when used in this manner, does
13 not override the trial court’s primary determination of the fee as a percentage of the common fund and
14 thus does not impose an absolute maximum or minimum on the potential fee award.” *Laffitte*, 1 Cal. 5th
15 at 505 (emphasis added); *In re Rite Aid Corp. Secs. Litig.* (3d Cir. 2005) 396 F.3d 294, 306-307 (“[The
16 lodestar cross-check does not trump the primary reliance on the percentage of common fund method”).

17 The Supreme Court in *Laffitte* stated: “If the multiplier calculated by means of a lodestar cross-
18 check is extraordinarily high or low, the trial court should consider whether the percentage used should
19 be adjusted so as to bring the imputed multiplier within a justifiable range, but the court is not necessarily
20 required to make such an adjustment.” *Id.* Thus, a lodestar cross-check is aimed at astronomical
21 multipliers. Indeed, cross-checks are not required; in many cases, performing a cross-check “undermines”
22 one of the primary reasons for using the percentage method: aligning counsel’s incentives with the benefits
23 delivered to the class and discouraging protracted litigation. *Id.* at 506 (finding trial courts “retain the
24 discretion to forgo a lodestar cross-check”); *Report of the Third Circuit Task Force, Court Awarded*
25 *Attorney Fees* (1985) 108 F.R.D. 237, 258; *Lealao v. Beneficial California, Inc.* (2000) 82 Cal. App. 4th
26 19, 29-30 (citing the recommendations of the Third Circuit Task Force with approval and observing that
27 “[t]he criticisms of the lodestar approach set forth in this Report are now echoed by many authorities, who
28 have been most vocal about the manner in which it exacerbates the problem of ‘cheap settlements’ and

1 burdens already overworked trial judge”).

2 Courts have defined reasonable multipliers on a lodestar cross-check to “range from 2 to 4 or even
3 higher.” *Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 255; *see also, e.g., Sutter Health*
4 *Uninsured Pricing Cases* (2009) 171 Cal. App. 4th 495, 512 (applying a 2.52 multiplier on a cross-check
5 in an antitrust class action); *Chavez v. Netflix, Inc.* (2008) 162 Cal. App. 4th 43, 60 (applying a 2.5
6 multiplier on a lodestar cross-check); *City of Oakland v. Oakland Raiders* (1988) 203 Cal. App. 3d 78
7 (affirming a 2.34 multiplier without remand). The intermediate court in *Laffitte*, after finding that “2 to 4”
8 is a reasonable range for multipliers on a cross-check, affirmed a 2.13 multiplier. *Laffitte v. Robert Half*
9 *International, Inc.* (2014) 231 Cal. App. 4th 860, 881-82. The intermediate court opinion was affirmed in
10 full by the California Supreme Court in its new decision guiding lower courts on assessing fees.

11 With respect to Class Counsel’s lodestar, to date, approximately 1,029.40 hours have been
12 expended by Class Counsel in this matter. (Genish Decl. ¶ 19; Lucio Decl. ¶ 24; Hawkins Decl. ¶ 14; Lee
13 Decl. ¶ 9, Ex. A; Choi Decl. ¶ 7; Marder Decl. ¶ 12.) Including Class Counsels’ expected additional hours
14 of attorney time in managing this settlement, including responding to Class Members and implementing
15 the settlement with the Settlement Administrator. (Genish Decl. ¶ 20; Lucio Decl. ¶¶ 19-24; Hawkins
16 Decl. ¶ 15; Lee Decl. ¶ 9; Choi Decl. ¶ 7.) As detailed in their declarations, Class Counsel request hourly
17 rates of \$200-\$1,150, which is commensurate with each counsel’s experience and mimics the market.
18 (Genish Decl. ¶¶ 18-19; Lucio Decl. ¶¶ 19-24; Hawkins Decl. ¶ 16; Lee Decl. ¶ 10; Choi Decl. ¶ 6; Marder
19 Decl. ¶ 12.) The courts are quite liberal in the evidence required to prove an attorney’s hours. Detailed
20 time records are not required. An attorney’s testimony alone may suffice: “Testimony of an attorney as to
21 the number of hours worked on a particular case is sufficient evidence to support an award of attorney
22 fees, even in the absence of detailed time records.” *Martino v. Denevi* (1986) 182 Cal. App. 3d 553, 559.

23 Reasonable hours include, in addition to time spent during litigation, the time spent before the
24 action is filed, including time spent interviewing the clients, investigating the facts and the law, and
25 preparing the initial pleadings. *New York Gaslight Club, Inc. v. Carey* (1980) 447 U.S. 54, 62. Further,
26 the fee award should include fees incurred to establish and defend the attorneys’ fee claim. *Serrano v.*
27 *Unruh* (1982) 32 Cal. 3d 621, 639 [*Serrano IV*]. Thus, Class Counsel requests that the court find that these
28 hours were reasonable in this litigation.

1 A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and experience
2 in the relevant community. *PLCM Group, Inc. v. Drexler* (2000) 22 Cal. 4th 1084, 1095. The court may
3 consider other factors when determining a reasonable hourly rate, *e.g.*, the attorney's skill and experience,
4 the nature of the work performed, the relevant area of expertise and the attorney's customary billing rates.
5 *Flannery v. California Highway Patrol* (1998) 61 Cal. App. 4th 629, 632-33.

6 Class Counsel's skill and experience justify the requested rate. As shown in the supporting
7 declarations, Class Counsel have significant experience in the area of employment and wage and hour
8 class actions. Specifically, Class Counsel's practice focuses on representing employees in employment
9 matters, particularly wage and hour cases. (Genish Decl. ¶¶ 2-8 & 18; Lucio Decl. ¶¶ 7-14; Hawkins Decl.
10 ¶¶ 25-28; Lee Decl. ¶ 6-8; Choi Decl. ¶¶ 4-5; Marder Decl. ¶¶ 3-10.) As such, based on the hours and
11 applicable rate, including anticipated time, the total lodestar to be expended by Class Counsel through
12 finalizing this settlement will be approximately \$780,477.00. (Genish Decl. ¶ 20; Lucio Decl. ¶¶ 19-24;
13 Hawkins Decl. ¶ 14; Lee Decl. ¶ 9, Ex. A; Choi Decl. ¶ 7; Marder Decl. ¶ 12.)

14 Once the court establishes the lodestar amount, it may enhance the fee award by a multiplier in
15 order to make an appropriate fee award. *Serrano III*, 20 Cal. 3d at 48. The pertinent factors include the
16 difficulty of the questions involved and the skill in presenting them, the contingent nature of the fee award,
17 the extent to which the litigation precluded other employment, and the percentage-of-the-fund the attorney
18 would have received on the fair market. *Id.*; *Lealao*, 82 Cal. App. 4th at 49. However, this list is not
19 exhaustive and the court can consider other factors it deems important in setting the multiplier. *Ketchum*
20 *v. Moses* (2001) 24 Cal. 4th 1122, 1139.

21 *Lealao* contains several factors justifying an enhancement based on the percentage-of-the-benefit,
22 namely, no objections by class members, commendable conduct by counsel, and significant recoveries by
23 class members, all of which were previously detailed above. *Lealao*, 82 Cal. App. 4th at 51-53. As in
24 *Lealao*, Class Members were notified of the settlement and attorney's fees with no objections. The extreme
25 effort undertaken by counsel, as shown by their hours and the significantly high number of claims being
26 paid out, shows commendable conduct.

27 It is also critical to note that prompt settlement cannot be used to diminish the fee or the
28 enhancement based on a percentage-of-the-fund. *Lealao*, 82 Cal. App. 4th at 52 (the promptness of

1 settlement “cannot be used to justify the refusal to apply a multiplier”). According to *Lealao*, courts placed
2 “an extraordinarily high value” on settlement, and counsel should be rewarded, not punished, for achieving
3 this goal in a timely fashion. *Id.*

4 The multiplier should be enhanced by the contingent nature of counsel’s fee recovery. The risks
5 in taking on a class action case are enormous, not the least of which is time and effort. As explained
6 previously, Defendants maintained that there were significant obstacles to succeeding in this lawsuit.
7 Thus, the risk involved in this case was quite significant for Plaintiffs and their counsel, and in the face of
8 such risks, the current settlement was achieved by Class Counsel.

9 Here based upon Class Counsel’s lodestar of \$780,477.00 and the requested fees of \$1,166,666.67,
10 Plaintiffs’ request for a multiplier of 1.49 is reasonable and fair, particularly based on the factors described
11 above. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224 (noting that courts using the lodestar
12 method to calculate attorney fees awards in class actions typically apply multipliers in the range of 2 to
13 4); *Boyd v. Bank of Am. Corp.* (C.D. Cal. Nov. 18, 2014) 2014 U.S. Dist. LEXIS 162880 (awarding 33%
14 of the common fund, based on a multiplier of 2.58, in a wage and hour class action settlement); *Vandervort*
15 *v. Balboa Capital Corp.* (C.D. Cal. 2014) 8 F. Supp. 3d 1200, 1210 (awarding 33% of the common fund,
16 based on a multiplier of 2.52).

17 As such, the requested fee award is fair and reasonable, and should be awarded in its entirety. Class
18 Counsel risked not only a great deal of time, but also a great deal of expense to ensure the successful
19 litigation of this action on behalf of all Class Members. For such reasons, Class Counsel’s request for
20 attorneys’ fees in the amount of \$1,166,666.67 is fair, reasonable, and adequate.

21 **VII. THE COURT SHOULD APPROVE THE REQUEST FOR REIMBURSEMENT OF**
22 **COSTS**

23 The request for reimbursement of costs, in the amount of \$22,069.56 is fair and reasonable,
24 especially in light of the fact that the Parties agreed that Class Counsel may seek up to \$35,000.00 as
25 reimbursement for litigation costs under the Settlement Agreement. As set forth in Class Counsel’s
26 declarations, the costs were all directly incurred in the prosecution of this action, including but not limited
27 to, filing fees, service of process costs, and mediation fees. (Genish Decl. ¶ 16, Ex. 1; Lucio Decl. ¶ 27,
28 Ex. 3; Hawkins Decl. ¶ 21, Ex. 1; Lee Decl. ¶ 11, Ex. B; Choi Decl. ¶ 8, Ex. B.) As such, the requested

costs should be approved as fair and reasonable.

VIII. THE ADMINISTRATION EXPENSES PAYMENT SHOULD BE APPROVED

Pursuant to the terms of the Settlement Agreement, the fees and costs of the Settlement Administrator, CPT Group, Inc., are to be paid out of the class settlement funds. As shown in the Declaration of William Argueta the settlement administration fees expended in this matter amount to a total of \$50,000.00, which is the amount that was agreed upon by the Parties. (Admin. Decl. ¶ 19, Ex. B.) For such reasons, it is requested that the Administration Expenses Payment be approved.

IX. CONCLUSION

For all the foregoing reasons, and on the basis of the authorities cited herein, Plaintiffs respectfully submit that the standards for final approval have been met and the terms of the Settlement Agreement are fair, adequate, and reasonable.

Accordingly, Plaintiffs respectfully request that the Court enter an Order in the form proposed and submitted:

1. Granting final approval to the proposed Settlement Agreement in this action;
2. Approving distribution of the settlement funds to the Participating Class Members and Aggrieved Employees pursuant to the terms of the Settlement Agreement;
3. Approving Plaintiffs' request for an award of the Class Representative Service Payments of \$7,500.00 to Theresa Bendorf, \$5,000.00 to Kristy Prather, and \$10,000.00 to Javier Marin, with payment pursuant to the terms of the Settlement Agreement;
4. Approving Class Counsel's request for an award of the Class Counsel Fees Payment of \$1,166,666.67 and Class Counsel Litigation Expenses Payment of \$22,069.56 with payment pursuant to the terms of the Settlement Agreement;
5. Approving Plaintiffs' request for payment of the Administration Expenses Payment to CPT Group, Inc. in the amount of \$50,000.00, with payment pursuant to the terms of the Settlement Agreement;
6. Approving Plaintiffs' request for payment to the LWDA of \$75,000.00, with payment pursuant to the terms of the Settlement Agreement; and
7. Entering final judgment in this action.

1 Dated: August 21, 2024

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