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

KRISTINA REYES, on behalf of herself and
all others similarly situated,

Plaintiff,

vs.

BACKPACK BOYZ LOS ANGELES, LLC;
LOS ANGELES INDUSTRY, INC., and
DOES 1-100, inclusive,

Defendants.

Case No.: 22STCV05435

CLASS and REPRESENTATIVE ACTION

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR FINAL APPROVAL OF
CLASS SETTLEMENT, CLASS
REPRESENTATIVE ENHANCEMENT
PAYMENT, and CLASS COUNSEL
AWARD;**

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION;**

**DECLARATION OF MATTHEW S.
DA VEGA IN SUPPORT OF MOTION;**

**DECLARATION OF MATTHEW H.
FISHER IN SUPPORT OF MOTION;**

**DECLARATION OF TED D.
MECHTENBERG IN SUPPORT OF
MOTION; and**

[PROPOSED] ORDER with COVER SHEET

Assigned For All Purposes to the Honorable
William Highberger (Dept. 10)

Date: August 18, 2023

Time: 10:00 a.m.

Location: Dept. 10 (Hon. William Highberger)

1 **TO THIS HONORABLE COURT, ALL INTERESTED PARTIES, and THEIR**
2 **ATTORNEYS OF RECORD PLEASE TAKE NOTICE** that on August 18, 2023 at 10:00
3 a.m., or as soon as the matter may be heard, in Department 10 (Hon. William Highberger) of the
4 above entitled Court at Los Angeles County Superior Court - Spring Street Courthouse located at
5 312 N Spring St, Los Angeles, CA 90012, Plaintiff Kristina Reyes (“Plaintiff”) pursuant to
6 California Code of Civil Procedure §382 and California Rules of Court, rule 3.769, *et seq.*, will
7 and does move this Court for an Order granting final approval of the proposed class action
8 settlement on the terms and conditions that this Court has previously approved (“The Motion”).
9 The Motion is *unopposed*, and is made pursuant to the California Code of Civil Procedure §382
10 and California Rules of Court, rule 3.769, *et seq.*, and the Order Granting Preliminary Approval
11 of Class Settlement (“Preliminary Approval Order”). Specifically, Plaintiff moves the Court for
12 an Order:

- 13 1. Approving the Class Settlement (**\$353,500** Gross Settlement Fund);
- 14 2. Certifying the Class for settlement purposes only;
- 15 3. Appointing Plaintiff as “Class Representative” for settlement purposes;
- 16 4. Appointing Plaintiff’s Counsel Da Vega Fisher Mechtenberg LLP as “Class
17 Counsel” for settlement purposes;
- 18 5. Approving a “Class Representative Enhancement Award” to the Class
19 Representative for their service to the Class and taking the risks of bringing
20 this Action as a class action, which has resulted in substantial benefits to the
21 Class, in an amount up to **\$10,000**;
- 22 6. Approving a “Class Counsel Award” of reasonable attorneys’ fees of
23 **\$116,655** to Class Counsel plus reimbursement of **\$25,000 for litigation**
24 **costs** incurred in pursuing the claims;
- 25 7. Approving the “PAGA Penalty Amount” payment for civil penalties under
26 the Private Attorneys General Act of 2004 (“PAGA”) of **\$35,000** (75% of
27 this amount [**\$26,250**] paid to the California Labor and Workforce
28

1 Development Agency ["LWDA Payment"] and 25% to this amount [\$8,750]
2 paid back to the PAGA group ["PAGA Group Amount"]).

- 3 8. Approving the "Settlement Administration Costs" of \$10,000 paid to the
4 CPT Group, Inc. ("CPT") for settlement administration costs;
5 9. Directing the Parties to implement the terms of the Settlement; and
6 10. Entering a Judgment approving the Settlement and retaining jurisdiction
7 over the parties to enforce the terms of the judgment.

8 This unopposed Motion will be based upon: this Notice; the attached Memorandum of
9 Points and Authorities; the concurrently filed Declarations of Class Counsel, the Class
10 Representative, and the Settlement Administrator Representative; and the records and files in this
11 action, and any other further evidence or argument that the Court may properly receive at or
12 before the hearing. Pursuant to Labor Code § 2699(1)(2), and the instructions provided by the
13 Department of Industrial Relations on its web site, a PDF copy of this motion and the supporting
14 papers will be sent/uploaded electronically to LWDA's website at the time it is filed and served. A
15 copy of the proof of that LWDA submission is attached to Declaration of Matthew S. Da Vega.

16
17 Dated: July 26, 2023

DAVEGA | FISHER | MECHTENBERG LLP

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19 

20 By: _____

Matthew S. Da Vega
Attorneys for Plaintiff

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION and SUMMARY OF SETTLEMENT TERMS**

3 On behalf of herself and similarly situated individuals, Plaintiff Kristina Reyes (“Plaintiff”
4 or “Class Representative”) respectfully moves for final settlement approval of the **\$353,500**
5 (Three Hundred and Fifty Three Thousand and Five Hundred dollars) maximum settlement
6 payment for the class claims asserted against Defendant Backpack Boyz Los Angeles LLC; Los
7 Angeles Industry, Inc., (“Defendant” or “Backpack Boyz”)(or together with the Plaintiff, the
8 “Parties”).

9 Plaintiff and Defendant vigorously disagree on the merits of the case. Class certification,
10 liability and damages are all sharply disputed. Nevertheless, after litigation, investigations,
11 numerous interviews, exchange of extensive information, data, and documents, and an all day
12 mediation the Parties reached an informed agreement to settle the class claims pursuant to the
13 Amended Joint Stipulation of Class Action Settlement and Release (“*Amended Settlement*
14 *Agreement*”).

15 Plaintiff filed their Unopposed Motion for Preliminary Approval of Class Action
16 Settlement. A copy of the Settlement Agreement was submitted to the Court and attached to the
17 Declaration of Matthew S. Da Vega in support of that motion (and later *Amended Settlement* per
18 the Court’s request addressing issues including taxation of then settlement proceeds [now taxed
19 33% wages, 33% interest, and 34% penalties instead of as 1099 misc. income] and any residual
20 left over monies post distribution [now going to California State Controller’s Unclaimed Property
21 Division instead of to a *Cy pres* recipient]).

22 On April 26, 2023, the Court held a hearing on the motion for Preliminary Approval. The
23 Court preliminarily approved the settlement.

24 On May 16, 2023, the Court issued its Order Granting Preliminary Approval of Class
25 Settlement (“Preliminary Approval Order”). The Court’s Preliminary Approval Order states, in
26 part:

27 “The Court determines there is sufficient evidence to suggest that the Agreement
28 (including the Class Representative Enhancement Payment, Class Counsel's fees
and costs, the Settlement Administration Costs, and the allocation of payments to

1 Settlement Class Members) falls within the range of possible approval that could
ultimately be given final approval by this Court as fair, reasonable, and adequate
2 ...

3 “The Settlement Agreement and the Notice of Class Action Settlement are
preliminarily approved. The Court further preliminarily approves the formulas
4 provided in the Settlement for calculating Individual Settlement Payments to the
Class Members using a shift-based calculation methodology.”

5 “The Settlement Class is provisionally certified for settlement purposes only as a
class of: “All current and former non-exempt employees who worked for
6 Defendants in the State of California from February 14, 2018, through the date the
Court grants preliminary approval of the Settlement.”

7
8 “The “Class Period” refers to the period of time from February 14, 2018 through
the date the Court grants preliminary approval of the Settlement.”

9
10 In that Order the Court also set a date for the Final Approval/Fairness hearing for August
11 18, 2023 at 10 a.m. in Dept. 10 (Hon. William Highberger). (Declaration of Matthew S. Da Vega in
12 Support of Plaintiff’s Unopposed Motion for Final Approval [“Da Vega Decl.”], **Exhibit 1 – May**
13 **16, 2023 Preliminary Approval of Class and Representative Action Settlement and**
14 **Provisional Class Certification Order (“Preliminary Approval Order”).**

15 On June 15, 2023 in accordance with the terms of the *Amended* Settlement Agreement
16 (filed with Court on February 15, 2023 and attached as Exhibit D: *Amended* Settlement
17 Agreement to Supplement Declaration of Matthew S. Da Vega ISO of Motion for Preliminary
18 Approval of Class Action Settlement) and Preliminary Approval Order, the Class Settlement
19 Administrator CPT, mailed the Court-approved “Notice of Class Action and Proposed Settlement”
20 (aka “Notice Packets”) via first class mail to all of the approximate 103 Class Members after
21 receiving the class member data and running a change of address search. Da Vega Decl., **Exhibit**
22 **2 – Declaration of Jennifer Forst (On Behalf of CPT Group, Inc.) with Respect to**
Settlement Administration and Class Notice [“CPT Decl.”], ¶¶ 1 - 19.)

23 On July 31, 2023 the “Opt-Out”, dispute, and objection deadline will have passed.
24 (Exhibit 2 – CPT Decl., ¶ 10).

25 As of July 24, 2023 the Claims Administrator reported (“CPT Decl.”):

- 26 • 1 (one) Notice Packets remains undeliverable despite skip trace efforts;
- 27 • 0 (zero) Requests for Exclusion (“Opt-Outs”);
- 28 • 0 (zero) Disputes; and

- 0 (zero) Objections.

(Exhibit 2 – CPT Decl., ¶ 7 - 12).

Therefore, there are a total of 103 participating settlement Class Members out of 103 putative Class Members, representing a 100% participation rate. The average individual pre-tax gross settlement payment, including PAGA, to each Settlement Class Members is estimated at \$1,607.72. The highest individual settlement payment to a Settlement Class Member is estimated at \$7,729.32 and the lowest is \$100.00 (Exhibit 2 – CPT Decl., ¶16-17.)

As of the date of the filing of this motion, and pursuant to the terms of the *Amended* Settlement Agreement and Preliminary Approval Order, the Class will receive an **Estimated Net Settlement Fund of \$165,595** (One Hundred and Sixty Five Thousand and Five Hundred and Ninety Five dollars) to pay Settlement Class Members. That amount was determined by subtracting Class Counsel’s attorneys’ fees [-\$116,655], Class Counsel’s litigation costs [-\$25,000], the Class Representative Incentive Award [-\$10,000], the PAGA Penalties to the LWDA [-\$26,250], and the Settlement Administrator costs [-\$10,000] from the Gross Settlement Amount [\$353,500] to determine settlement fund payment to Class Members. (Exhibit 2 – CPT Decl., ¶16.)

This an excellent result for Class Members, especially given the potential challenges entailed in successfully litigating this case. Courts routinely approve wage and hour settlements of comparable cases resulting in far less recovery to individual class members. In Class Counsel’s opinion, this is a good result in light of the disputed material factual and legal issues involved, the intrinsic risks of further litigation without any assurance of a better outcome for Class Members, and the substantial benefits available to Class Members under the Settlement. The Settlement promotes judicial economy and eliminates the risk that Class Members could receive nothing after protracted litigation.

The Settlement’s key terms are summarized as follows:

1. The Settlement Class is defined as:

“All current and former non-exempt employees who worked for Defendants in the State of California from February 14, 2018, through the date the Court grants preliminary approval of the Settlement, including but not limited to individuals holding the job titles of Budtenders, Cashiers,

Inventory Managers, Joint Rollers, Managers, Floor Lead, Floater, and Receptionist.” (*Amended Settlement Agreement* §1.1)

“Class Period” refers to the period of time from February 14, 2018 through the date the Court grants preliminary approval of the Settlement. As a practical matter, there were no shifts worked by any Class Member prior to March 10, 2021.” (*Amended Settlement Agreement* §1.7)

“Settlement Class” is defined to mean those Class Members who have not “opted out” of the Class Settlement by submitting a timely and valid Request for Exclusion. (*Amended Settlement Agreement* §1.35).

2. The Gross Settlement Amount:

The Settlement provides for Defendants to make a maximum payment of **\$353,500** in settlement of all class and PAGA claims in the case, including the Class Counsel Award, all Settlement Administration Costs, the PAGA Penalty Amount, all settlement payments to Settlement Class Members, and the Class Representative Enhancement Payment. (the “Gross Settlement Amount”) (*Amended Settlement Agreement* §§1.16.; 2.1). This amount was increased from the original \$350,000 due to an increase of number of class members from 93 to 103 per the “Escalator” clause in the Settlement Agreement (*Amended Settlement Agreement* §6.2).

3. The Estimated Net Settlement Fund to Class Members:

After deducting the Class Counsel’s Award of attorney fees (-\$116,655) and litigation costs (-\$25,000), Settlement Administration costs (-\$10,000), PAGA penalties paid to the LWDA (-\$26,250), and a Class Representative Enhancement Award (-\$10,000) from the total of the Gross Settlement Amount (\$353,500), the Participating Settlement Class Members shall receive the approximate Net Settlement remainder of **\$165,595**) (“Estimated Net Settlement Fund”) based on a pro rata allocation formula. (*Amended Settlement Agreement* §§ 1.3, 1.13, 1.16, 1.20, 1.21, 1.26, 1.27, 2.1, 2.2, 2.3, 2.5, 6.2).

4. Individual Settlement Amount Calculations:

The “Individual Settlement Amount Calculations” payment to the Class Members will be based on the approximate number of Shifts each Settlement Class Member worked during the Class Period. The Settlement Administrator will determine the total number of Shifts worked by all Class Members during the Class Period and then divide that Net Settlement Fund by the number of Total Shifts to derive the “Shift Point Value”. Then for each Settlement Class Member the Settlement Administrator shall multiply the number of their Shifts worked during the Class Period by the Shift Point Value to determine each Settlement Class Members Individual Settlement Amount. The Individual Settlement Amount(s) will be allocated for tax purposes as follows: Thirty-Three percent (33%) will be designated as wages; Thirty-Three percent (33%) will be designated as interest, and; Thirty-four percent (34%) will be designated as penalties. Defendant will bear the cost of all employer payroll taxes (which shall not be paid from the Individual Settlement Amount). (*Amended Settlement Agreement* § 7.1).

5. Notice Period and Response/Opt-Out Deadline:

Class Members had **45 calendar days** following Class Notice (mailed on June 15, 2023) on and until July 31, 2023, to mail in a written request to

be excluded (“Opt-Out Request”) or object to the proposed settlement.
(*Amended Settlement Agreement* §§1.34)

6. Release of Claims For Settling Class Members:

The Settlement Agreement provides for a release of claims for Class Members who did not timely submit an “Opt-Out” Request. The released claims include:

“The “Released Claims” with respect to the “Released Parties” (defined below) means any manner of action, cause of action, claim, demand, right, suit, obligation, debt, contract, agreement, promise, liability, or remedy of any nature whatsoever (including without limitation any damages, charges, penalties, interest, losses, costs, expenses, and attorneys' fees), whether in law or in equity, under contract, tort or any other subject area, or under any statute, rule, regulation, order, or law, whether federal, state, or local, on any grounds whatsoever, including without limitation any and all alleged violations of the California Labor Code, the California Code of Regulations, the Industrial Welfare Commission Wage Orders, the California Business & Professions Code, and the Fair Labor Standards Act, that were pled or that could have been pled, and claims sought or that could have been sought, based on or arising out of the factual allegations in the Complaint, whether foreseen or unforeseen, fixed or contingent.
(*Amended Settlement Agreement* §1.30).

The “Released Parties” means “Backpack Boyz and any of their current and former directors, officers, members, administrators, agents, insurers, beneficiaries, trustees, employee benefit plans, representatives, partners, accountants, servants, employees, attorneys, parents, subsidiaries, affiliates, divisions, branches, units, shareholders, investors, contractors, successors, joint venturers, predecessors, related entities, and assigns, and all other individuals and entities acting by, through, under and/or on behalf of Backpack Boyz.” (*Amended Settlement Agreement* §1.31).

The Settlement Agreement also provides Defendants with a general release from named Plaintiff, including a Civil Code § 1542 waiver. (*Amended Settlement Agreement* §2.6).

7. PAGA Payments

\$35,000 of the Gross Settlement Fund is allocated to be paid for the resolution of potential PAGA claims (the “PAGA Penalty Amount”). (*Amended Settlement Agreement* §1.27). Pursuant to PAGA, 75% of that amount, **\$26,250**, is to be paid to the California Labor and Workforce Development Agency (the “LWDA Payment”) and 25% of that amount, **\$8,750**, to the PAGA Group (the “PAGA Group Amount”). (*Amended Settlement Agreement* §§1.20, 1.25, 1.26, 2.5).

8. Settlement Administrator Payment

As part of the Final Approval/Fairness Hearing, Class Counsel has applied to the Court for payment from the Gross Settlement Fund to compensate the Settlement Administrator – CPT Group, Inc. - for fees and costs associated with the administration of the settlement for **\$10,000** (the “Settlement Administration Costs”). (*Amended Settlement Agreement* §§ 1.2, 1.3)

9. Class Representative Incentive Award

Pursuant to the terms of the Settlement, Class Counsel will seek an Enhancement Payment of **\$10,000** for the Class Representative. (*Amended Settlement Agreement* §§1.8, 2.3).

10. Class Counsel Award (Attorney Fees and Costs)

Plaintiff may apply to the Court for an award of up to **\$116,655 in attorney fees plus** reimbursement of up to **\$25,000** in litigation costs (*Amended Settlement Agreement* §§ 1.5, 2.2; 6.2).

The final approval of the Settlement is appropriate as all requirements for a class action have been satisfied and the terms of the Settlement are fair and reasonable.

II. FACTUAL BACKGROUND

Plaintiff and Class Members are current and former non-exempt Cannabis Dispensary Employees for the Defendants in Los Angeles, Long Beach, and La Mesa, California. Plaintiff was employed as a Budtender (a derivative of the term “bartender”), along with Cashiers, Inventory Managers, Joint Rollers, Managers, Floor Leads, Floaters, Receptionists and other non-exempt employees who work/worked for Defendants at its various locations in California. Plaintiff alleges Defendants intentionally misclassified these non-exempt employees as “Independent Contractors”, when in fact Plaintiff and Class Members are/were Defendants’ employees. Plaintiff further alleges that Defendants failed to pay Plaintiff and Class Members for all wages earned including for overtime hours worked at the appropriate overtime rate (Defendants paid Class Members in cash and paid them only a flat regular hourly rate for overtime hours worked and not the correct overtime rates of 1.5x or 2x), failed to pay minimum wages, failed to pay for “on-duty” meal periods or “on-duty” rest breaks, failed to keep and provide accurate and timely records of wages earned and other legally mandated records (Defendants paid in cash and did not provide wage statements), failed to reimburse Plaintiff and Class Members for necessary business expenses (i.e. use of personal cell phones for Defendants’ business), and failed to pay Plaintiff and Class Members whose employment has terminated (voluntarily resigned and/or were terminated) a final payment of his or her wages in a prompt and timely manner in conformity with California Labor Codes. Defendant denies Plaintiff’s allegations and maintains that with respect to Plaintiff and the Class, Defendant acted in accordance with applicable law.

1 **III. PROCEDURAL HISTORY**

2 **February 14, 2022 (Original Complaint Filed and PAGA Notice Sent):** Plaintiff sent
3 and submitted her PAGA notice (LWDA-CM-868131-22) and also filed her class action suit
4 under CCP §382 to address Defendants' violations of California wage and hour laws. Plaintiff's
5 complaint alleged 8 causes of action, including: 1. Failure to Pay Overtime Wages, 2. Failure to
6 Pay Minimum Wage, 3. Failure to Provide Meal Breaks, 4. Failure to Provide Rest Breaks,
7 5. Failure to Furnish Timely/Accurate Wage Statements, 6. Failure to Pay All Wages Due at
8 Discharge in Timely Manner, 7. Failure to Reimburse Necessary Business Expenses,
9 8. Unlawful Business Practices. Plaintiff is a member of the proposed class and representative of
10 other non-exempt Cannabis Dispensary employees.

11 **March 24, 2022 (Parties Discuss Potential Class Mediation):** Plaintiff's counsel was
12 contacted by Defense counsel (Tal Yeyni of Lewitt Hackman in Encino, California). The parties
13 discussed potential resolution of the class wide claims and started discussing potential mediators.
14 The parties eventually agreed upon using mediator Hon. Robert L. Dondero (Ret.) and schedule
15 the mediation for July 25, 2022.

16 **May 24, 2022 (First Amended Complaint Filed):** Plaintiff filed and served her First
17 Amended Complaint ("FAC") with the addition of the 9th cause of action for violations of the
18 PAGA. This includes a claim for penalties under PAGA for misclassification of employees.

19 **July 25, 2022 (Date of Mediation Proceedings):** The Parties, after exchanging
20 data/evidence, participated in an all day mediation with JAMS Mediator Hon. Robert L. Dondero.
21 At the mediation the Parties reached a tentative settlement of the class and PAGA claims pending
22 this Court's approval. The Parties executed an confidential MOU regarding settlement. The
23 Parties then executed the long form settlement in the form of a Joint Stipulation of Class Action
24 Settlement and Release ("Settlement Agreement").

25 **April 26, 2023 (Hearing on Motion for Preliminary Approval):** The Plaintiff filed her
26 Unopposed Motion for Preliminary Approval of Class Action and PAGA Settlement. A copy of
27 the Settlement Agreement was attached. The Court, after a number of continuances requesting
28 minor changes to terms of settlement related to taxes and residual monies (filed as *Amended*

Settlement Agreement), held the hearing on the motion for Preliminary Approval on April 26, 2023. The Court granted the motion.

May 16, 2023 (Court Issues Order Preliminary Approving Class Settlement): The Court issued its Order Granting Preliminary Approval of Class Settlement (“Preliminary Approval Order”). In the Preliminary Approval Order the Court set the hearing for Final Approval Hearing on August 18, 2023 at 10 a.m.

June 15, 2023 (Notice of Class Action and PAGA Settlement Mailed): Notice Packets to Class Members were mailed by the Settlement Administrator CPT.

July 31, 2023 (Class Action Notice Period/Response Deadline Ended): The Class Notice/Response Deadline ended.

August 18, 2023 (Hearing on Final Approval/Fairness of Class Settlement): The hearing on Final Approval/Fairness of the Class Action and PAGA settlement is to be held.

IV. THE SETTLEMENT SHOULD RECEIVE FINAL APPROVAL

Pursuant to the Settlement, the Settlement Administrator CPT has engaged in a comprehensive notification process which started on June 15, 2023 with mailing of notice to 103 putative Class Members via First Class mail. The notice period in which to submit a dispute or “opt out” of the settlement concluded on July 31, 2023. The terms of the Settlement have been well received by the Class Member as 0 (zero) Class Members have submitted an “opt-out” (100 % participation rate), 0 (zero) Class Members have objected, and 0 (zero) Class Members have submitted a dispute. (**Exhibit 2**– CPT Decl., ¶¶ 4-14)

“The trial court’s discretion is broad” regarding approval of a class action settlement, and “is to be exercised though the application of several well-recognized factors.” *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 407. These factors include, but are not limited to, the strength of Plaintiff’s case; the risk, expense, complexity and likely duration of further litigation; the risk of maintaining class action status through trial; the amount offered in settlement; the extent of discovery completed and the stage of the proceedings; the experience and views of counsel; and the reaction of the class members to the proposed settlement. *Id.* (omitting quotations and citations). “The most important factor is the strength of

1 the case for plaintiffs on the merits, balanced against the amount offered in settlement.” *Id.* at
2 407-408 (quoting *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130). An
3 analysis of the pertinent factors to the Parties’ Settlement demonstrates that final approval is
4 appropriate.

5 **A. The Parties Disputed the Merits of Plaintiff’s Case and Likelihood of Class**
6 **Certification**

7 The Settlement is the result of the exchange of significant data and information and
8 vigorously investigated and debated claims. Plaintiff’s Counsel began their investigation into the
9 claims well before the case was filed. Plaintiff’s Counsel interviewed and obtained informal
10 discovery from the Plaintiff and various current and former Class Members regarding their
11 experiences working for Defendant. Likewise, Defendant’s counsel conducted their own
12 investigation of Plaintiff’s allegations after the litigation was initiated. These investigations were
13 crucial to the Parties’ dispute over both the merits of the case, as well as with respect to the
14 appropriate scope of the Class.

15 After the Action was initiated, Plaintiff’s counsel and Defendant’s counsel engaged in
16 litigation, discovery, discussions and negotiations before reaching this Settlement. Early on they
17 began having regular discussions regarding the claims, discovery, production of data, the scope of
18 the Class, and the possibility of mediation and settlement. The Parties each feel strongly
19 regarding their respective positions as to the claims asserted, both at the certification stage and on
20 the merits. In this case, Plaintiff alleges that class certification is appropriate because Defendant’s
21 employees were misclassified as independent contractors and subjected to consistent wage and
22 hour policies regarding the payment of overtime wages, meal/rest periods, and wage statements.
23 Plaintiff alleges Defendant misclassified all Class Members as independent contractors and Class
24 Members worked overtime hours but were not paid the appropriate overtime rates throughout the
25 Class Period, instead of the correct 1.5x or 2x their regular flat rates. Defendant asserts that class
26 certification would not be appropriate because Plaintiff’s proposed Class Members were not
27 misclassified.

28 Throughout the litigation, the Parties also have vigorously disputed the merits of Plaintiff’s

1 claims. Plaintiff alleges that all Class Members throughout the Class Period were subject to the
2 same misclassification and wage policy and practices promulgated by Defendants. Plaintiff
3 alleges Defendant misclassified Class Members as independent contractors when they were in fact
4 not independent contractors and worked overtime hours that was not paid for at the appropriate
5 overtime rates, denied duty-free meal/rest periods, and not reimbursed for necessary business
6 expenses, etc. Defendants have generally denied Plaintiff's allegations, and further asserts that it
7 has no liability for any of Plaintiff's or the Class Members' alleged claims on the basis that it
8 properly classified Class Members as independent contractors. Defendant further contends that, if
9 this matter were to be further litigated, it would have strong defenses on the merits.

10 As the Parties clearly disagree regarding the strength of Plaintiff's claims and likelihood
11 of class certification, the Settlement represents a fair compromise assuring significant recovery to
12 the Class Members that they would not otherwise be guaranteed.

13 **B. The Risk, Expense, And Complexity Of Continuing To Litigate The Action**

14 As demonstrated above, the Parties are sharply divided on the factual and legal issues
15 pertaining to the underlying claims, as well as whether class certification can be obtained in this
16 case. Defendant is represented by well-staffed counsel who are experienced in wage and hour
17 law and class actions, as are Plaintiff's counsel. The Parties contend that continued litigation
18 would be protracted and expensive, with no assurance of a better outcome for the Class.

19 Significantly, while extensive informal discovery has occurred to ensure the Settlement is
20 fair and reasonable to the Class, should the Settlement not be finally approved, the Parties will
21 need to start from scratch in terms of engaging in formal discovery on the certification issues, as
22 well as the merits in this matter. The Settlement reached by the Parties through extensive arms-
23 length negotiations eliminates the risk that the Class Members will receive nothing, eliminates the
24 need for protracted and expensive litigation that financially jeopardizes any recovery, and
25 eliminates the risk of lengthy and uncertain appeals. The elimination of those many uncertainties
26 is reflected in the Settlement which provides prompt and substantial relief to the Class Members.
27 These factors weigh heavily in favor of approving the Settlement.

28 **C. The Settlement Amount Offered To Class Members Is Fair And Reasonable**

The Settlement provides for Defendant to make a payment of **\$353,500** in settlement of all

1 Class claims in the case, including attorney's fees and costs, settlement administration fees,
2 PAGA penalties, and a class representative enhancement award. Class Members will share in a
3 Estimated Net Settlement Fund of approximately **\$165,595** after subtracting attorney fees
4 [-\$116,655] and attorney costs [-\$25,000], the class representative enhancement award [-
5 \$10,000], LWDA Payment [-\$26,250], and settlement administration costs [-\$10,000]. (Exhibit 2
6 – CPT Decl., ¶16.) This is an excellent recovery for the class, which at the time of filing includes
7 103 (out of 103) Settlement Class Members. The average Class Member will receive a pre-tax
8 award of approximately \$1,607.72. (Exhibit 2 – CPT Decl., ¶ 17.) The amount of the Settlement
9 is reasonable given the difficulty of the claims, the degree of risk and uncertainty involved in
10 further litigation, the amount of time that would pass before Plaintiff and the Class Members
11 would see the fruits of any class verdict in their favor, and the lack of ability of Defendant to pay.

12 The Individual Settlement Amount Calculations are based on the approximate number of
13 Shifts each Settlement Class Member worked during the Class Period. The Settlement
14 Administrator will determine the total number of Shifts worked by all Class Members during the
15 Class Period and then divide the Net Settlement Fund by the number of Total Shifts to derive the
16 “Shift Point Value”. Then for each Settlement Class Member the Settlement Administrator shall
17 multiply the number of their Shifts worked during the Class Period by the Shift Point Value to
18 determine each Settlement Class Members Individual Settlement Amount. The Settlement Class
19 Members Individual Settlement Amounts shall be reported as follows: 33% as wages, 33% as
20 interest, and 34% as penalties. (*Amended Settlement Agreement* § 7.1).

21 As stated in the Class Notices, the Settlement Class Members need not take any further
22 action to receive a Settlement payment other than cash the settlement checks they receive in the
23 mail. 116 (*Amended Settlement Agreement* §7.4). Since any and all uncashed settlement checks
24 will be distributed to the California State Controller's Unclaimed Property Division, this
25 Settlement and the associated Final Approval Order and Judgment will not create an unpaid
26 residue, and therefore no distribution of such shall be required.

27 **D. The *Amended Settlement Agreement* Is Fair And Reasonable**

28 The law favors settlements, especially of class actions. *See Potter v. Pacific Coast Lumber*
Co. (1951) 37 Cal. 2d 592, 602; *Van Bronkhorst v. Safeco Corp.* (9th Cir. 1976) 529 F.2d 943,

1 950. To ensure there is no “fraud, collusion or unfairness to the class,” class claims can only be
2 settled through Court review and approval. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794,
3 1801. The trial court is required to determine whether the “settlement is fair, adequate and
4 reasonable,” and has “broad discretion” in making this assessment. *Id.*

5 Following notice to the Class, the Court can now make a final determination regarding the
6 fairness of the Settlement. In making this evaluation, courts consider and balance a number of
7 factors, as described above, including: [T]he strength of plaintiffs’ case, the risk, expense,
8 complexity and likely duration of further litigation, the risk of maintaining class action status
9 through trial, the amount offered in settlement, the extent of discovery completed and the stage of
10 the proceedings, the experience and views of counsel, the presence of a governmental participant,
11 and the reaction of the class members to the proposed settlement. *Wershba v. Apple Computer,*
12 *Inc.* (2001) 91 Cal.App.4th 224, 244–45 (quoting *Dunk v. Ford Motor Co.*, *supra*, 48 Cal.App.4th
13 at 1801).

14 A presumption of fairness exists when: (1) the parties reached a settlement through arm’s-
15 length bargaining; (2) the parties conducted sufficient investigation and discovery to allow
16 counsel and the Court to act intelligently; (3) counsel are experienced in similar litigation; and,
17 (4) the percentage of objectors is small. *Dunk, supra*, 48 Cal.App.4th at 1802. In this case, both
18 Plaintiff and Defendant recognized that it was in their mutual interest to explore early resolution.
19 Defendant agrees, through an informal discovery process, to produce a significant amount of data
20 to enable Plaintiff to fully and fairly evaluate both liability and damages. Indeed, prior to and
21 during the mediation, Defendant produced voluminous data, which Plaintiff analyzed through
22 dynamic spreadsheet calculations via Plaintiff’s experts. Those calculations were provided in
23 Plaintiff’s motion for preliminary approval and declarations in support thereof.

24 The Parties therefore had more than enough information to allow for a sufficient analysis
25 of the likelihood of certification (and decertification), liability, and damages. Prior to attending
26 mediation, the Parties were aware of the strengths and weaknesses of their respective positions,
27 and they addressed their respective positions at the lengthy mediation session. It was only after
28 the exchange of information and multiple rounds of arm’s-length demands and offers facilitated
by the mediator that the parties finally reached their proposed Settlement. The amount is, of

1 course, a compromise figure, and considers risks related to liability, possible damage scenarios,
2 and all defenses asserted by Defendants.

3 Should a Class Member not desire to participate in the Settlement, for whatever reason,
4 the Parties provided for an “opt-out” procedure. This procedure allowed any Class Members who
5 believed they had claims worth more than what the Settlement provides with an opportunity to
6 pursue their individual claims. Moreover, in the event that a Class Member disagreed with the
7 Settlement for any reason whatsoever, the Parties provided for an objection procedure. However,
8 to date 0 (zero) Class Members have “opted out”, 0 (zero) Class Members have disputed their
9 shifts/individual payment amounts, and 0 (zero) Class Members have objected to final settlement
10 approval. At all times during this litigation, the Parties were represented by competent and
11 experienced counsel with decades of class action experience, who vigorously prosecuted their
12 respective positions while seeking a cost-effective resolution to this Action. Counsel is confident
13 that the Settlement is in the best interest of the Plaintiff, and the Class, as it is fair, reasonable,
14 and provides substantial relief which the Class would not be guaranteed, for numerous reasons,
15 should litigation proceed.

16 **V. THE CLASS REPRESENTATIVE ENHANCEMENT PAYMENT IS**
17 **REASONABLE**

18 Pursuant to the terms of the Settlement, Class Counsel now seeks an Enhancement
19 Payment of **\$10,000 for the Class Representative.** (*Amended Settlement Agreement* §§1.8, 2.3).
20 Courts have routinely granted such enhancements. *Staton v. Boeing Co.*, 327 F.3d 938, 977 (9th
21 Cir. 2003) (“[N]amed Plaintiffs . . . are eligible for reasonable incentive payments.”).

22 When considering whether to make an incentive award, courts consider the following
23 factors: (1) the risk to the class representative in commencing suit, both financial and otherwise;
24 (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount
25 of time and effort spent by the class representative; (4) the duration of the litigation; and (5) the
26 personal benefit, or lack thereof, received by the class representative as a result of the litigation.
27 *Van Vranken v. Atl. Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995) (quotations and
28 citation omitted).

The typical enhancement award ranges from approximately \$5,000.00 to \$40,000.00,

1 although some awards are higher, and commonly more than one class representative receives
2 awards in the above range. *Mirkarimi v. Nev. Property 1, LLC*, No. 12cv2160 BTM (DHB), 2016
3 WL 795878, at *6 (S.D. Cal. Feb. 29, 2016) (finding a \$30,000.00 enhancement award is proper);
4 *Chu v. Wells Fargo Inv., LLC*, Nos. C 05-4526 MHP, C 06-7924 MHP, 2011 WL 672645, at *5
5 (N.D. Cal. Feb. 16, 2011) (awarding \$10,000.00 to two named plaintiffs, and \$4,000.00 to three
6 named plaintiffs, and indicating that enhancement awards have ranged from \$5,000.00 to
7 \$50,000.00); *see also Williams v. Centerplate, Inc.*, No 11-CV-2159 H-KSC, 12-cv-0008-H-KSC,
8 2013 WL 4525428, at * (S.D. Cal. Aug. 26, 2013) (finding \$5,000.00 incentive awards to three
9 named plaintiffs, representing 2.3% of the common fund, reasonable).

10 Here, the requested Class Representative Enhancement Payment of \$10,000 is reasonable
11 and justified based on the significant risk, difficulties, time and effort the Class Representative
12 incurred in bringing this case on behalf of the Class, as well as the substantial benefits the resulting
13 Settlement provides the Class. The requested award is at the bottom of the reasonable range, and
14 is justified because of the Class Representative's involvement. The Class Representative has made
15 exceptional efforts to provide information, witnesses, and evidence to Plaintiff's Counsel to
16 achieve the excellent result described herein. The proposed Class Representative Enhancement
17 Payment of \$10,000 represents only 0.028 % of the \$353,500 gross settlement payment (\$10,000
18 divided by \$353,500) and will not significantly reduce the awards of the Class Members.

19 Plaintiff is a single Latina women working in the cannabis industry. She was the driving
20 force behind this case. She initiated the respective claims, arranged for Plaintiff's Counsel to
21 obtain evidence through production of her own employment files, interviewed former co-workers,
22 reviewed the pleadings/briefs, had numerous calls and meetings with counsel, attended a full day
23 mediation in person, and took personal and financial risk in coming forward (*see, e.g., Earley v.*
24 *Sup. Ct.*, 79 Cal. App. 4th 1420, 1433 (2000) (representative risk an adverse award of costs).
25 Plaintiff knows little about the legal system but provided and obtained additional information in
26 support of her legal claims. Plaintiff and witnesses expressed fear that by participating in a class
27 action lawsuit they might risk their current jobs and/or future opportunities. Plaintiff however
28 stepped up and worked diligently in support of the case. Plaintiff had numerous meetings and

1 telephone conversations with Class Counsel to aid in the initial investigation, factual development,
2 mediation, and resolution of this case. She also reached out to and communicated with other
3 former/current Class Members about their work, and encouraged by Plaintiff, these other Class
4 Members to contact Class Counsel to provide information about their time at Defendants. In sum,
5 the Settlement could never have been achieved without her service to the greater good on behalf of
6 the Class has resulted in recovery for these workers. (See Da Vega Decl., **Exhibit 3 - Declaration**
7 **of Kristina Reyes ISO Motion for Final Approval of Class Settlement**). The Class
8 Representative also risked potential judgments against herself if these matters were unsuccessful
9 as a losing party is liable for the prevailing party's costs. *Earley v. Sup. Ct.* (2000) 79 Cal.App.4th
10 1420, 1431-33. Additionally, Plaintiff has protected the interests of Class Members during the
11 pending of this matter, and will continue to do so.

12 **VI. THE PROPOSED ATTORNEYS' FEES AND COSTS ARE REASONABLE**

13 Under the terms of the Amended Settlement Agreement, Class Counsel now moves for a
14 Class Counsel Award of reasonable attorney's fees in the amount of \$116,655 (33% of the Gross
15 Settlement Amount of \$353,500) approved per Court's Preliminary Approval Order and *Amended*
16 *Settlement Agreement*. (*Amended Settlement Agreement* § 1.5, 2.2, 6.2; and Preliminary
17 Approval Order). Class Counsel also seeks reimbursement of reasonable costs incurred in the
18 amount of \$25,000 (actual costs exceed \$25,000). (Da Vega Decl., ¶14; Amended Settlement
19 Agreement § 1.5, 2.2). These amount falls well within the historical range of attorneys' fee
20 awards, especially as Class Counsel's fees constitute one-third (1/3) of the total settlement value.
21 The requested fee represents fair compensation for undertaking complex, risky, expensive, and
22 time-consuming litigation on a contingent fee basis, especially in light of the substantial benefits
23 achieved by Class Counsel for the Class Members. Plaintiff's Counsel diligently litigated and
24 investigated this case. Class Counsel has attached a detailed declaration justifying the award of
25 fees and costs. (see Da Vega Decl., ¶¶ 1- 22).

26 It has long been recognized that "a litigant or a lawyer who recovers a common fund for
27 the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee
28 from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). The purpose of

1 this doctrine is to avoid unjust enrichment and to spread litigation costs proportionately among all
2 the beneficiaries. *Id.* This common fund doctrine is firmly rooted in American case law. *See, e.g.,*
3 *Trustees v. Greenough*, 105 U.S. 527 (1882); *Central R. & Banking Co. v. Pettus*, 113 U.S. 116
4 (1885); *Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984).

5 California courts have recognized that an appropriate method for awarding attorney's fees
6 in class action cases like this is to award a percentage of the "common fund" created as a result of
7 the settlement. *City & Cnty. of San Francisco v. Sweet* ("Sweet"), 12 Cal.4th 105, 110-11 (1995);
8 *Quinn v. State*, 15 Cal.3d 162, 168 (1975). The basis of the common fund is fairness to the
9 successful litigant who might otherwise receive no benefit because his recovery might be
10 consumed by the expenses; correlative prevention of an unfair advantage to others who are
11 entitled to share in the fund and who should bear their share of the burden of its recovery; and
12 encouragement of the attorney, who will be more willing to undertake and diligently prosecute
13 proper litigation for the protection or recovery of the fund if he is assured that he will be properly
14 and directly compensated should his efforts be successful. *Sweet*, 12 Cal.4th 105, 111 (1995). In
15 *Quinn v. State*, the California Supreme Court expressly recognized that "one who expends
16 attorneys' fees in winning a suit which creates a fund from which others derive benefits may
17 require those passive beneficiaries to bear a fair share of the litigation costs." 15 Cal.3d 162, 167
18 (1975). Similarly, in *Sweet*, the Court recognized that the common fund doctrine has been
19 applied "consistently in California when an action brought by one party creates a fund in which
20 other persons are entitled to share." 12 Cal.4th at 110.

21 Several courts have expressed frustration with the alternative "lodestar" approach for
22 deciding fee awards, which usually involves wading through voluminous and often
23 indecipherable time records. *Lealao v. Beneficial Cal., Inc.*, 82 Cal. App. 4th 19, 31 n.5 (citing *In*
24 *re Activision Sec. Litig.*, 723 F. Supp. 1373, 1375 (N.D. Cal 1989)). The percentage approach is
25 preferable to the lodestar because it: (1) aligns the interests of class counsel and absent class
26 members; (2) encourages efficient resolution of the litigation by providing an incentive for early,
27 yet reasonable, settlement; and (3) reduces the demands on judicial resources. *In re Activision*,
28 723 F. Supp. at 1378-79. The Ninth Circuit now routinely uses the percentage of the common
fund approach to determine the award of attorney's fees. *Lealao*, 82 Cal. App. 4th at 30-31; *see*

1 e.g., *In re Pacific Enters. Sec. Litig.*, 47 F.3d 373, 378-79 (9th Cir. 1995) (approving attorney's
2 fee of 33%).

3 Class Counsel's request for fees of one-third of the Gross Settlement Amount is well
4 within the range of reasonableness. Historically, courts have awarded percentage fees between
5 20% and 50%, depending on the circumstances of the case. See *In re Activision*, 723 F.Supp. at
6 1378. Awarding 33% of a common fund is neither unreasonable nor uncommon. California
7 courts have frequently awarded attorneys' fees in common fund cases equal to one-third of the
8 gross recovery. See, e.g., *Lafitte v. Robert Half International Inc.* (2016) 1 Cal.5th 480 (approving
9 one-third percent attorneys' fee); *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66 n.11 (1st Dist.
10 2008) (noting that fee of one-third gross settlement value is customary); see also, e.g., *In re*
11 *M.D.C. Holdings Sec. Litig.*, 1990 WL 454747, at *7 (S.D. Cal. Aug. 30, 1990) ("In private
12 contingent litigation, fee contracts have traditionally ranged between 30% and 40% of the total
13 recovery.").

14 Further, California courts recognize that a percentage fee "may be calculated on the basis
15 of the total fund made available rather than the actual payment made to the class." *Lealao*, 82
16 Cal.App.4th at 51 (citing *Boeing Co. v. Van Gemert*, 444 U.S. 472 (1980); *Waters v. Intern.*
17 *Precious Metals Corp.*, 190 F.3d 1291 (11th Cir. 1999); *Williams v. MGM-Pathe Commun's. Co.*,
18 129 F.3d 1026 (9th Cir. 1997)); see also, e.g., *Bergman v. Thelen LLP*, 2016 U.S. Dist. LEXIS
19 170861, *21-22 (N.D. Cal. Dec. 9, 2016) ("...Ninth Circuit precedent requires courts to award
20 class counsel fees based on the total benefits being made available to class members rather than
21 the actual amount that is ultimately claimed.") (citing *Williams*).

22 Class Counsel has borne, and continues to bear, the entire risk and cost of litigation
23 associated with this class action on a pure contingency basis. The factual and legal issues posed
24 in this case are highly disputed, and there also were risks whether a class would be certified,
25 leaving a large number of putative class members unlikely to receive any recovery. While
26 California courts recognize that the percentage method is superior to the lodestar method, they
27 also recognize that the lodestar provides a useful "cross-check" in determining reasonableness of
28 percentage fees sought. Here, the requested fee award of \$116,655 represents a negative
multiplier of the lodestar to date (\$122,125) which is well within the range warranted under

1 California law. (see Da Vega Decl., ¶ 13, 19-21; **Exhibit 4 - NALFA 2020 Litigation Hourly**
2 **Rate Range Growth; Exhibit 5 - Laffey Matrix; Exhibit 6 - National Law Journal Billing**
3 **Survey 2017**; See also Declaration of Matthew H. Fisher ISO Final Approval, ¶¶ 8-13;
4 Declaration of Ted Mechtenberg ISO Final Approval ¶¶ 8-13). ““Multipliers of 1 to 4 are
5 commonly found to be appropriate in complex class action cases.” *Destefano v. Zynga, Inc.*,
6 2016 WL 537946, at *21 (N.D. Cal. Feb. 11, 2016) (quoting *Hopkins v. Stryker Sales Corp.*, 2013
7 WL 496358, at *4 (N.D. Cal. Feb. 6, 2013)); see *Vizcaino v. Microsoft Corp.*, 290 F.3d United
8 States District Court Northern District 1043, 1051 n.6 (9th Cir. 2002)(citing survey finding most
9 multipliers range from 1.0 to 4.0). As a result, this Court should have no trouble concluding that
10 an award is supported by the lodestar cross-check is fair and reasonable and is justified under
11 California law. “[T]he lodestar method better accounts for the amount of work done, while the
12 percentage of the fund method more accurately reflects the results achieved.” *Rawlings v.*
13 *Prudential-Bache Properties, Inc.* (6th Cir. 1993) 9 F.3d 513, 516. The Court should approve the
14 requested attorneys’ fees and costs, which are justified by the results achieved, the complexity of
15 the issues, the difficulty of the case, and the risk undertaken by Class Counsel. The requested
16 attorneys’ fees and costs will not be opposed by Defendant and are well within established
17 guidelines.

18 **VII. CONCLUSION**

19 For the reasons set forth above and in the accompanying papers, Plaintiff respectfully
20 requests that the Court grant Plaintiff’s Unopposed Motion for Final Approval of the Class
21 Settlement and sign the proposed Order and judgment thereon. The Settlement is fair, adequate,
22 and reasonable. It will result in substantial payments to Class Members; it is non-collusive; and it
23 was achieved as the result of informed, extensive, and arm’s length negotiations conducted by
24 counsel for respective Parties who are experienced in wage and hour class action litigation.

25 **DATED:** July 26, 2023

DA VEGA | FISHER | MECHTENBERG LLP

26 

27 By: _____

28 Matthew S. Da Vega
Attorneys for Plaintiff and Class