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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO COUNTY**

ROBERT JORDAN, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

MONDELEZ GLOBAL LLC, a Delaware
limited liability company; and DOES 1
through 50, inclusive,

Defendants.

Case No.: CIVSB2202758

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR FINAL APPROVAL OF
CLASS AND REPRESENTATIVE ACTION
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT**

Date: February 20, 2024
Time: 8:30 a.m.
Dept.: S-26

Complaint Filed: February 4, 2022
Trial Date: None Set

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that, on February 20, 2024, at 8:30 a.m. before the Honorable Jessica Morgan, judge presiding in Department S-26 of the above-referenced Court, located at 247 West Third Street, San Bernardino, California 92415, Plaintiff Robert Jordan (“Named Plaintiff” or “Class Representative”) will and hereby does seek an Order:

(1) granting final approval of the Joint Stipulation of Class and Representative Action Settlement (“Settlement” or “Settlement Agreement”) in this matter;

(2) approving distribution of the settlement funds to the Class Members pursuant to the terms of the Settlement Agreement;

(3) approving the Class Representative’s request for an Incentive Award of \$10,000.00 to the Class Representative pursuant to the terms of the Settlement Agreement;

(4) approving Class Counsel’s request for an award of attorneys’ fees in the amount of approximately one-third of the \$1,100,000.00 Settlement Fund, or \$366,666.66, and reimbursement of actual litigation costs of \$13,801.77 pursuant to the terms of the Settlement Agreement;

(5) approving the Class Representative’s request for payment of the settlement administration costs to CPT Group in the amount of \$10,000.00 pursuant to the terms of the Settlement Agreement; and

(6) entering final judgment as to all Settlement Class Members and Aggrieved Employees in this action.

This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which provides for court approval of the settlement of a purported class action and allows the Court to grant final certification of a class for settlement purposes. In light of the overwhelmingly positive response, as shown by the lack of objections and nominal opts-out, there is no question that the Settlement is fair, reasonable, and adequate and thus should be granted final approval.

This Motion will be based on the attached Memorandum of Point and Authorities and the supporting Declarations of Larry W. Lee, Kristen M. Agnew, Nicholas Rosenthal, William L. Marder, Plaintiff Robert Jordan, and Jeremy Romero of CPT Group, upon the oral arguments of

counsel (should there be any), and on the complete records and file herein.

DATED: January 25, 2024

DIVERSITY LAW GROUP, P.C.
POLARIS LAW GROUP

By: _____

Larry W. Lee

Kristen M. Agnew

Nicholas Rosenthal

William L. Marder

Attorneys for Plaintiff and the Class

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1 **I. INTRODUCTION**

2 This is a wage and hour class and representative Private Attorneys General Act
3 (“PAGA”) action. Plaintiff Robert Jordan (“Class Representative” or “Named Plaintiff”) worked
4 as a non-exempt employee for Defendant Mondelez Global LLC (“Defendant”). Named Plaintiff
5 alleges that Defendant: (a) failed to provide off-duty meal and/or periods to employees or pay
6 meal/rest period premiums in lieu thereof, in violation of Labor Code sections 226.7 and 512; (b)
7 failed to pay for all hours worked in violation of Labor Code sections 510, 558, 1194, 1197, and
8 1197.1; (c) failed to provide accurate, itemized wage statements, in violation of Labor Code
9 section 226(a); (d) failed to pay all wages upon termination of employment, in violation of Labor
10 Code sections 201, 202, 203; (e) engaged in Unfair Business Practices in violation of the UCL,
11 the California Labor Code, and the applicable IWC Wage Orders; and (f) violated PAGA, Labor
12 Code section 2698 *et. seq.* As a result, Named Plaintiff alleges that he, the other Class Members,
13 and the other Aggrieved Employees are entitled to damages, penalties, attorneys’ fees, and costs.
14 Defendant denies each, every, and all of the allegations of the Complaint.

15 Prior to the settlement of this action, Named Plaintiff and Defendant (the “Parties”)
16 engaged in the exchange of discovery and a thorough study of the legal principles applicable to
17 the claims asserted against Defendant. Defendant produced the relevant payroll data for the Class
18 Members and Aggrieved Employees. With the assistance of an experienced mediator, the Parties
19 were ultimately able to reach the current settlement. The terms of the settlement provide that
20 Defendant shall pay the gross settlement amount of \$1,100,000.00 (“Settlement Fund”). On
21 average, each Settlement Class Member will receive approximately \$2,129.61 as their Individual
22 Settlement Award, and each Aggrieved Employee will receive approximately \$40.72 as their
23 Individual PAGA Penalty Payment. Significantly, the entire settlement amount is non-
24 reversionary, such that no monies will revert back to Defendant.

25 The Parties believe that this amount is fair, adequate, and reasonable, especially given the
26 risks and uncertainty of class certification and the merits of this case. Further, notice of the
27 settlement was provided to the class by CPT Group in the manner approved by the Court. Not a
28 single objection was received, and only two (2) valid requests for exclusion from the Settlement

were submitted. Thus, there is a 99.35 % participation rate. Therefore, the Parties respectfully request that the Court grant this Final Approval of Class Action Settlement.

II. THE PAYMENTS TO THE SETTLEMENT CLASS MEMBERS AND AGGRIEVED EMPLOYEES

The Settlement requires Defendant to pay the gross amount of \$1,100,000.00 (the “Settlement Fund”). The entire Settlement Fund is non-reversionary, such that no monies will revert back to Defendant. There are 305 Settlement Class Members. *See* Declaration of Jeremy Romero on behalf of CPT Group (“CPT”) (“Admin Decl.”) ¶ 12.

The net settlement amount is estimated to be \$662,031.57 (the “Payout Fund”). *See* Admin. Decl. ¶ 14. The Payout Fund is based on the following:

Settlement Fund	\$1,100,000.00
Less Class Counsel Fees	(\$366,666.66)
Less Class Counsel Costs	(\$13,801.77)
Less Incentive Award	(\$10,000.00)
Less LWDA Payment	(\$37,500.00)
Less Payment to Aggrieved Employees	(\$12,500.00)
<u>Less Settlement Administration Costs</u>	<u>(\$10,000.00)</u>
Payout Fund	\$662,031.57

Pursuant to the terms of the Settlement Agreement, Settlement Class Members will receive a proportionate share of the Payout Fund, based on the number of pay periods each Settlement Class Member performed worked for Defendant during the Class Period in the State of California as a non-exempt employee in the positions of driver, warehouse associate, stockhandler, combo driver/warehouse associate, combo stock driver, combo stockhandler, working foreperson, foreman, and related positions. *See* SA § VIII-7-(b). There are 305 Settlement Class Members, with a total of 44,625 pay periods at issue during the Class Period. *See* Admin Decl. ¶ 13. Based on estimated settlement calculations at this time, the estimated average payment to each Settlement Class Member will be \$2,129.61, and the highest payment to a Settlement Class Member is estimated to be \$4,191.93. *See id.* at ¶ 15.

1 The Settlement allocates \$50,000.00 of the Settlement Fund toward penalties under the
2 Private Attorneys General Act (“PAGA Payment”), of which 75%, or \$37,500.00, shall be paid
3 to the Labor and Workforce Development Agency (“LWDA”), and 25%, or \$12,500.00 (“Net
4 PAGA Payment”), shall be paid to Aggrieved Employees who were employed by Defendant in
5 California in the relevant positions during the PAGA Period. *See* Admin. Decl. ¶ 16. Aggrieved
6 Employees will receive a proportionate share of the Net PAGA Payment based on the number of
7 pay periods worked during the PAGA Period in the State of California as a non-exempt
8 employee in the positions of driver, warehouse associate, stockhandler, combo driver/warehouse
9 associate, combo stock driver, combo stockhandler, working foreperson, foreman, and related
10 positions. *See* SA § VIII-7-(c). Based on the estimated calculations at this time, the average
11 Individual PAGA Penalty Payment to each Aggrieved Employee is estimated to be \$40.72 and
12 the highest payment is estimated to be \$84.24. *See* Admin. Decl. ¶ 16. All Class Members who
13 are Aggrieved Employees, including the two individuals who validly requested exclusion from
14 the Settlement, will receive an Individual PAGA Penalty Payment. *See* SA § VIII-11-(g).

15 **III. CLASS MEMBERS WERE PROVIDED PROPER NOTICE OF THE**
16 **SETTLEMENT**

17 The notice procedures required by the Preliminary Approval Order have been followed
18 and satisfy all due process rights of Class Members. The Preliminary Approval Order
19 contemplated that the Notice of Settlement of Class and Representative Action (the “Notice”), as
20 approved in the Preliminary Approval Order, be sent to all Class Members by first class mail, as
21 specified in the Settlement Agreement. The Preliminary Approval Order contemplated, further,
22 that CPT Group would serve as the Claims Administrator.

23 As clearly stated in the Administrator’s Declaration, notice was provided to Class
24 Members, as required by the Preliminary Approval Order. On or about October 30, 2023, the
25 Settlement Administrator received the Class List and Data from Defendant’s Counsel that
26 included 307 Class Members. *See* Admin Decl. ¶ 3. On or about November 20, 2023, each of the
27 persons identified on the mailing list were sent the Notice via first class mail. *See id.* at ¶ 6. As
28 part of the administration process, the Settlement Administrator has re-mailed the Notice to eight

(8) Class Members using newly updated addresses after performing a skip-trace using the U.S. Postal Service National Change of Address Database, one of the most comprehensive address databases available for skip tracing. *See id.* at ¶ 7. As of the date of this filing, three (3) Notices remain undeliverable. *See id.* at ¶ 8. Further, the Notice provided Class Members with Class Counsel’s contact information, where they could further seek information regarding the settlement, leave questions for the Settlement Administrator, and update their address. *See id.* at ¶ 6, Exhibit A.

The provision of sending the Notice to Class Members as described above meets the requirements for the “best notice practicable” in this case as necessary to protect the due process rights of class members. *See Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811-12 (1985) (provision of “best notice practicable” with description of the litigation and explanation of opt-out rights satisfies due process); *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 174-75 (1974) (individual notice must be sent to class members who can be identified through reasonable means); *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) (best practicable notice is that which is “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections”). As such, proper notice has been given to the Class Members. Thus, the Court may proceed to determine the fairness and adequacy of the Settlement and enter its Order granting final approval, secure in the knowledge that all absent Class Members have been given the opportunity to participate fully in the claims, exclusion, and the approval process.

IV. THE SETTLEMENT TERMS ARE FAIR, ADEQUATE, AND REASONABLE, AND THE SETTLEMENT SHOULD BE GIVEN FINAL APPROVAL

A. The Terms, Negotiation, and Reception of the Settlement by Class Members All Strongly Support the Conclusion that the Settlement is Fair, Adequate, and Reasonable

As explained by the Court of Appeal in *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 130, 133 (2008), a class action settlement should be approved when the plaintiff has conducted sufficient discovery, and the settlement is reasonable in light of the strengths of the

1 plaintiff's claims. As discussed in the Motion for Preliminary Approval, Class Counsel have
2 conducted extensive formal and informal discovery and investigation and, in light of the strength
3 and weaknesses of Named Plaintiff's claims, Class Counsel submits that this settlement is fair
4 pursuant to *Kullar*.

5 Without reiterating the Parties' showing that the Settlement Agreement and the
6 negotiation process that led up to it was fair and adequate, as set forth in detail in the Motion for
7 Preliminary Approval, the Parties highlight the following facts. The Settlement Agreement was
8 the product of negotiation between highly able and experienced attorneys on both sides. *See*
9 Declaration of Kristen M. Agnew ("Agnew Decl.") ¶ 2-6; Declaration of Larry W. Lee ("Lee
10 Decl.") ¶¶ 2, 5-7; Declaration of Nicholas Rosenthal ("Rosenthal Decl.") ¶¶ 2-4; Declaration of
11 William L. Marder ("Marder Decl.") ¶¶ 2-10. In addition, the resolution of this case was reached
12 only after the production of data relevant to the potential value of the class and PAGA claims.
13 *See* Agnew Decl. ¶¶ 3, 4. Class Counsel retained Econ One to review the payroll data and
14 perform a damage analysis in preparation for mediation. *See id.* at ¶ 4. Based on the information
15 provided by Defendant, Class Counsel was able to determine, among other things,
16 approximations of the total number of Class Members and Aggrieved Employees, the number of
17 meal and rest period eligible shifts worked during the Class Period and PAGA Period, the
18 number of pay periods in which non-discretionary incentive pay was earned in the same
19 workweek as overtime and/or meal period premiums, the aggregate amount of time lost due to
20 the alleged rounding, the number of employees who separated employment, and the average rate
21 of pay for all employees. *See id.* Class Counsel calculated a range of potential damages and
22 penalties, and estimated that Defendant's realistic liability exposure is approximately
23 \$9,204,947. *See id.* at ¶ 5. Thus, in the present case, Class Counsel estimates that the Settlement
24 Fund is approximately 11.95% of the maximum recovery of the class and representative PAGA
25 claims.

26 The results after mailing of the Class Notice further support confirmation of the Court's
27 preliminary approval of the settlement with final approval of the settlement, as evidenced by the
28 fact that ***there is not a single Class Member who has objected to the current settlement and***

1 *only two (2) Class Members submitted valid requests to opt-out.* See Admin. Decl. ¶¶ 9, 10. The
2 Court may appropriately infer that the class action settlement is fair, adequate, and reasonable
3 when, among other reasons, few, or no class members object to it. See *Class Plaintiffs v. City of*
4 *Seattle*, 955 F.2d 1268, 1291 (9th Cir. 1992); *Churchill Vill. LLC v. Gen. Elec.*, 361 F.3d 566,
5 577 (9th Cir. 2004) (approving settlement with 45 objections and 500 opt-outs from a 90,000-
6 person class, representing 0.05% and 0.56% of the class, respectively); *Chun-Hoon v. McKee*
7 *Foods Corp.*, 716 F. Supp. 2d 848, 852 (N.D. Cal. 2010) (where 16 of 329 class members opted
8 out, court found that positive class reaction “strongly supports settlement”). Here, the lack of any
9 objections and nominal opt-outs to this current settlement is an indication that Class Members
10 themselves view the settlement as fair, adequate, and reasonable.

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

26 Although the Court possesses “broad discretion” in determining that a proposed class
27 action settlement is fair, the Court’s role must be limited to the extent necessary to reach a
28 reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion

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

9 A court’s approval of a class action settlement will only be reversed for a clear abuse of
10 discretion. *See Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996); *Officers for*
11 *Justice*, 688 F.2d at 626 (“reverse only upon a strong showing that the district court’s decision
12 was a clear abuse of discretion”); *Class Plaintiffs*, 955 F.2d at 1276; *Ackerman v. Kassar*, 1993
13 WL 326453 (9th Cir. 1993); *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1238 (9th Cir.
14 1998). As the court cautioned in *7-Eleven Owners for Fair Franchising v. Southland Corp.*:

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

22 85 Cal. App. 4th 1135, 1146 (2000).

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

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

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

Dunk, 48 Cal. App. 4th at 1802; *7-Eleven Owners for Fair Franchising*, 85 Cal. App. 4th at
1146; *accord, Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980); *In re Wash.*
Pub Power Supply, 720 F. Supp. at 1387. -15-

1 The settlement in the case at bar warrants approval and carries a presumption of fairness.
2 As previously noted in the Motion for Preliminary Approval, this current settlement was
3 negotiated at arm's length. *See* Agnew Decl. ¶¶ 2-5. Furthermore, Class Counsel is highly
4 experienced in this type of litigation. As shown in the supporting declarations, Class Counsel has
5 significant experience in class and representative actions and employment wage and hour
6 matters. *See id.* at ¶¶ 8-12; Lee Decl. ¶¶ 5-7; Rosenthal Decl. ¶¶ 3, 4; Marder Decl. ¶¶ 3-10.

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

9 To assess the fairness, adequacy and reasonableness of a class action settlement, the
10 Court also should weigh the immediacy and certainty of substantial settlement proceeds against
11 the risks inherent in continued litigation. *See also In re General Motors Corp.*, 55 F.3d 768, 806
12 (3d Cir. 1995 (“present value of the damages plaintiffs would likely recover if successful,
13 appropriately discounted for the risk of not prevailing, should be compared with the amount of
14 the proposed settlement”) (internal citations omitted); *Girsh v. Jepson*, 521 F.2d 153, 157 (3d
15 Cir. 1975); *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 616-17 (N.D. Cal. 1979).

16 If Named Plaintiff pursued this case without settlement and failed to prevail, Named
17 Plaintiff would have been potentially responsible for Defendant's costs. As such, should any
18 individual bring individual claims against Defendant on the same causes of action, they would
19 each face the uncertainty of prevailing and the possibility of paying costs to Defendant.
20 Accordingly, such claims likely would not be brought—thus, this lawsuit achieves a true benefit
21 for the class that they might not otherwise get or seek as individuals. Here, given that a fair and
22 reasonable settlement has been reached, neither Named Plaintiff nor any of the Class Members
23 will be required to pay for Defendant's litigation costs.

24 The risks of this case were weighed by Class Counsel and should be considered a
25 significant factor by the Court in its determination of final approval. Class Counsel obtained a
26 very substantial settlement for the Class Members that resulted in a fair recovery which at the
27 same time provides for finality and no risk of costs by the Class Members or the Class
28 Representative.

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

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

14 Another factor considered by courts in approving a settlement is the complexity, expense,
15 and likely duration of the litigation. *See Officers for Justice*, 688 F.2d at 625; *Girsh*, 521 F.2d at
16 157. In applying this factor, the Court must weigh the benefits of the settlement against the
17 expense and delay involved in achieving an equivalent or more favorable result at trial. *See*
18 *Young v. Katz*, 447 F.2d 431, 433-434 (5th Cir. 1971).

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

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
3 interest of the Class Members as a whole. *See* Agnew Decl. ¶ 2, 6; Lee Decl. ¶ 2; Rosenthal
4 Decl. ¶ 2; Marder Decl. ¶ 2. Similarly, counsel for Defendant is in favor of this Settlement. The
5 endorsement of qualified and well-informed counsel of a settlement as fair, reasonable, and
6 adequate is entitled to significant weight by the Court in its final approval determination. *See*
7 *Officers for Justice*, 688 F.2d at 625; *Ellis*, 87 F.R.D. at 18; *Boyd*, 485 F. Supp. at 617; *Linney*,
8 151 F.3d at 1242.

9 As detailed above, each of the factors counsel strongly in favor of final approval of the
10 Settlement by this Court.

11 **V. THE REQUESTED INCENTIVE AWARD SHOULD BE APPROVED**

12 Named Plaintiff has requested, and Defendant does not oppose, an Incentive Award of
13 Ten Thousand Dollars (\$10,000.00), pursuant to the terms of the Settlement Agreement. Named
14 Plaintiff requests that this Court approve the Incentive Award in light of the efforts Named
15 Plaintiff put into this case, the absence of any objection to the Incentive Award, and the excellent
16 result achieved.

17 As shown in the supporting declaration, Named Plaintiff spent a significant amount of
18 time: (i) engaging in telephonic and in-person discussions with Class Counsel regarding the case;
19 (ii) searching for documents relating to his claims, including pay records, policy manuals, and
20 emails; (iii) reviewing various files and pleadings in this case, including the LWDA notice, the
21 Complaint, the First Amended Complaint and his declarations; and (iv) reviewing the Settlement
22 Agreement. *See* Declaration of Robert Jordan (“Jordan Decl.”) ¶ 5. Named Plaintiff has
23 continuously been kept apprised of the status of this case. *See id.*

24 In addition to the invaluable service he provided, Named Plaintiff also took a significant
25 risk, both professionally and monetarily, in acting as the Class Representative. Because the
26 claims alleged by Named Plaintiff involved the payment of costs to the prevailing party, Named
27 Plaintiff could have possibly faced paying the costs of Defendant had he not prevailed in this
28 action. *See* Jordan Decl. ¶ 7. Moreover, Named Plaintiff understood that an individual case

1 would have resolved much faster than a class action and involved much less financial risk than a
2 class action. *See id.* at ¶ 3. Despite this, however, Named Plaintiff agreed to pursue this case on
3 behalf of the Class Members. *See id.*

4 Also, given that future employers are much less likely to hire individuals who have filed
5 suit against their prior employer, particularly cases of this nature, Named Plaintiff could face
6 negative employment prospects in the future. Named Plaintiff took such risks upon himself and
7 all of the Class Members benefited from this. Class Members did not have to file individual
8 lawsuits and bear the risks of payment of fees and costs if they did not prevail, nor did they have
9 to face the potential for retaliation and not getting future employment had they filed a lawsuit
10 which is a public record. These are significant benefits, even apart from the time the Class
11 Representative has spent working on this case, that weigh in favor of granting the requested
12 enhancement.

13 Finally, as part of the Settlement, Named Plaintiff also agreed to give a general release of
14 his individual claims, something that the Class Members did not have to do. *See Jordan Decl.* ¶
15 8. Thus, Named Plaintiff has sacrificed his own individual rights for those of the Class Members.
16 This is a significant factor to take into account that further warrants the award of the requested
17 service amount.

18 Courts have routinely granted approval of settlements containing such enhancements. *See*
19 *e.g., Herrera v. Federal Express Corporation*, 2020 WL 2951122 at *7 (C.D. Cal. March 31,
20 2020) (noting that case law supports enhancements of \$10,000); *Potter v. Big Text Trailer*
21 *Manufacturing, Inc.*, 2020 WL 1942619 at *10 (C.D. Cal. March 20, 2020) (awarding \$10,000
22 enhancement where plaintiff spent 30-40 hours on the matter and entered into a general release);
23 *Smith v. Experian Information Solutions, Inc.*, 2020 WL 6689209 at *7 (C.D. Cal. Nov. 9, 2020);
24 *Aikhan v. Goodrich Corporation*, 2020 WL 49191382 at *9 (C.D. Cal. June 25, 2020); *Thomas*
25 *v. Cognizant Technology Solutions U.S. Corporation*, 2013 WL 12371622 at *9 (C.D. Cal. June
26 24, 2013); *Djukich v. AutoNation, Inc.*, 2015 WL 13756099 at *14 (C.D. Cal. Nov. 12, 2015).
27 Moreover, it should be noted that there were no objections by any Class Members to the
28 proposed Incentive Award. For such reasons, Named Plaintiff respectfully requests that this

1 Court approve the amount of the Incentive Award.

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

3 Class Counsel's application for an award of attorneys' fees in an amount of one-third
4 (33.33%) of the Settlement Fund is fair and reasonable. Class Counsel has achieved an excellent
5 settlement in this litigation, as set forth in the Settlement Agreement and this Motion. The
6 proposed settlement provides substantial benefits to the Class Members and was reached after
7 aggressive investigation and litigation by Class Counsel. Furthermore, there have been no
8 objections filed against the Settlement or to Class Counsel's request for attorneys' fees in the
9 amount of \$366,666.66. As more fully detailed below, Class Counsel's request for attorneys'
10 fees is fair, reasonable, and adequate.

11 Class Counsel seeks a fee award calculated as approximately 33.33% of the Settlement
12 Fund for the successful prosecution and resolution of this action. Recently, the California
13 Supreme Court issued a ruling regarding the award of attorney's fees in wage and hour class
14 action settlements. Under California law, the award of attorneys' fees in common fund wage and
15 hour class action settlements should start with the percentage method. *See Laffitte v. Robert Half*
16 *Int'l*, 1 Cal. 5th 480, 503 (2016) ("We join the overwhelming majority of federal and state courts
17 in holding that when class action litigation establishes a monetary fund for the benefit of the
18 class members, and the trial court in its equitable powers awards class counsel a fee out of that
19 fund, the court may determine the amount of a reasonable fee by choosing an appropriate
20 percentage of the fund created."). Under the percentage of the fund method, the Court's objective
21 remains to "mimic the market" in fixing a reasonable fee. *See Gaskill v. Gordon*, 160 F.3d 361,
22 363 (7th Cir. 1998) (J. Posner) ("When a fee is set by a court rather than by contract, the object is
23 to set it at a level that will approximate what the market will set.... The judge, in other words, is
24 trying to mimic the market in legal services.").

25 An award of 33.33% of the Settlement Fund in attorneys' fees mimics the marketplace as
26 it "is supported by the fact that typical contingency fee agreements provide that class counsel
27 will recover 33.33% if the case is resolved before trial and 40% if the case is tried." *Fernandez v.*
28 *Victoria Secret Stores LLC*, 2008 WL 8150856, *16 n. 59 (C.D. Cal. July 21, 2008) (citing

1 Brickman, *Effective Hourly Rates of Contingency-Fee Lawyers: Competing Data and Non-*
2 *Competitive Fees*, 81 Wash U. L. Q. 653, 659 n. 11) (Fall 2003). Indeed, “empirical studies [that]
3 show that...fee awards in class actions average around one-third of the recovery.” *Chavez v.*
4 *Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n.11 (2008).

5 The California Supreme Court in *Laffitte* affirmed a fee award representing 33 1/3
6 percent of the fund. *Laffitte*, 1 Cal. 5th at 506. And this was based on a lodestar amount that
7 required a multiplier of 2.13. *Id.* at 487. As the Court held, only when the multiplier is
8 “extraordinarily high or low [should] the trial court [] consider whether the percentage method
9 should be adjusted so as to bring the imputed multiplier within a justifiable range.” *Id.* at 505.

10 Moreover, in the *Laffitte* intermediate court decision, the court observed that “33 1/3
11 percent of the common fund is consistent with, and in the range of, awards in other class action
12 lawsuits.” *Laffitte v. Robert Half Int’l*, 231 Cal. App. 4th 860, 871 (2014). Here, the fee award
13 representing 33.33% of the Settlement Fund clearly falls within that range, and is consistent with
14 other comprehensive surveys of class action settlements and fee awards. *See Fitzpatrick, An*
15 *Empirical Study of Class Action Settlements and Their Fee Award*, 7 J. Empirical Leg. Stud. 811,
16 833 (2010) (analyzing 444 cases between 2006-2007 and concluding that “[m]ost fee awards
17 were between 25 percent and 35 percent, with almost no awards more than 35 percent.”);
18 Eisenberg & Miller, *Attorney Fees in Class Action Settlements: An Empirical Study: 1993-2008*,
19 7 J. of Empirical Leg. Stud. 248, 262, fn.16 (2010) (independent studies of class action litigation
20 nationwide conclude that fees representing one-third of the total recovery is consistent with
21 market rates).

22 Finally, “the response of the class members to attorneys’ fee notice, though not decisive,
23 is relevant to the... reasonable determination” regarding fees. *Swedish Hospital v. Shalala*, 1 F.3d
24 1261, 1272 (D.C. Cir. 1993). A positive response rate tends to suggest that the court’s
25 “approximation of the market” for fees is well supported. *Id.* at 1269. In this case, the Notice
26 specifically notified Class Members that Class Counsel would be seeking 33.33% of the
27 Settlement Fund as attorneys’ fees. To date, no Class Member has objected to the settlement.
28 This strong favorable response also supports the requested fees.

1 In addition, it is recognized that one of the primary factors justifying an enhanced
2 attorney's fees reward is the attendant risks inherent in the litigation. As observed in *City of*
3 *Detroit v. Grinnell Corp.*, 495 F. 2d 448, 470 (2d Cir. 1974):

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

9 Here, it is clear that a common fund of \$1,100,000.00 has been created, as the entire amount is to
10 be paid out without any reversion. For Class Counsel, the fees here were wholly contingent in
11 nature and the case presented far more risk than the usual contingent fee case. Among the risks
12 was the cost inherent in class action litigation, as well as a potentially drawn-out battle with a
13 defendant that has retained premier defense counsel.

14 As a secondary backup support for the percentage of the fund method, when fees are
15 allocated by percentage method, courts have discretion to "cross-check" the fees awarded
16 through the lodestar method. However, the *Laffitte* Court "emphasize[d] [that] the lodestar
17 calculation, when used in this manner, does not override the trial court's primary determination
18 of the fee as a percentage of the common fund and thus does not impose an absolute maximum
19 or minimum on the potential fee award." *Laffitte*, 1 Cal. 5th at 505 (emphasis added); *In re Rite*
20 *Aid Corp. Secs. Litig.*, 396 F.3d 294, 306-07 (3d Cir. 2005) ("[The lodestar cross-check does not
21 trump the primary reliance on the percentage of common fund method.]). The Supreme Court in
22 *Laffitte* stated: "If the multiplier calculated by means of a lodestar cross-check is extraordinarily
23 high or low, the trial court should consider whether the percentage used should be adjusted so as
24 to bring the imputed multiplier within a justifiable range, but the court is not necessarily required
25 to make such an adjustment." *Id.* (emphasis added). Thus, a lodestar cross-check is aimed at
26 astronomical multipliers. Indeed, cross-checks are not required; in many cases, performing a
27 cross-check "undermines" one of the primary reasons for using the percentage method: aligning
28 counsel's incentives with the benefits delivered to the class and discouraging protracted
litigation. *Id.* at 506 (finding trial courts "retain the discretion to forgo a lodestar cross-check");

1 *Report of the Third Circuit Task Force, Court Awarded Attorney Fees* 108 F.R.D. 237, 258
2 (1985); *Lealao*, 82 Cal. App. 4th 19, 29-30 (citing the recommendations of the Third Circuit
3 Task Force with approval and observing that “[t]he criticisms of the lodestar approach set forth
4 in this Report are now echoed by many authorities, who have been most vocal about the manner
5 in which it exacerbates the problem of ‘cheap settlements’ and burdens already overworked trial
6 judge.”).

7 Courts have defined reasonable multipliers on a lodestar cross-check to “range from 2 to
8 4 or even higher.” *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 255 (2001); *see also*,
9 *e.g.*, *Sutter Health Uninsured Pricing Cases*, 171 Cal. App. 4th 495, 512 (2009) (applying a 2.52
10 multiplier on a cross-check in an antitrust class action); *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th
11 43, 60 (2008) (applying a 2.5 multiplier on a lodestar cross-check). The intermediate court in
12 *Laffitte*, after finding that “2 to 4” is a reasonable range for multipliers on a cross-check, affirmed
13 a 2.13 multiplier. *Laffitte*, 231 Cal. App. 4th at 881-82. The intermediate court opinion was
14 affirmed in full by the California Supreme Court in its new decision guiding lower courts on
15 assessing fees.

16 With respect to Class Counsel’s lodestar, to date, over 244.60 hours have been expended
17 by Class Counsel in this matter. *See* Agnew Decl. ¶ 13, Exhibit A; Lee Decl. ¶ 8, Exhibit A;
18 Rosenthal Decl. ¶ 5, Exhibit A; Marder Decl. ¶ 11, Exhibit A. Moreover, Class Counsel expects
19 to incur six additional hours of attorney time in finalizing this settlement. *See* Agnew Decl. ¶ 13;
20 Rosenthal Decl. ¶ 5. Ms. Agnew and Mr. Rosenthal each request an hourly rate of \$800 per
21 hour. *See* Agnew Decl. ¶ 14; Rosenthal Decl. ¶ 6. Mr. Lee and Mr. Marder each request an
22 hourly rate of \$900 per hour. *See* Lee Decl. ¶ 9; Marder Decl. ¶ 12. The courts are quite liberal in
23 the evidence required to prove an attorney’s hours. Detailed time records are not required. An
24 attorney’s testimony alone may suffice: “Testimony of an attorney as to the number of hours
25 worked on a particular case is sufficient evidence to support an award of attorney fees, even in
26 the absence of detailed time records.” *Martino v. Denevi*, 182 Cal. App. 3d 553, 559 (1986).

27 Reasonable hours include, in addition to time spent during litigation, the time spent
28 before the action is filed, including time spent interviewing the clients, investigating the facts and

1 the law, and preparing the initial pleadings. *New York Gaslight Club, Inc. v. Carey*, 447 U.S. 54,
2 62 (1980). Further, the fee award should include fees incurred to establish and defend the
3 attorneys' fee claim. *Serrano v. Unruh*, 32 Cal. 3d 621, 639 (1982) [*Serrano IV*]. A reasonable
4 hourly rate is the prevailing rate charged by attorneys of similar skill and experience in the
5 relevant community. *PLCM Group, Inc. v. Drexler*, 22 Cal. 4th 1084, 1095 (2000). The court
6 may consider other factors when determining a reasonable hourly rate, *e.g.*, the attorney's skill
7 and experience, the nature of the work performed, the relevant area of expertise and the
8 attorney's customary billing rates. *Flannery v. California Highway Patrol*, 61 Cal. App. 4th 629,
9 632-33 (1998).

10 Here, Class Counsel's skill and experience justify the requested rate. As shown in the
11 supporting declarations, Class Counsel have significant experience in the area of employment
12 and wage and hour class actions. Specifically, Class Counsel's practice focuses on representing
13 employees in employment matters, particularly wage and hour cases. *See* Agnew Decl. ¶¶ 8-12 ;
14 Lee Decl. ¶ 6; Rosenthal Decl. ¶ 3, 4; Marder Decl. ¶¶ 3-10. As such, based on the hours and
15 applicable rate, the total lodestar to be expended by Class Counsel through finalizing this
16 settlement will be approximately \$207,660.

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

25 *Lealao* contains several factors justifying an enhancement based on the percentage-of-
26 the-benefit, namely, no objections by Class Members, commendable conduct by counsel, and
27 significant recoveries by Class Members, all of which were previously detailed above. *Lealao*,
28 82 Cal.App.4th at 51-53. As in *Lealao*, the Class Members were notified of the Settlement and

1 attorneys' fees with no objections. The extreme effort undertaken by counsel, as shown by their
2 hours and the significantly high amount of claims being paid out, shows commendable conduct.

3 It is also critical to note that prompt settlement cannot be used to diminish the fee or the
4 enhancement based on a percentage-of-the-fund. *Lealao*, 82 Cal.App.4th at 52 (the promptness
5 of settlement "cannot be used to justify the refusal to apply a multiplier"). According to *Lealao*,
6 courts placed "an extraordinarily high value" on settlement, and counsel should be rewarded, not
7 punished, for achieving this goal in a timely fashion. *Id.*

8 The multiplier should be enhanced by the contingent nature of counsel's fee recovery.
9 The risks in taking on a class action case are enormous, not the least of which is time and effort.
10 Not only was there significant risk taken upon by Class Counsel, but their ability to obtain the
11 current settlement should be seen as quite commendable.

12 As explained previously, Defendant maintained that there were significant obstacles.
13 Thus, the risk involved in this case was quite significant for the Class Representative and his
14 counsel, and in the face of such risks, the current settlement was still able to be obtained by Class
15 Counsel.

16 Here based upon Class Counsel's lodestar of \$207,660, the requested fees result in a
17 multiplier of 1.766 [$\$366,666.66$ (requested fees) $\div$ $\$207,660$ (lodestar amount)]. This
18 demonstrates that the requested fees are reasonable and fair, particularly based on the factors
19 described above. *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224 (Ct. App. 2001) (noting
20 that courts using the lodestar method to calculate attorney fees awards in class actions typically
21 apply multipliers in the range of 2 to 4); *Boyd v. Bank of Am. Corp.*, 2014 U.S. Dist. LEXIS
22 162880 (C.D. Cal. Nov. 18, 2014) (awarding 33% of the common fund, based on a multiplier of
23 2.58, in a wage and hour class action settlement); *Vandervort v. Balboa Capital Corp.*, 8
24 F.Supp.3d 1200, 1210 (C.D. Cal. 2014) (awarding 33% of the common fund, based on a
25 multiplier of 2.52).

26 As such, the requested fee award is fair and reasonable, and should be awarded in its
27 entirety. Class Counsel risked not only a great deal of time, but also a great deal of expense to
28 ensure the successful litigation of this action on behalf of all Class Members. For such reasons,

Class Counsel's request for attorneys' fees in the amount of \$366,666.66 is fair, reasonable, and adequate.

VII. THE COURT SHOULD APPROVE THE REQUEST FOR REIMBURSEMENT OF COSTS

The request for reimbursement of costs, in the amount of \$13,801.77, is fair and reasonable. Pursuant to the terms of the Settlement Agreement, Named Plaintiff is allowed to seek reimbursement of litigation costs up to a maximum of \$25,000.00. To date, Class Counsel has expended \$13,801.7 in litigation related costs. *See* Agnew Decl. ¶ 15, Exhibit B. The authority for the court to award this is the Parties' Settlement Agreement and Labor Code sections 226, 1194, 2802, and 2698 *et. seq.* As such, this request should be approved.

VIII. THE SETTLEMENT ADMINISTRATOR'S FEES AND COSTS SHOULD BE APPROVED

Pursuant to the terms of the Settlement Agreement, the fees and costs of the Claims Administrator, CPT Group, are to be paid out of the Settlement Fund. The settlement administration costs total \$10,00.00. *See* Admin Decl. ¶ 17, Exhibit B. Thus, settlement administration fees in the amount of \$10,000.00, as agreed to in the Settlement Agreement, should be approved.

IX. NOTICE HAS BEEN PROVIDED TO THE LWDA

On October 12, 2023, Class Counsel uploaded the Court's Order Granting Preliminary Approval to the LWDA's website. *See* Agnew Decl. ¶ 16. The LWDA has not responded or objected to this settlement. On January 25, 2024, Class Counsel uploaded this Motion and Proposed Order to the LWDA's website. *Id.* at ¶ 17.

X. CONCLUSION

For all the foregoing reasons, and on the basis of the authorities cited herein, Named Plaintiff respectfully submits that the standards for final approval have been met, and the terms of the Settlement Agreement are fair, adequate and reasonable. Accordingly, Named Plaintiff respectfully requests that the Court enter an Order in the form proposed and submitted:

1. Granting final approval to the proposed Settlement Agreement;

- 1 2. Approving distribution of the Settlement Fund pursuant to the terms of the
2 Settlement Agreement;
- 3 3. Approving the Class Representative’s request for an Incentive Award with
4 payment pursuant to the terms of the Settlement Agreement;
- 5 4. Approving the Class Representative’s request for an award of the Class Counsel’s
6 fees and litigation costs with payment pursuant to the terms of the Settlement Agreement;
- 7 5. Approving the Class Representative’s request for payment of the settlement
8 administration costs with payment pursuant to the terms of the Settlement Agreement;
- 9 6. Entering judgment as to all Settlement Class Members and Aggrieved Employees
10 in this action; and
- 11 7. Setting a compliance hearing date.

12
13 DATED: January 25, 2024

DIVERSITY LAW GROUP, P.C.
POLARIS LAW GROUP

14
15 By: _____

Larry W. Lee
Kristen M. Agnew
Nicholas Rosenthal
William L. Marder

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