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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

JOEL ZELAYA, an Individual; DEMETRIO MONTES, an Individual;

Plaintiffs,

vs.

COMMERCIAL LUMBER & PALLET CO., INC., a California Corporation; RAYMOND GUTIERREZ, an Individual; and DOES 1 through 100, inclusive,

Defendants.

CASE NO.: 22PSCV00340

Related Case: 22STCV03643

Reassigned for all purposes to Hon. Stuart M. Rice, Dept. 1

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND SETTLEMENT OF PAGA CLAIM, ATTORNEYS' FEES, COSTS, CLASS REPRESENTATIVE SERVICE AWARD, AND ENTERING OF FINAL JUDGMENT

DATE: February 2, 2024
TIME: 10.30 a.m.
DEPT: 1 (Spring Street)

TO THE HONORABLE COURT AND TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on February 2, 2024, at 10:30 p.m., or as soon thereafter as the matter may be heard before the Honorable Stuart M. Rice in Department 1 of the Los Angeles County Superior Court – Spring Street Courthouse, located at 312 North Spring Street, Los Angeles California 90012, Plaintiff Joel Zelaya, Plaintiff Demetrio Montes and Plaintiff Pedro Negrete (hereinafter "Plaintiffs") will, and hereby do, move for an order:

- Granting final approval of the Joint Stipulation of Class Action Settlement (hereinafter the "Settlement Stipulation") on the grounds that the Settlement Stipulation and the terms thereof are fair, adequate, and reasonable;
- Awarding attorneys' fees in the amount of $252,155.00 to the Barkhordarian Law Firm, PLC and the Wilshire Law Group as Class Counsel ("Class Counsel"), representing one-third of the Gross Settlement Amount, which is reasonable and justified on both a percentage-basis and also based on a lodestar cross-check (*unless the Court finds the initial request of 35% or $264,762.75 is fair and reasonable*);
- Awarding payment in the amount of $36,772.29 to Class Counsel for reimbursement of reasonable litigation costs and expenses;
- Awarding an enhancement award in the amount of $7,5500.00 to each Plaintiff Joel Zelaya, Plaintiff Demetrio Montes and Plaintiff Pedro Negrete (*unless the Court find the initial request of $10,000.00 each is fair and reasonable*) for a total of $22,500.00 for their time and efforts in representing the Class;
- Authorizing payment to the Settlement Administrator, CPT Group, Inc. for Administration Costs in the amount of $10,500.00;
- Approval of the proposed PAGA settlement and allocation of the penalties under the PAGA in the amount of $50,000.00, of which seventy-five percent (75%) or $37,500.00 will be paid to the California Labor and Workforce Development Agency and twenty-five percent (25%), or $12,500.00 will be part of the Net Settlement Fund for distribution to the Settlement Class; and

- Authorizing the Settlement Administrator to proceed with its duties set forth in the Settlement Stipulation to prepare final calculations; collect settlement funds; disburse payments of attorneys' fees and costs, the enhancement award, and the PAGA payment; administer payment of the individual settlement awards; and complete all reporting requirements related thereto.

This motion is based upon the following Memorandum of Points and Authorities submitted herewith, as well as the Declarations of Class Counsel in support thereof, and of the Settlement Administrator, in support thereof; as well as the pleadings and other records on file with the Court in this matter, including the previously submitted, and such evidence and oral argument as may be presented at the hearing on this motion.

DATED: January 10, 2024

BARKHORDARIAN LAW FIRM, PLC

By: /s/Gregory P. Wong

Gregory P. Wong
Heather K. Cox
Attorneys for Plaintiffs Joel Zelaya and Demetrio Montes, on behalf of themselves and all others similarly situated

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Joel Zelaya, Demetrio Montes and Pedro Negrete (collectively hereinafter "Plaintiffs") seek final approval of the Stipulation of Class Action Settlement (hereinafter "Settlement," "Agreement," or "Settlement Stipulation") entered into by and between Plaintiffs, individually and on behalf of all others similarly situated, on the one hand, and Defendant Commercial Lumber & Pallet Co. Inc. and Defendant Raymond Gutierrez (collectively hereinafter "Defendants"), on the other hand (collectively, Plaintiffs and Defendants are referred to as "Parties") as well as an order and judgment approving the attorneys' fees, costs, and class representative service award requested by Plaintiffs.

On September 1, 2023, this Court granted preliminary approval of the Settlement Stipulation. Pursuant to the Court's Order, on October 2, 2023, the Court-appointed Claims Administrator, CPT Group, Inc., mailed copies of the Class Notice to all 284 members of the settlement class. Class Members were given 45 days (or up to and through November 16, 2023) to submit requests for exclusion and objections to the settlement. As of the filing of this motion, no objections were submitted by class members and no class members chose to opt out of the settlement.

Plaintiff, moving without opposition from Defendant, now seeks final approval of the class action settlement in this matter. The basic terms of the Settlement are as follows:

Settlement Class: The Settlement Class is defined as, "[A]ll current or former hourly non-exempt employees of Defendants within California at any time during the class period. *See* at ¶8. "Class Period" means the period from January 17, 2018, through the date that a preliminary approval order is entered which was on September 1, 2023. *See* Settlement at ¶9.

Total Maximum Settlement Amount: Gross Settlement Amount of Seven Hundred Fifty-Six Thousand Four Hundred Sixty-Five Dollars and Zero Cents ($756,465.00). *See* Settlement at ¶13.

Net Class Member Distribution Amount: Assuming approval of the proposed attorneys' fees and costs, PAGA payment, class representative enhancements, and claims administration expenses, and based on the valid claims submitted by class members during the claims administration process, a total of at least Three Hundred Eighty Nine Thousand, Three Hundred and Ten Dollars and Zero cents ($389,310.00) will be distributed to the participating class members. *See* Declaration of CPT Group, Inc. Claims Administrator Jeremy Talavera (hereinafter "CPT Decl.") at ¶12. The total settlement results in an average estimated Individual Settlement Payment to be at least $1,380.53 and ranging from an estimate of $8.93, to $2,720.88, prior to the deduction of employee-sided State and Federal taxes. CPT Decl. at ¶14.

Attorneys' Fees and Costs: Pursuant to the Settlement Stipulation, Class Counsel applies for attorneys' fees in the amount of up to $264,762.75 and not to exceed thirty-five percent of the Maximum Settlement Amount and for which the Court has indicated that is it will likely approve $252,155.00 or thirty-three percent of Maximum Settlement Amount. *See* Settlement at ¶13.

Additionally, Class Counsel applies for costs in the amount of $36,772.29. *See* Declaration of Heather K. Cox In Support of Plaintiff's Motion for Final Approval of Class Action Settlement ("Cox Decl.") at ¶55. Declaration of Justin F. Marquez in Support of Plaintiff's Motion for Final Approval of Class Action Settlement ("JFM Decl.") at ¶¶4, 10.

PAGA Payment: Pursuant to the Settlement Stipulation, Fifty Thousand Dollars ($50,000.00) will be allocated to the PAGA claims. The sum of Thirty-Seven Thousand Five Hundred Dollars ($37,500.00) will be sent to the California Labor and Workforce Development Agency and the remaining Twelve Thousand Five Hundred Dollars ($12,500.00) will be distributed to the participating class members. *See* Settlement at ¶13.

Class Representative Enhancement: Pursuant to the Settlement Stipulation, this motion seeks a Class Representative Enhancement Payments of up to $10,000.00 and which the Court has indicated it will approve a payment of $7,500.00 to each Plaintiff, Plaintiff Joel Zelaya, Plaintiff Demetrio Montes and Plaintiff Pedro Negrete, for a total of $22,500.00. *See* Settlement at ¶13.

Claims Administration Costs: Claims administration costs of Ten Thousand Five Hundred Dollars ($10,500.00) to be paid to the mutually agreed upon class action claims administrator CPT Group, Inc. *See* Settlement at ¶13; CPT Decl.at ¶14.

Plaintiffs submit that the relief negotiated on behalf of the Class is fair, reasonable, and valuable. Plaintiffs, therefore, respectfully request that the Court: (1) grant this Motion for Final Approval of the Settlement Stipulation; (2) grant final approval of the claims administration costs/expenses; (3) approve the proposed class representative enhancement payments; (5) award attorneys' fees and costs in the amount requested; (5) enter judgment pursuant to the Settlement Agreement; and (6) retain jurisdiction to enforce the Settlement.

II. FACTS AND PROCEDURE

Plaintiff Joel Zelaya and Plaintiff Demetrio Montes (collectively hereinafter the "Zelaya Plaintiffs") initially filed this matter on April 6, 2022. *See* Cox Decl. at ¶6. Thereafter the Zelaya Plaintiffs submitted their Second Amended Complaint, which was filed on February 8, 2023 and alleges claims for: (1) Failure to Provide Required Rest Periods; (2) Failure to Provide Required Meal Periods; (3) Failure to Pay Overtime Wages; (4) Failure to Pay Minimum Wages; (5) Failure to Pay Timely Wages; (6) Failure to Pay All Wages Due to Discharged and Quitting Employees; (7) Failure to Maintain Required Records; (8) Failure to Furnish Accurate Itemized Wage Statements; (9) Unlawful Discount and Deduction of Entitled Wages; (10) Unlawful Assignment of Wages; (11) Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties; (12) Unfair and Unlawful Business Practices; and (13) Civil Penalties Pursuant to California Private Attorneys General Act (Labor Code §2698, et seq.) (the "Operative Complaint"). *See* Cox Decl. at ¶8.

In the course of litigation, Class Counsel has conducted an in-depth investigation of the claims, including the analysis of timekeeping data, payroll data, labor agreements, and various other documents related to the Plaintiffs' claims. *See* Cox Decl. at ¶¶12-14. This analysis included review and quantitative analysis of timekeeping and payroll data. *See* Cox Decl. at ¶¶12-14. After Class Counsel's extensive review and analysis of the timekeeping and payroll data and after completion of a full risk analysis, the Parties participated in a full-day mediation on October 11, 2022 utilizing the services of Michael Young, a respected mediator with extensive experience and knowledge in the area of wage and hour class action mediation. *See* Cox Decl. at ¶7. At mediation, the Parties engaged in arms' length negotiations to try to come to a resolution of this dispute. *See* Cox Decl. at ¶7. Through good-faith and arms-length negotiations at mediation, each Party, represented by their respective counsel, recognized the substantial risk of an adverse result of the case and agreed to settle the matter and all other matters covered by this Settlement. *See* Cox Decl. at ¶7. Thereafter, this matter was related to the case *Pedro Negrete v Commercial Lumber & Pallet Co. Inc*., Los Angeles Superior Court case number 22STCV03643. *See* Cox Decl. at ¶10.

Subsequently, counsel for Plaintiff Pedro Negrete, counsel for the Zelaya Plaintiff, and counsel for Defendants (herein after collectively the "Parties") drafted and agreed to the terms of settlement. *See* Cox Decl. at ¶11.

Plaintiffs filed their motion for Preliminary Approval of the Settlement Agreement on August 11, 2023. *See* Cox Decl. at ¶12. After reviewing Plaintiffs motion and after a hearing on August 18, 2023, the Court requested additional information and directed the Parties to address certain concerns. *See* Cox Decl. at ¶13. The Parties addressed all issues raised by the Court, revised the Class Notice and submitted a revised pleadings and the proposed class action settlement was approved on September 1, 2023 and issued an order granting Preliminary Approval. *See* Cox Decl. at ¶14.

Per the Settlement Agreement and the Preliminary Approval Order, CPT, Inc. was retained to serve as settlement administrator. As set forth in the CPT Declaration, prepared and mailed Notice Packets and managed the entire process through which notice of the proposed settlement was provided to the settlement class. CPT Decl. at ¶¶ 3-7. No Notice Packets were returned and there were no objections, disputes or timely requests for exclusion received from the settlement class members. CPT Decl. at ¶¶ 8-12. As a result the settlement has a 100% participation rate encompassing all 282 participating class members. CPT Decl. at ¶14.

III. THE PROPOSED SETTLEMENT MERITS FINAL APPROVAL

a. Factors Considered in Determining Final Approval of Class Action

"Public policy generally favors the compromise of complex class action litigation." *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 110, 1118 (2009), *see also 7-Eleven Owners for Fair Franchising v. Southland Corp*., 85 Cal. App. 4th 1135, 1151 (2000) ("Voluntary conciliation and settlement are the preferred means of dispute resolution … [t]his is especially true in complex class action litigation. …"). Class action settlement approval occurs in two steps: (1) an early (preliminary) review by the trial court, and (2) a subsequent (final) review after notice has been distributed to Class Members for their comments and/or objections. Cal. Rule of Ct. 3.769. Preliminary approval of the proposed settlement in this action was granted on September 1, 2023. Plaintiffs now seek final approval.

In conducting the final review of a proposed settlement, fairness is presumed when: (1) the settlement is reached through arms-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is low. *Nordstrom Comm' Cases,* 186 Cal. App. 4th 576, 581 (2010).

By granting preliminary approval, this Court has already determined that the Settlement Agreement is fair and reasonable, subject to objections. No class members submitted any disputes or filed any objections to the settlement, and no class members requested to be excluded from the settlement. CPT Decl.at ¶¶9-12. The lack of objections establishes that the Court's preliminary assessment has been separately endorsed by the Settlement Class. Accordingly, this Court should grant final approval.

b. Class Counsel Conducted a Thorough Investigation of the Factual and Legal Issues and Were Able to Objectively Assess the Settlement's Reasonableness

Class Counsel have conducted a thorough investigation of both the factual and legal issues affecting the strengths and weaknesses of Plaintiffs' claims, the potential class recovery, and Defendant's financial limitations and challenges. Class Counsel conducted fact interviews and thoroughly reviewed and analyzed the relevant employer policies and handbooks. Cox Decl. at ¶16. In preparation for mediation, Defendant provided Class Counsel with an expansive set of clock and payroll data that captured hours worked for all classifications of employees in the settlement class as well as handbooks and policies. Cox Decl. at ¶17. This allowed Class Counsel to analyze the viability of the core allegations on a granular level that provided insight not just into the overall potential violation rate, but also class certification issues such as the distribution and character of the potential violations. Cox Decl. at ¶¶18-39. Class Counsels' extensive factual investigation gave invaluable insight into the nature and extent of the class claims and the reasonable range of settlement. *Id.*

c. The Settlement Was Reached Through Arm's-Length Bargaining in Which All Parties Were Represented by Experienced Counsel

"[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed settlement's fairness." *State v. Levi Strauss & Co.*, 41 Cal. 3d 460, 482 (1986). Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is offered; thus, there is a presumption that settlement negotiations are conducted in good faith. *Nordstrom Commission Cases*, 186 Cal. App. 4th 576, 581 (2010) (*quoting Cellphone Termination Fee Cases*, 180 Cal. App. 4th at 1117-1118).

The Parties also engaged in extensive settlement negotiations and participated in a mediation conducted by Michael Young, a well-regarded mediator experienced in wage-and-hour class actions, that was ultimately successful. *See* Cox Decl. at ¶7. Prior to and during the mediation, the Parties exchanged detailed data and information pertaining to the putative class, including putative class members' job titles; job descriptions; time worked; pay rates; and discussed various aspects of the case, including, but not limited to, the risks and delays of further litigation; the risks to the Parties of proceeding with class certification and representative adjudication; the law relating to unpaid wage issues; meal and rest periods; wage-and-hour enforcement; and representative PAGA claims; the evidence produced and analyzed; and the possibility of appeals, among other things. *See* Cox Decl. at ¶¶16-39. During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.

Arriving at a settlement that was acceptable to both Parties was not easy. Defendants and their counsel felt strongly about their ability to prevail on the merits and at certification, and Plaintiffs and Class Counsel believed that they would be able to obtain class certification and prevail at trial. In particular, among other defenses, Defendants' position is that Plaintiffs would be unable to obtain class certification not only because the putative class was limited in size, but also because the core legal issue underlying Plaintiffs' combined break claims and disputed points of law. After conducting investigations, as well as informal discovery efforts and settlement negotiations, the Parties have agreed that this case is well-suited for settlement given the legal issues relating to Plaintiffs' principal claims, as well as the costs and risks to both sides that would attend further litigation.

The proposed Settlement takes into account the strengths and weaknesses of each side's position and the uncertainty of how the case might have concluded at certification and/or trial. The parties reached the proposed Settlement based on this large volume of facts, evidence, and investigation. In addition, Class Counsel has extensive experience in employment class actions, including significant experience in California wage-and-hour litigation. *See* Cox Decl. at ¶¶ 41-49.

d. The Proposed Settlement is Reasonable Given the Strengths of Plaintiff's Claims and the Risks and Expenses of Continued Litigation

The Gross Settlement Fund of up to $756,465.00 represents a fair, adequate, and reasonable resolution of this case. The proposed Settlement was calculated using the information and data uncovered during the litigation, informal discovery, case investigation, as well as the exchange of information in the context of settlement negotiations. The proposed Settlement takes into account the potential risks and rewards inherent in any case and, in particular, with this case. Moreover, considering all of the facts and circumstances of this case, the proposed Settlement represents a substantial global recovery for the Class.

Assuming that all of the fees, costs, and payments are approved and awarded in the full amounts provided for by the proposed Settlement, the Net Settlement Fund is currently estimated to be approximately $389,310.00. *See* CPT Decl.at ¶14. The range of individual settlement payments calculated by the Claims Administrator runs from $8.93 to $2,720.88 with an average payment estimated at $1,380.53. *See* CPT Decl.at ¶14. Settlement Class Members who do not opt out will receive a Settlement Award that is calculated on a pro rata basis, based upon their respective number of weeks worked during the Settlement Period. There is no reason to doubt the fairness of the proposed plan of allocation of the settlement funds for purposes of preliminary approval. Even at the final approval stage, "[a]n allocation formula need only have a reasonable, rational basis [to warrant approval], particularly if recommended by experienced and competent class counsel." *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001) 127 F. Supp. 2d

418, 429-430.

In light of the above considerations, Class Counsel believe that the proposed Settlement as a whole is fair, reasonable, and adequate, and is in the best interest of the Class. Although the recommendations of Class Counsel are not conclusive, the Court can properly take the recommendations into account, particularly if Class Counsel appears to be competent, has experience with this type of litigation, and significant discovery and investigation have been completed. Newberg, §11.47.

Understanding that the maximum potential recovery only provides the most optimistic valuation of a case's worth, Class Counsel also undertook a risk analysis valuation of the claims in this matter. The class data and information obtained in this case allowed Class Counsel to develop a damages/valuation model and complete evaluation of the claims and Defendant's defenses thereto. As outlined in the Declaration of Heather K. Cox, prior to entering into the proposed Settlement, Class Counsel performed an extensive analysis of each claim, based on a volume of documents and data produced by Defendant and obtained through other sources. *See* Cox Decl. at ¶¶18-39. The results of the Kullar analysis returned a "Risk-Adjusted" Range of Recovery of $251,445.06 to $1,888,946.80. *See* Cox Decl. at ¶ 39. The total settlement value achieved in this case of is firmly within this range.

e. The Settlement Class Has Responded Positively To The Settlement

The Class Members' response demonstrates their support for this settlement. The Claims Administrator mailed notices of settlement to all class members. *See* CPT Decl.at ¶7. As of January 9, 2024, there have been no opt out requests or objections to the settlement. *See* CPT Decl.at ¶¶10-12. The lack of any negative reaction to the proposed settlement is strong indicia of its fairness. Furthermore, there was an enthusiastic response by the class as reflected by the total amount of the responses.

f. The Proposed PAGA Settlement is Reasonable

Pursuant to the Settlement Stipulation, $50,000.00 from the Class Settlement Amount shall be allocated to the resolution of the PAGA claim, of which 75% ($37,500.00) will be paid directly to the LWDA, and the remaining 25% ($12,500.00) will be added to the Net Settlement Amount.

See Settlement Stipulation at ¶13. This result was reached after good-faith negotiation between the Parties with input from the mediator. Where PAGA penalties are negotiated in good faith and "there is no indication that [the] amount was the result of self-interest at the expense of other Class Members," such amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.*, Case No. 08-00844, 2009 U.S. Dist. LEXIS 33900, at *24 (N.D. Cal. Apr. 3, 2009); *see, e.g., Nordstrom Com. Cases*, 186 Cal. App. 4th 576, 579 (2010) ("[T]rial court did not abuse its discretion in approving a settlement which does not allocate any damages to the PAGA claims."); *Villacres v. ABM Industries, Inc.*, 189 Cal. App. 4th 562 (2010) (Finding that a release of "all claims" in class action settlement encompassed claims under the PAGA). Class Counsel further submits that the PAGA allocation is reasonable and fair in light of the fact that each of the California Labor Code violations alleged in the PAGA notice were also alleged as class claims and figured separately in the litigation and evaluation of all claims alleged in this action.

IV. THE REQUESTED PAYMENT TO THE CLAIMS ADMINISTRATOR IS REASONABLE AND SHOULD RECEIVE FINAL APPROVAL

Plaintiffs request final approval of claims administration costs in the amount of $10,500.00 to be paid to CPT Group, Inc. CPT has promptly and properly distributed the Class Notice to all Class Members and completed its duties in accordance with the Court's preliminary approval Order.

V. THE NEGOTIATED CLASS REPRESENTATIVE ENHANCEMENT PAYMENT IS FAIR AND REASONABLE

The Settlement Stipulation proposes up to $10,000.00 class representative enhancement payment to each plaintiff and the Court has indicated that it will likely approve a class representative enhancement payment of $7,500.00 to each plaintiff. *See* Settlement Stipulation at ¶12. This amount is fair and reasonable in consideration of the fact that it was Plaintiffs' sense of justice and initiative that led them to take steps that have resulted in the Class Members being fairly compensated for the claims alleged in this matter. Plaintiffs have agreed to provide Defendant with a California Code of Civil Procedure section 1542 general release, and, therefore, is releasing Defendant from a broader range of claims than the other Class Members. *See* Settlement Stipulation at ¶62. In light of these factors, Class Counsel submits that the proposed enhancement payments are fair and reasonable.

VI. THE COURT SHOULD APPROVE THE REQUESTED FEES AND COSTS

a. Plaintiff is Entitled to Reasonable Attorneys' Fees Under California's Fee-Shifting Statutes

Plaintiffs are entitled to attorneys' fees under the fee-shifting provisions of California Labor Code sections 226(e), 1194(a) and 2699(g)(1) as well as the fee authorizing provisions of the California Private Attorney General Act, Code of Civil Procedure section 1021.5. These statutes are designed to create financial incentives for qualified attorneys to take on meritorious cases in which the recoveries may be so small that it would be unlikely for employees to find representation on a percentage-of-recovery basis. *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553, 580 (2004); *Ketchum v. Moses*, 24 Cal. 4th 1122, 1132 (2001); *see also, Lealao v. Beneficial California, Inc.*, 82 Cal. App. 4th 19, 41 (2000). The weight of legal authority indisputably supports Plaintiffs' proposition that Class Counsel should be adequately compensated for successfully prosecuting an action on behalf of employees who would otherwise lack the financial incentive and/or means to vindicate their statutory rights.

b. The Requested Fee Award is Fair and Reasonable, Calculated as Percentage of a Common Fund

Class Counsel applies for an award of attorneys' fees in the sum of $252,155.00 (which is one-third of the Gross Settlement Amount) based on the Court's indication that it would not be inclined to grant the full 35% attorneys' fees agreed to in the Settlement Stipulation. *See* Settlement Stipulation at ¶6. California state and federal courts have recognized that an appropriate method for determining an award of attorneys' fees is based on a percentage of the total value of benefits to Class Members by the settlement, also known as the "common fund" method. *Serrano v. Priest* 20 Cal.3d 25, 34 (1977) (*Serrano III*); *Boeing Co. v. Van Gemert* 444 U.S. 472, 478 (1980); *Vincent v. Hughes Air West, Inc*. 557 F.2d 759, 769 (9th Cir. 1977). "Despite its primacy, the lodestar method is not necessarily utilized in common fund cases." *Lealao v. Beneficial California, Inc.* 82 Cal.App.4th 19, 27 (2000).

The purpose of the common fund/percentage approach is to "spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." *Vincent, supra*, 557 F.2d at 769. In *Quinn v. State of California* (1995) 15 Cal.3d 162, 167, the Court stated: "[O]ne who expends attorneys' fees in winning a suit which creates a fund from which others derive benefits may require those passive beneficiaries to bear a fair share of the litigation costs." As there is a defined and clearly traceable benefit to the Class, the Court can base an award of attorneys' fees using a 'common fund' approach to compensate Class Counsel.

c. Application of a Lodestar Cross-Check in this Action Militates in Favor of Awarding the Requested Attorneys' Fees

Class Counsel's fee request is also reasonable when calculated using the lodestar method. The lodestar is produced by multiplying the number of hours reasonably expended by counsel by a reasonable hourly rate. *See Graciano v. Robinson Ford Sales, Inc.*, 144 Cal. App. 4th 140, 164 (2006). The court then engages in a multiplier analysis and determines whether the lodestar figure should be augmented. *See Ketchum*, 24 Cal. 4th at 1132. Under the lodestar method, "there is 'no mathematical rule requiring proportionality between compensatory damages and attorneys' fees award." *Harman v. City and County of San Francisco*, 158 Cal. App. 4th 407, 421 (2007). While "the attorney who takes [a fee-shifting] case can anticipate receiving full compensation or every hour spent litigating a claim[,]" *Weeks v. Baker & McKenzie*, 63 Cal. App. 4th 1128, 1175 (1998), courts should not be "enmeshed in a meticulous analysis of every detailed facet of the professional representation." *Serrano v. Unruh*, 32 Cal. 3d 621, 642 (1982); s*ee also*, *Fox v. Vice*, 131 S. Ct. 2205, 2216 (2001) (The essential goal in shifting fees … is to do rough justice, not to achieve auditing perfection").

The starting point in determining the appropriate hourly fee is to discern the prevailing rate for similar work in the pertinent geographic area. *PLCM Group v. Perez*, 22 Cal. 4th 1084, 1096-1097 (2000) (using prevailing hourly rate in community for comparable legal services even though party used in-house counsel). Class Counsel's hourly rates are comparable to, or less than, those charged by other class action plaintiffs' counsel and are commensurate with the rates awarded to Class Counsel in similar action as well as those charged by Class Counsel Mr. Wong for hourly defense work. *See* Cox Decl. at ¶55-56.

Furthermore, the total attorney hours expended on this action are reasonable. Class Counsel expended a collective total of 368.4 hours. *See* Cox Decl. at ¶¶38, 41, Exhibit A (detailed breakdown of attorney time); JFM Decl. at ¶¶ 4-5. Multiplying the total hours billed by Class Counsel by their reasonable hourly rates yields a lodestar of $261,527.50 and a very reasonable multiplier of 1.01 relative to the amount of attorney fees authorized under the Settlement Stipulation ($264,762.75). *See* Settlement at ¶13. Accordingly, the total amount of attorneys' fees requested in this action is reasonable and warranted under the pertinent legal authority. *See Schneider v. Chipotle*, 2020 WL 6484833 (N.D. Cal., Nov. 4, 2020) ("Class Counsel is not seeking to recover the full lodestar amount. Accordingly, this negative multiplier suggests that the fee request is reasonable") (citations omitted).

d. The Requested Award of Attorneys' Fees is Supported by Class Counsel's Prosecution of this Case on a Contingency Basis

Recognizing that attorneys who represent clients under contingency-fee agreements shoulder considerable risk of the possibility of minimal or low recovery, courts recognize that contingent-fee attorneys should obtain a larger fee than the market-value of their services in order to help assure skilled representation of class interests. *See Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th at 580 ("[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."); *Ketchum v. Moses*, 24 Cal. 4th at 1132 (2001) ("[A] contingent fee contract, since it involves a gamble on the result, may properly provide for larger compensation than would otherwise be recoverable.').

The risks faced by attorneys working on contingency are substantial. This is particularly true in the context of class action litigation where there can be numerous hotly contested procedural and substantive issues, considerable outlay of costs without guarantee of recovery, and the possibility that intervening factors, such as the financial condition of the defendant, may limit the scope of potential recovery. California courts thus recognize that "the experience of the marketplace indicates that lawyers generally will not provide legal representation on a contingent basis unless they receive a premium for taking that risk." *Ketchum*, 24 Cal. 4th at 1136. "Given the unique reliance of our legal system on private litigants to enforce substantive provisions of law through class and derivative actions … [attorneys] must be provided incentives roughly comparable to those negotiated in the private bargaining that takes place in the legal marketplace, as it will otherwise be economic for defendants to increase injurious behavior." *Lealao*, 82 Cal. App. 4th at 47. These policies support Plaintiff's fee request, as her counsel undertook substantial risk in prosecuting this case.

e. The Requested Award of Attorneys' Fees is Supported by the Results Achieved on Behalf of the Class

Courts assess the reasonableness of a request for attorneys' fees by examining the results achieved on behalf of the Class. *See Serrano*, 20 Cal. 3d at 49. This settlement represents a substantial recovery for the Settlement Class in light of the compelling defenses to liability and Defendant's financial condition.

As set forth above and in the supporting Declaration of Heather K. Cox, Class Counsel undertook a thorough analysis of the claims in this action including spending hundreds of hours of legal research and data analysis to develop the novel core theories of liability in this case. Using this data, Class Counsel was able to determine that the maximum settlement amount of $756,465.00 was well within the range of the "Risk Adjusted" valuation of the potential recovery. Class Counsel also expended substantial efforts and resources contacting settlement class members, in order to maximize the total amount claimed by class members under the settlement. The result is that participating Class Members will receive over $389,310.00 in total settlement payments at an average recovery of $1,380.53. CPT Decl. at ¶14. Accordingly, the cumulative benefits achieved by the Settlement favor approval of the requested fees.

f. The Requested Award of Attorneys' Fees is Supported by Class Counsel's Experience, Reputation, and Skill

The "skill and experience of the attorneys and nature of work performed" are also evaluated under California law in connection with a fee motion. *Northwest Energetic Services, LLC v. Cal. Franchise Tax Bd.*, 159 Cap. App. 4th 841, 880 (2008). Class Counsel regularly litigate wage and hour claims and have considerable experience settling wage and hour class actions. *See* Cox Decl.

at ¶¶46-49.

g. The Requested Costs are Reasonable

Class Counsel has incurred a total of **$36,772.29** in costs and expenses that would normally be billed to a fee-paying client. The costs incurred by Class Counsel are set forth in the Declarations of Heather K. Cox (See Cox Decl. at ¶55) and Justin F. Marquez (See JFM Decl. at ¶10, Exhibit A). The majority of costs incurred in this action relate to filing fees, and mediator fees, costs that are reasonable and necessary to the litigation of this case. In accordance with the Settlement Stipulation, Class Counsel requests an award of $36,772.29, which is less than the costs Preliminarily Approved by the Court in this Action of $40,000.00. Accordingly, the requested costs should also be awarded.

VII. CONCLUSION

The Parties have negotiated a fair and reasonable settlement of claims. Having appropriately presented the materials and information necessary for preliminarily approval, the Parties respectfully request that the Court grant final approval of the Settlement Stipulation and issue Judgment as proposed by Plaintiffs.

Respectfully Submitted,

DATED: January 10, 2024

BARKHORDARIAN LAW FIRM, PLC

By: /s/Gregory P. Wong

Gregory P. Wong
Heather K. Cox
Attorneys for Plaintiffs Joel Zelaya and Demetrio Montes, on behalf of themselves and all others similarly situated