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similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF STANISLAUS

MARTHA PADILLA, individually, and on
behalf of all others similarly situated,

Plaintiff,

vs.

ALL IN ONE JANITORIAL SERVICES,
INC., a California Corporation, GOARETTE
MARIE JARVIS; and DOES 1 through 20,
inclusive,

Defendants.

CASE NO. CV-22-001931

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT**

*[Filed concurrently with supporting
declarations and [Proposed] Order and
Judgment]*

Date: February 28, 2024

Time: 8:30 a.m.

Department: 23

Complaint Filed: April 29, 2022

1 PLEASE TAKE NOTICE that on February 28, 2024 at 8:30 a.m., or as soon thereafter as
2 the matter may be heard in Department 23 of the above-entitled court. Plaintiff Martha Padilla
3 (“Plaintiff”) will and hereby does move this Court for: (1) an order determining the good faith of
4 and granting final approval of the proposed class action and PAGA settlement; (2) entry of the
5 proposed Order of Final Approval and Judgment; (3) an order awarding costs to the claims
6 administrator; and (4) an order awarding attorneys’ fees and costs and a class representative
7 enhancement award to Class Counsel and the Plaintiff, respectively.

8 This Motion is brought pursuant to California *Rules of Court*, Rule 3.769, on the grounds
9 that the Class Action Settlement Agreement (“Agreement”) between Plaintiff, Martha Padilla
10 (“Plaintiff”), and Defendants All In One Janitorial Services, Inc. and Goarette Marie Jarvis
11 (“Defendants”), (collectively “Parties”) is fair, reasonable, and adequate, achieved as the result of
12 informed, arms-length negotiations, and deserving of approval for the benefit of the Settlement
13 Class members to whom it pertains.

14 This Motion is based on this Notice and Motion, the declarations of Daniel J. Bass, Martha
15 Padilla and Jeremy Romero on behalf of CPT Group, Inc., the other papers on file in this action,
16 and such other and further oral and documentary evidence as may be submitted at or before the
17 hearing on the Motion.

18
19 Dated: February 6, 2024

MAKAREM & ASSOCIATES, APLC

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21 By: Daniel Bass
22 Daniel J. Bass
23 Attorney for Martha Padilla
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1 **I. INTRODUCTION**

2 Pursuant to California Rules of Court, Rule 3.769(g), Plaintiff, Martha Padilla (“Class
3 Representative” or “Plaintiff”), as Class Representative—of the “Class” which means all
4 individuals employed by Defendant All In One Janitorial Services, Inc., as a non-exempt
5 employee in the state of California at any time between April 20, 2018 and September 26, 2022
6 (“Class Members”). (see Declaration of Daniel J. Bass [“Bass Decl.”], ¶ 12).

7 The Settlement will resolve all of Plaintiff’s class claims against Defendant. As set forth in
8 Plaintiff’s Motion for Preliminary Approval, which was granted by this Court on August 24, 2023,
9 (Bass Decl., Exh. B) this Court should approve as fair and reasonable the class-wide, non-
10 reversionary Class Action Settlement Agreement (“Settlement Agreement”). (Bass Decl., Exh. A).
11 Fifty Thousand Dollars (\$50,000.00), inclusive of all fees and costs (the “Gross Settlement
12 Amount”) shall be paid for settlement of the claims of the Settlement Class. (Bass Decl., ¶ 13).

13 No Settlement Class members have opted out and the administrator reports that a total of
14 25 Class Members are part of this Settlement, which represents a 100% participation rate.
15 (Declaration of Jeremy Romero [“Romero Decl.”], ¶¶ 10-11). Moreover, as no one has objected
16 to the Settlement, this reflects that the Settlement was well-received by all class members. See
17 Romero Decl., ¶ 10; see also, *Anderson v. Nextel Retail Stores, LLC*, 2010 U.S. Dist. LEXIS
18 43377 at *49 (C.D. Cal. 2010) (holding that a relatively high participation rate and extremely low
19 objection rate weighed in favor of approving the settlement). Nor are there any workweek
20 disputes or requests for exclusion from the Settlement. (Romero Decl., ¶ 10). Therefore, all 25
21 Settlement Class Members will be issued settlement payment. (*Id.* ¶¶ 10-11). A unanimous
22 participation rate “supports the fairness, reasonableness, and adequacy of the settlement.”
23 *Williams v. Costco Wholesale Corp.*, 2010 U.S. Dist. LEXIS 67731 at *13 (S.D. Cal. 2010).

24 Moreover, the Court should grant Plaintiff’s request for a Class Representative’s Service
25 Award of \$5,000 (Bass Decl., ¶ 15), Plaintiff’s request for attorneys’ fees of \$17,500 (Bass Decl.,
26 ¶ 14), Class Counsel’s costs of \$4,903.75 (*Id.*), and settlement administration costs of \$5,000
27 (Romero Decl., ¶ 15), because each payment is reasonable and based on diligent work performed
28 or costs incurred for the benefit of all Class Members.

Accordingly, the Settlement, and all of its terms, satisfies California Rules of Court, Rule 3.769, and other applicable laws, such that this Court should grant final approval.

II. STATUS OF THE LITIGATION

A. Defendants and Plaintiff

Defendants employed Plaintiff as a non-exempt employee, serving as a janitor for several years. (Declaration of Daniel J. Bass “Bass Decl.”, ¶ 2). During the time that Plaintiff was employed, she was subject to the same policies and procedures as all other non-exempt hourly paid employees, which among other things, Plaintiff contends caused employees to work long hours, sometimes off the clock, and without breaks. As such, Plaintiff and his fellow class members were denied full payment of their wages, including overtime and double time, and legally compliant breaks. (*Id.* at ¶ 3).

B. Commencement of the Action and Pleadings

This matter involves a lawsuit brought by Plaintiff on behalf of non-exempt employees of Defendants. The action is the putative class action pending in Stanislaus County, Case No. CV-22-001931, filed on April 29, 2022. (*Id.* at ¶ 4). Plaintiff also submitted notice to the LWDA, via online submission of her potential claims on April 15, 2022, being assign LWDA case number LWDA-CM-878853-22. (*Id.* at ¶ 5).

Defendants contend that they at all times complied with California law. Defendants assert that it properly paid employees for all time worked. Defendants further contend that they provided Plaintiff and other putative class members with compliant meal and rest periods, and that to the extent any employee did not take a compliant meal or rest period, the reason for the non-compliant meal or rest period would be an individualized issue that would preclude class certification. (Bass Decl. at ¶ 6.)

C. Investigation

Before filing the lawsuit, Class Counsel investigated and researched the facts and circumstances underlying the pertinent issues and the laws applicable thereto. This required thorough discussions between Class Counsel and the Plaintiff, as well as preliminary research into the various legal issues and employment practices involved in the case. After conducting their initial

1 investigation, Class Counsel determined that Plaintiff's claims were well-suited for class action
2 adjudication owing to what appeared to be a common set of policies and procedures that impacted
3 Plaintiff and other putative class members in a similar fashion. (*Id.* at ¶ 7).

4 After filing the lawsuit, Class Counsel conducted an extensive investigation of the facts and
5 claims giving rise to the action, including:

- 6 (1) reviewing and analyzing time and payroll records and Defendant's written policies
and procedures;
- 7 (2) researching the applicable law and evaluating potential defenses;
- 8 (3) evaluating the damages based on countervailing interpretations of law;
- 9 (4) reviewing other documentation provided by Defendant. (*Id.* at ¶ 8).

10 Defendants, for their part, vigorously contested liability, the amount of claimed damages,
11 and the propriety of class certification. After Class Counsel analyzed the relevant documentary and
12 testamentary evidence, Class Counsel determined that this case was appropriate for resolution via
settlement. (*Id.* at ¶ 9).

13 **D. Mediation and Settlement**

14 On September 26, 2022, the Parties participated in an all-day mediation presided over by
15 James Johnston, Esq, which led to this Agreement to settle the Action. Over the next months the
16 parties negotiated the details of the long form settlement agreement which was fully executed on
17 May 15, 2023 and for which preliminary approval was granted on August 24, 2023. (*Id.* at ¶¶ 10-
18 11, Exhs. A-B). After Preliminary Approval was granted, the Settlement Administrator confirmed
19 for the Parties that the records provided by Defendants showed that there were 25 potential Class
20 Members. (Romero Decl. ¶ 5).

21 **III. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS**

22 **A. Settlement Class**

23 The "Class" or "Settlement Class" means all individuals employed by Defendant ALL IN
24 ONE JANITORIAL SERVICES, INC., as a non-exempt employee in the state of California at any
25 time between April 1 and September 26, 2022. Based on its records, Defendants estimate that there
26 are 25 Class Members who collectively worked a total of 2,250 Workweeks during the Class Period
27 above and 25 Aggrieved Employees who worked a total of 1,071 PAGA Pay Periods with the PAGA
28 claim period Class Period covering the same dates, for settlement purposes. (Bass Decl., ¶ 12). As

of the date of this filing, no Settlement Class members have opted out and it is anticipated that all 25 Settlement Class members will participate in the Settlement. (Romero Decl., ¶¶ 10-11).

B. Settlement Consideration

Under the terms of the proposed agreement, the parties have agreed that all claims brought on behalf of the Class shall be fully and finally resolved for a “Gross Settlement Amount” of \$50,000.00. (Bass Decl. ¶ 13). The Gross Settlement Amount is non-reversionary and no portion of the Settlement Amount will be returned to the Defendants. (*Id.*). The following amounts will be deducted from the Gross Settlement Amount, with the amount remaining after these deductions constituting the Net Settlement Amount (*Id.* at ¶¶ 13-20, Romero Decl. ¶ 12):

- **Attorneys’ Fees and Costs:** Up to 35% of the Gross Settlement Amount or \$17,500 plus up to \$7,000 in actual costs and expenses;
- **Class Representative Service Payment:** Up to \$5,000 to the named Plaintiff as a class representative;
- **Settlement Administration Costs:** Up to \$5,000 from the Gross Settlement Amount for the costs associated with administration of the Settlement.
- **LWDA PAGA Penalty Amount:** 75% share of the \$5,000.00 (or \$3,750.00) allocated from the Gross Settlement Amount for PAGA penalties that will be paid to the LWDA.
- **Individual PAGA Payments:** 25% share of the \$5,000.00 (or \$1,250.00) allocated from the Gross Settlement Amount for PAGA penalties that will be paid to Aggrieved Employees based on their PAGA Period Pay Periods.

Thus, the net Settlement amount was estimated to be around \$11,750 (Romero Decl., ¶ 14), though this number will increase by at least \$2,096.25 in authorized but not spent litigation costs. (Bass Decl., ¶¶ 14, 20, Exh D). Each Participating Class Member shall be eligible to receive an Individual Class Payment, which is calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member’s Workweeks. (Bass Decl., ¶ 19). Based on estimated settlement calculations, prior to increasing the Net Settlement Amount for any unused costs, the average gross payment to each Settlement Class Member is \$470.00, the highest is \$1,017.92, and the lowest is \$26.33. (Romero Decl., ¶ 13).

C. Claims and Settlement Fund Distribution Procedure

According to the Settlement Agreement “Effective Date” means the first business day following the last of the following occurrences: (i) if no Class Member timely and properly intervenes, files a timely motion to vacate the Judgment under, or objects to the Settlement, then

1 the date the Court enters an order granting Final Approval of the Settlement; (ii) if a Class
2 Member timely intervene or files a timely motion to vacate the judgment or objects to the
3 Settlement, then sixty-one (61) days following the date the Court enters an order granting final
4 approval, assuming no appeal is filed; or (iii) if a Class Member timely intervenes or files a
5 motion to vacate the Judgment, or objects to the Settlement, and files a timely appeal, then the
6 date of final resolution of that appeal (including any requests for rehearing and/or petitions for
7 certiorari), resulting in final and complete judicial approval of the Settlement in its entirety, with
8 no further challenge to the Settlement being possible. Bass Decl., Exh. A at I(O) The Settlement
9 Administrator shall distribute to Class Counsel the attorneys' fees and expenses approved by the
10 Court to Class Counsel no later than 15 days after Defendants deposits the entirety of the Gross
11 Settlement Amount with the Settlement Administrator. (*Id.*, Exh. A at VII(C)) The Settlement
12 Administrator shall distribute to the Class Representative the Service Award approved by the
13 Court no later than 15 days after Defendants deposits the entirety of the Gross Settlement Amount
14 with the Settlement Administrator. (*Id.*, Exh. A at VII(D)) The Settlement Administrator shall
15 distribute to the LWDA the portion of the PAGA Payment due to it an approved by the Court no
16 later than 15 days after Defendants deposits the entirety of the Gross Settlement Amount with the
17 Settlement Administrator. (*Id.*, Exh. A at VII(E))

18 The Settlement Administrator shall mail the Individual Settlement Amount to each Class
19 Participant, by first-class U.S. mail, to the last-known address no later than 15 days after the
20 Defendants deposits the entire of the Gross Settlement Amount with the Settlement
21 Administrator. Within 200 days of the distribution of the Individual Settlement Amounts to the
22 Class Participants, the Settlement Administrator shall provide to Class Counsel a declaration of
23 payment. (*Id.*, Exh. A at VII(F)). Any funds associated with checks that have not been cashed
24 within 180 days, will become void and the Individual Settlement Amount associated with the un-
25 cashed check shall be paid out in accordance with Civil Code section 384 to a cy pres agreed to
26 by the Parties as required by Code of Civil Procedure section 384 or any other methods of
27 distribution consistent with Code of Civil Procedure section 384. The cy pres recipient shall be
28 CASA of Stanislaus County or other mutually agreeable cy pres recipient should the Court not

1 approve the Parties' proposed beneficiary and/or as otherwise consistent with Code of Civil
2 Procedure section 384. (*Id.*, Exh. A at VII(G)).

3 **IV. FAIRNESS ANALYSIS**

4 **A. Standard for Final Approval**

5 The trial court has broad discretion to determine whether a proposed class action
6 settlement is fair. See *Rebney v. Wells Fargo Bank* (1990) 220 Cal.App.3d 1117, 1138. There is a
7 presumption of fairness of a class action settlement when: (1) the settlement is reached as the
8 result of arm's length negotiations; (2) there has been sufficient investigation and discovery; (3)
9 counsel is experienced in similar litigation; and (4) the percentage of objections is low. See *Dunk*
10 *v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802. Before approving a class action settlement,
11 a trial court must have an understanding "of the amount that is in controversy and the realistic
12 range of outcomes of the litigation." *Kullar v. Footlocker Retail, Inc.* (2008) 168 Cal.App.4th
13 116, 120. However, the parties need not provide an explicit statement of the maximum amount
14 plaintiffs could have potentially recovered. See *Munoz v. BCI Coca Cola Bottling Co. of Los*
15 *Angeles* (2010) 186 Cal.App.4th 399, 409.

16 Further, "voluntary conciliation and settlement are the preferred means of dispute
17 resolution. This is especially true in complex class action litigation...." *7-Eleven Owners for Fair*
18 *Franchising v. The Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151 (quoting *Officers for*
19 *Justice v. Civil Service Comm. of the City and County of San Francisco*, 688 F.2d 615, 625 (9th
20 Cir. 1982)). A class action may not be dismissed, compromised, or settled without the approval of
21 the Court. See Cal. Rules of Court, Rules 3.769 and 3.770. The decision to approve or reject a
22 class action settlement may only be reversed upon a strong showing of "clear abuse of
23 discretion." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998); *Class Plaintiffs v.*
24 *City of Seattle*, 955 F.2d 1268 (9th Cir. 1992) (in the context of a class action settlement, an
25 appellate court cannot "substitute [its] notion of fairness for those of the [trial] judge and the
26 parties to the agreement," and will reverse only upon a strong showing of abuse of discretion.)

27 To make this fairness determination, the court must consider several relevant factors,
28 including "the strength of plaintiff's case, the risk, expense, complexity and likely duration of

1 further litigation, the risk of maintaining class action status throughout trial, the amount offered in
2 settlement, the extent of discovery completed and the state of the proceedings, [and] the experience
3 and views of counsel...” *Dunk v. Ford Motor Co.*, *supra*, 48 Cal.App.4th at 1801; *Wershba v. Apple*
4 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 244-245; *7-Eleven Owners for Fair Franchising v. The*
5 *Southland Corp.*, *supra*, 85 Cal.App.4th at 1146. “The list of factors is not exclusive and the court
6 is free to engage in a balancing and weighing of factors depending on the circumstances of each
7 case.” *Wershba*, 91 Cal.App.4th at 245. Furthermore, courts must give:

8 [p]roper deference to the private consensual decision of the parties, [since] the court’s
9 intrusion upon what is otherwise a private consensual agreement negotiated between the
10 parties ... must be limited to the extent necessary to reach a reasoned judgment that the
11 agreement is not the product of fraud or overreaching by, or collusion between, the
12 negotiating parties, and the settlement, taken as a whole, is fair, reasonable and adequate ...
(*Hanlon*, 150 F.3d at 1027.)

12 **B. The Strength of Plaintiff’s Case and Complexities of Further Litigation**

13 Plaintiff believes that the Settlement Class claims in this action are legally meritorious and
14 present a reasonable probability of a favorable determination on behalf of the class. At the same
15 time, there is undeniably significant litigation risk avoided by the proposed Settlement, both at class
16 certification proceedings, at trial, and potentially in the appellate courts. (Bass Decl., ¶ 28).

17 Liability remains highly contested by Defendants who deny that they engaged in any
18 violations of the law, and they further deny any liability or engagement in wrongdoing of any kind
19 associated with the claims alleged in the Action by the Plaintiff or any Class Member. Defendants
20 contend that at all times they complied with all wage-and-hour laws in connection with the
21 employment and/or retention of services of Plaintiff and the Class Members. (*Id.*, ¶ 29)

22 Plaintiff’s counsel understood and appreciated the defenses and position of Defendants but
23 believed that Plaintiff would ultimately succeed in the action. In light of the strongly divergent
24 views, the parties, were able to negotiate a fair settlement, considering the costs and risks of
25 continued litigation. The negotiations were at all times conducted professionally and at arm’s
26 length and have produced a result that the Parties believe to be in their respective best interests.
27 (*Id.*, ¶ 30)

28 The Parties have also considered the uncertainty and risk of the outcome of further

1 litigation, and the difficulties and delays inherent in such litigation. Plaintiff is also aware of the
2 burdens of proof necessary to establish liability for the claims asserted in the action, the defenses
3 thereto, and the difficulties in establishing damages. (*Id.*, ¶ 31) In evaluating the settlement, the
4 Court will seek a reasonable estimate of the nature and amount of recovery that each class member
5 could have obtained if the Plaintiff had prevailed in the litigation. Numerous decisions summarize
6 a trial court's task when considering whether to approve the settlement of a putative class action.
7 (*Id.*) As Division Five of this Court stated:

8 The trial court has broad discretion to determine whether the settlement is fair. [Citation.]
9 It should consider relevant factors, such as the strength of Plaintiff's case, the risk, expense,
10 complexity and likely duration of further litigation, the risk of maintaining class action
11 status through trial, the amount offered in settlement, the extent of discovery completed
12 and the stage of the proceedings, the experience and views of counsel, the presence of a
13 governmental participant, and the reaction of the class members to the proposed settlement.

14 *Cellphone Fee Termination Cases* (2009) 180 Cal.App.4th 1110, 1117-18 (citations omitted). The
15 court's consideration of relevant factors, however, does not transform the settlement approval
16 "into a trial or rehearsal for trial on the merits." *7-Eleven Owners for Fair Franchising*, 85
17 Cal.App.4th at 1145 (internal citation omitted). The record need only provide the trial court with
18 an understanding of the amount that is in controversy and the realistic range of outcomes of the
19 litigation. Because settlements are inherently a compromise, once the parties have provided it
20 with the requisite "basic information," the trial court must only "satisfy itself that the class
21 settlement is within the 'ballpark' of reasonableness." *Tech-Bilt, Inc. v. Woodward-Clyde &*
22 *Assoc.* (1985) 38 Cal.3d 488, 499-500.

23 Here, in preparation for mediation, Plaintiff calculated Defendants' liability to Class
24 Members to be in excess of the settlement amount. Plaintiff's valuation assumed that Plaintiff: (1)
25 prevailed in certifying the case; (2) prevailed in establishing liability on the merits; and (3) was
26 awarded the full amount of all discretionary penalties (Bass Decl., ¶ 32). The realistic range of
27 outcomes for this litigation took into account the present state of the law regarding meal and rest
28 break claims and the other claims brought in the Action, Defendants' defenses for each claim, and
the likelihood of prevailing on a class certification motion as well as trial and any appeals (*Id.*, ¶

33). Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011,1026.

Kullar v. Footlocker Analysis

To allow this Court to make an informed assessment pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 18 Cal.App.4th 116, Plaintiff's Counsel provides the following assessment of the case and settlement. Plaintiff's Counsel believes that the settlement is a very good one for the class members. In this case, Plaintiff sought unpaid wages and statutory penalties as well as equitable remedies of declaratory relief, disgorgement, accounting, and restitution. (Bass Decl., ¶ 34). Plaintiff estimated Defendant's total non-penalty exposure at \$318,300.00. As such, the settlement represents over approximately 15.7% of Defendants' non-penalty exposure based on Plaintiff's analysis. This is a reasonable recovery, particularly given the number of class members at issue and the size of Defendant's operations. (Bass Decl., ¶ 35).

Courts have determined that settlements are, of course, reasonable even where Plaintiffs recover only a portion of their actual losses. *See Behrens v. Wometco Enters., Inc.* (S.D. Fla. 1988) 118 F.R.D. 534, 542, *aff'd*, (11th Cir. 1990) 899 F.2d 21 ("[T]he fact that a proposed settlement amounts to only a fraction of the potential recovery does not mean the settlement is unfair or inadequate."). Indeed, "[a] settlement can be satisfying even if it amounts to a hundredth or even - a thousandth of a single percent of the potential recovery." *Id.*; *see also City of Detroit v. Grinnell Corp.* (S.D.N.Y. 1972) 356 F.Supp. 1380, 1386 [a recovery of 3.2% to 3.7% of the amount sought is "well within the ball park"], *aff'd in part, rev'd on other grounds*, (2d Cir. 1974) 495 F.2d 448; *Martel v. Valderamma* (C.D. Cal. 2015) 2015 U.S. Dist. LEXIS 49830 * 17 (approving a settlement of \$75,000 when potential damages were \$1.2 million); *In re Toys R US FACTA Litig.* (C.D. Cal. 2014) 295 F.R.D. 438, 453 (approving settlement with vouchers (not cash) potentially worth a maximum of three percent (3%) if all possible claims were actually made, or \$391.5 million aggregate voucher potential where the class could have recovered \$13.05 billion); 4 William B. Rubenstein et al., *Newberg on Class Actions* (5th ed. 2016) § 13:15 (the range of reasonableness percentage could be as low as 1/100th or 1/1000th of 1%); *Ma v. Covidien Holding, Inc.*, (C.D. Cal. Jan. 31, 2014, No. SACV 12-02161-DOC) 2014 WL 360196, at *5 (finding a settlement worth

1 9.1% of the total value of the action “within the range of reasonableness”); *Balderas v. Massage*
2 *Envy Franchising, LLC*, (N.D. Cal. July 21, 2014, No. 12-CV-06327 NC) 2014 WL 3610945, at
3 *5 (granting preliminary approval of a net settlement amount representing 5% of the projected
4 maximum recovery at trial); *Glass v. UBS Fin. Servs., Inc.* (N.D. Cal. Jan. 26, 2007, No. C-06-4068
5 MMC) 2007 WL 221862, at *9, *aff’d*, 331 Fed. Appx. 452 (9th Cir. 2009) (approving a settlement
6 of an action claiming unpaid overtime wages where the settlement amount constituted
7 approximately 25% to 35% of the estimated actual loss to the class).

8 Below, Plaintiff details the issues that necessitated deductions from the maximum potential
9 value of this case to arrive at the reasonable Maximum Settlement Amount derived in this action.
10 Here there are 25 Class Members who collectively worked a total of 2,250 Workweeks and 25
11 Aggrieved Employees who worked an estimated 1,071 PAGA Pay Periods. (Bass Decl. ¶ 36).
12 Plaintiff believes the total value of plaintiffs’ claims had plaintiffs prevailed on all claims is
13 \$604,734.00 (only for the period of April 29, 2018 to September 26, 2022), including all penalties
14 and interest or \$318,300.00 absent penalties and interest. (*Id.*)

15 **Rest Periods:** Plaintiff calculated Defendants’ maximum liability to be about 4 shifts per
16 employee per week at the average hourly rate of \$14.50 per violation. As such, with a 100%
17 violation rate, Plaintiff estimated that Defendants’ exposure could be as high as \$ 130,500.
18 Plaintiff did not discount this number or the calculations that follow in order to arrive at the
19 settlement; rather, Plaintiff discounted the number in order to reach a settlement that understood
20 the risks of continued litigation and difficulties in showing a 100% violation rate for rest breaks.
21 (Bass Decl. ¶ 37).

22 **Meal Periods:** Plaintiff again calculated Defendant’s maximum liability at 100% unique
23 violation rate for meal breaks or 9,000 meal period violations. As such, Plaintiff estimated that
24 Defendant’s exposure could be as high as \$ 130,500. Again, Plaintiff did not discount this number
25 or the calculations that follow in order to arrive at the settlement; rather, Plaintiff discounted the
26 number in order to reach a settlement that understood the risks of continued litigation and
27 difficulties in showing a 100% violation rate for meal breaks during each employee’s shifts. (Bass
28 Decl. ¶ 38).

1 **Unpaid Off-the-Clock:** Based on Plaintiff's experiences and personal observations at
2 work, Plaintiff estimated that approximately .25 hours (15 minutes) of work was performed off-
3 the-clock by employees on a daily basis, resulting in an approximately \$28,275 in underpayments
4 at employees' regular rate for 13 minutes each shift and \$6,525 in unpaid overtime for 2 minutes
5 each shift. (Bass Decl. ¶ 39).

6 **Unreimbursed Expenses:** Based on Plaintiff's experiences and personal observations at
7 work, Plaintiff estimated that approximately \$10 per workweek was spent on items necessary for
8 the completion of work, resulting in an approximately \$22,500 in unreimbursed expenses for the
9 class period. (Bass Decl. ¶ 40).

10 **Penalties:** Although the Class arguably could have seen a payout of approximately \$48,720
11 for waiting time penalties (for 14 terminated employees during a three-year statutory period) and
12 \$19,750 in wage statement penalties (for 15 employees for a one-year period), Plaintiff's Counsel
13 had to weigh the likelihood of recovery against probable defenses and the wide discretion Courts
14 have exercised in awarding Labor code penalties. Along these lines, Plaintiff considered that
15 Defendants would argue that Plaintiff could not prove the "willful" prong needed to obtain waiting
16 time penalties under Cal. Lab. Code § 203 and would further argue that Plaintiff could not show
17 that Class Members suffered an "injury" as a result of wage statement violations, as required by
18 Cal. Lab. Code § 226. Further, Plaintiff arguably could not recover any waiting time penalties for
19 meal and rest claims. Moreover, Plaintiff would not recover any derivative penalties if he failed to
20 prove the underlying claims. (Bass Decl. ¶ 41).

21 **Certification in General:** The great discretion afforded trial courts in electing to grant or
22 deny class certification, and the resultant possibility that this Court would deny certification of any
23 of the claims, resulting in no recovery whatsoever for those unnamed class members further
24 weighed in favor of settlement. Indeed, going into settlement discussions and during the course of
25 constructing the settlement, Class Counsel bore in mind similar meal and rest break cases wherein
26 class certification was denied. *See e.g. In re Lamps Plus Overtime Cases* (2012) 209 Cal.App.4th
27 35; *Washington v. Joe's Crab Shack* (N.D. Cal. 2010) 271 F.R.D. 629 ("individualized inquiry will
28 be required to determine whether any single employee failed to take a meal break because he/she

1 was too busy, and also to determine whether a particular employee signed a waiver based on a
2 decision not to take meal breaks”). *Hernandez v. Chipotle Mexican Grill, Inc.* (2012) 146
3 Cal.Rptr.3d 424, 2012 WL 3579567, *10.

4 **Trial and Manageability Issues:** While Plaintiff was confident in the strength of her
5 claims, as is always the case with a trial, Plaintiff needed to accept that there was a possibility that
6 he would not prevail at trial. Compromise is inherent and necessary in the settlement process. Thus,
7 even if “the relief afforded by the proposed settlement is substantially narrower than it would be if
8 the suits were to be successfully litigated,” this is no bar to a class settlement because “the public
9 interest may indeed be served by a voluntary settlement in which each side gives ground in the
10 interest of avoiding litigation.” *Id.* at 250 (quoting *Air Line Stewards, Loc. 550 v. American*
11 *Airlines, Inc.*, (7th Cir.1972) 455 F.2d 101, 109. The Ninth Circuit observed “the very essence of
12 a settlement is compromise, ‘a yielding of absolutes and an abandoning of highest hopes.’” *Officers*
13 *for Justice v. Civil Serv. Commission* (9th Cir.1982) 688 F.2d 615, 624 (citation omitted). Thus,
14 when analyzing the amount offered in settlement, the Court should examine “the complete package
15 taken as a whole,” and the amount is “not to be judged against a hypothetical or speculative measure
16 of what might have been achieved by the negotiators.” *Id.* at pp. 625, 628.

17 Given the difficulties Plaintiff and the Settlement Class faced, both in terms of certification
18 and in adjudicating their claims on the merits, the litigation discounts afforded by Plaintiff are
19 appropriate and the settlement is fair, reasonable, and adequate. In the present case, it is clear that
20 the settlement before this Court is the best course of action as it ensures a fair and adequate recovery
21 for the members of the class. Thus, it was clearly reasonable for Plaintiff to negotiate a smaller
22 certain award rather than seek the full recovery but risk recovering nothing.

23 Plaintiff, in agreeing to the settlement had to take into account the difficulties in certifying
24 a class and maintaining any such certification. Moreover, Plaintiff had to take into account the
25 uncertainties, including business uncertainties facing Defendants and similar employers during the
26 ongoing COVID 19 pandemic. Each of these concerns weighed into Plaintiff’s analysis to
27 eventually agree to a settlement that is less than Defendants’ total projected liability even if Plaintiff
28 eventually won every aspect of this case including potential appeal. A settlement now guarantees

1 that class members will 1) obtain a recovery and 2) that they will get the recovery in a time period
2 that is shorter than one if the case went through a full trial and appeal process. (Bass Decl., ¶ 42).

3 The settlement amount was a negotiated compromise, factoring in the risks related to
4 certification, liability, and damages. Taking into account all of the circumstances of the action and
5 the significant factual and legal defenses raised by Defendants against certification, liability, and
6 damages, Class Counsel believe that the settlement is fair and reasonable. Each Class Member's
7 individual share of the settlement amount is tailored to the number of weeks worked by each Class
8 Member during the class period so the distribution is weighted in favor of those Class Members
9 who were potentially most affected by the alleged violations. Moreover, because the class consists
10 of several employees, it was unlikely that the potential monetary claims of individual Class
11 Members would have proved viable without the class-action mechanism. (Bass Decl. ¶ 43).

12 C. The Experience and Views of Counsel

13 This "Parties represented by competent counsel are better positioned than courts to
14 produce a settlement that fairly reflects each party's expected outcome in litigation." *In re Pacific*
15 *Enterprises Security Litigation*, 47 F.3d 373, 378 (9th Cir. 1995). Here, Plaintiff is represented by
16 competent and experienced counsel who possess extensive experience litigating wage and hour
17 class actions and have been appointed as class counsel in numerous cases alleging similar claims.
18 (Bass Decl., ¶¶ 44-50).

19 There is an initial presumption that a proposed settlement is fair and reasonable if it is the
20 result of arms-length negotiations. See *Williams v. Vukovich*, 720 F.2d 909, 922-923 (6th Cir,
21 1983) ("The court should defer to the judgment of experienced counsel who have competently
22 evaluated the strengths of his proofs."); *In re Excess Value Ins. Coverage Litig.*, No. M-21-84
23 (RMB) 2004 WL 1724980, at *10 (S.D.N.Y. July 30, 2004) ("Where 'the court finds the
24 settlement is the product of arm's length negotiations conducted by experienced counsel
25 knowledgeable in complex class litigation, the settlement will enjoy a presumption of fairness.'");
26 *In re Inter-Op Hip Prosthesis Liab. Litig.*, 204 F.R.D. 330, 351 (N.D. Ohio 2001) (granting
27 preliminary approval of settlement "where the settlement is the result of extensive negotiations by
28

1 experienced counsel...”); *see also* 2 Hebert Newberg & Alba Conte, Newberg on Class Actions,
2 §11.41 at 90 (4th Ed. 2001).

3 Counsel for Plaintiff have extensive experience in employment law, particularly wage and
4 hour class action litigation. (Bass Decl., ¶¶ 44-52). Counsel for Plaintiff and Defendants each
5 zealously negotiated on behalf of their respective clients’ best interests, and the Settlement was
6 reach after lengthy negotiations. As a result, the Settlement is presumed to be fair and reasonable,
7 and was not the product of collusion.

8 **D. No Class Members Have Opted Out of or Objected to the Settlement**

9 As part of CPT’s preparation for mailing, all 25 names and addresses contained in the
10 Class List were processed against the National Change of Address (“NCOA”) database,
11 maintained by the United States Postal Service (“USPS”), for purposes of updating and
12 confirming the mailing addresses of the Settlement Class Members before mailing of the Notice
13 Packet. (*See* Romero Decl., ¶ 6). On November 2, 2023, the Notices were mailed by U.S. first
14 class mail to the 25 Settlement Class Members. The deadline to submit requests for exclusion or
15 objection was December 18, 2023. (*Id.*, ¶ 7). Two Notice Packets were returned as undeliverable,
16 both of which were skipped traced and mailed again to the newly discovered addresses. (*Id.*, ¶¶ 8-
17 9). As of this date, none of the Notice Packets were deemed undeliverable. (*Id.*, ¶ 9).

18 The Administrator has received no requests for exclusion from the Settlement, disputes or
19 objections. (*Id.*, ¶ 10). As of the date of this filing, a 100% participation rate is anticipated. (*Id.*, ¶
20 11). Accordingly, all factors typically used by California courts to determine the appropriateness
21 of final approval of a class action settlement weigh in favor of finding that this Settlement is a fair
22 and reasonable result after well-represented parties who engaged in arms-length negotiations over
23 hotly-contested and unclear issues of California’s wage and hour laws, culminating in a
24 settlement that provides a substantial benefit to all class members. In other words, the Settlement
25 as proposed by the parties should be finally approved.

1 **V. CLASS COUNSELS' FEES AND COSTS**

2 **A. Attorneys' Fees and Costs Provided in the Settlement are Fair and Reasonable**

3 In the Settlement, Defendants agreed, subject to Court approval, to pay Class Counsel an
4 award of reasonable attorneys' fees in the amount of \$17,500 and up to \$7,000 in costs (Bass
5 Decl., Exh., A), for work performed for the benefit of the Class. To date, Class Counsel has
6 incurred only \$4,903.75 in litigation costs. (Bass Decl., Exh. D). In terms of their actual time
7 spent on the matter, Class Counsel will have collectively spent more than 62.2 hours. (Bass Decl.,
8 ¶ 56) Multiplying the hours by their hourly rates, Class Counsel's incurred fees exceed
9 \$47,152.00. (Bass Decl., ¶¶ 56-57). Class Counsel anticipate spending additional time attending
10 the final approval hearing and working with the Settlement Administrator through the
11 disbursement and accounting process, that will likely exceed 20 hours. (*Id.*, ¶ 58).

12 Though there are two methods for determining the appropriateness of a fee award, the
13 starting point for determining a fees' appropriateness is to assess the amount of time spent by the
14 attorneys working for the class. In *Lealao v. Beneficial California*, the court held that:

15 The starting point of every fee award, once it is recognized that the court's role in equity is
16 to provide just compensation for the attorney, must be a calculation of the attorney's
17 services in terms of the time he has expended on the case. Anchoring the analysis to this
concept is the only way of approaching the problem that can claim objectivity, a claim
which is obviously vital to the prestige of the bar and the courts. [citation omitted]

18 *Lealao*, 82 Cal.App.4th 19, 26-27. As stated above, Class Counsel's actual fees incurred litigating
19 this case already exceed \$47,152.00. (Bass Decl., ¶¶ 56-57). Beyond a simple review of Class
20 Counsel's hours worked, the fee award presently requested comports with attorneys' fee awards
21 issued by other courts under both the "common fund" and "lodestar" methodologies.

22 Because the requested award is well within those typically provided a multiplier when
23 approved by California courts, and because it is fully supported by the factors that California
24 courts consider in determining the reasonableness of attorney fee awards in class action cases,
25 Class Counsel respectfully submit that their request for \$17,500 in fees is appropriate.

26 **B. The Trial Court has Wide Discretion Over the Amount of the Fee Award**

27 California appellate courts have long recognized that trial courts are ideally situated to
28 assess the quality and effectiveness of Class Counsel's efforts, and have, thus, conferred

1 considerable equitable discretion upon trial courts to determine an appropriate fee award. *See*
2 *Serrano*, 20 Cal.3d at 49; *accord, Glendora Community Redev. Agency v. Demeter* (1984) 155
3 Cal.App.3d 465, 474 (holding that “[t]he rule with respect to attorney[s]’ fees is that the amount
4 to be awarded as attorney[s]’ fees is left to the sound discretion of the trial court. The trial judge is
5 in the best position to evaluate the services rendered by an attorney in his courtroom; his
6 judgment will not be disturbed unless it is clearly wrong.”).

7 California courts recognize two standard methods for calculating attorneys’ fee awards in
8 common fund class actions. The more prevalent “percentage of the fund” (also known as the
9 “common fund” or “common benefit”) method calculates attorneys’ fees based on a percentage of
10 the common benefit bestowed upon the class. The “lodestar-plus-multiplier” method uses Class
11 Counsel’s “lodestar” as a basis - determined by multiplying the hours counsel expended by their
12 hourly rates - which the Court may then enhance by a multiplier. The “lodestar-plus-multiplier”
13 method is often a cross-check of the propriety of the “common fund” award.

14 **1. The “Common Fund” Doctrine**

15 The California Supreme Court has held it is advisable for trial courts to employ the
16 “common fund” doctrine to award attorneys’ fees and costs to Class Counsel in class actions,
17 where litigants proceeding in a representative capacity have secured a monetary settlement or
18 judgment on behalf of the class. *Serrano*, 20 Cal.3d at 35-40. The United States Supreme Court
19 has specifically endorsed the use of the percentage of the fund method in paradigmatic common
20 fund cases such as this one. *Blum v. Stenson*, 465 U.S. 886, 900 fn. 16 (1984) [“... under the
21 ‘common fund doctrine,’ ... a reasonable fee is based on a percentage of the fund bestowed on the
22 class...”]; *see also, Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Vincent v. Hughes Air*
23 *West, Inc.*, 557 F.2d 759, 769 (9th Cir.1977).

24 Class Counsel commenced this action with the goal of, inter alia, recovering unpaid
25 wages, premium wages for meal and rest break violations, penalties for inaccurate wage
26 statements, and waiting time penalties. This Settlement constitutes the achievement of that goal.
27 As such, Class Counsel should be paid their attorneys’ fees based on the common benefit they
28 have achieved for the class. *Lealao*, 82 Cal.App.4th at 28-36, 50-51 (noting that percentage of the

1 fund awards are appropriate in cases where the common benefit to the class can be quantified);
2 *Serrano*, 20 Cal.3d at 35-40.

3 Various federal courts have made similar attorneys' fee awards of a similar or greater
4 percentage to that requested in this case. (*See, e.g., In re Pacific Enters. Sec. Litig.* (9th Cir. 1995)
5 47 F.3d 373, 379 (affirming an award equal to 33% of the common fund); *In re Activision Sec.*
6 *Litig.* (N.D. Cal. 1989) 723 F. Supp. 1373, 1375 (awarding plaintiffs' counsel 32.8% of the
7 common fund created to settle the litigation); *In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526
8 F. Supp. 494, 500-503 (awarding 45% of \$7.3 million settlement fund); *Beech Cinema, Inc. v.*
9 *Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F. Supp. 1195, 1197-1199
10 (approximately 53% of the settlement fund awarded); *Van Gemert v. Boeing Co.* (S.D.N.Y. 1981)
11 516 F. Supp. 412, 420 (awarding 36% of settlement fund); *Parker v. City of Los Angeles* (1974)
12 44 Cal.App.3d 556, 557-68 (affirming fee award to counsel of one-third of recovery achieved).)

13 In fact, fees amounting to 35% or more of the settlement fund are often awarded. In
14 *Crandall v. U-Haul* (Los Angeles County Super. Ct., Case No. BC178775), the Honorable Steven
15 Czuleger awarded a 40% attorney fee request in an overtime-exemption class action; in *Bushnell*
16 *v. Cremar, Inc.* (Orange County Super. Ct., Case No. 657778), the Honorable Donald E.
17 Smallwood awarded attorneys' fees in the amount of 38%; in *Abzug v. Kerkorian* (CA000981,
18 Los Angeles County Super. Ct., November 1990), the Honorable R. William Schoettler awarded
19 a 45% fee; in *Haitz v. Meyer, et al.* (Alameda County Super. Court, 8-20-1990 No. 572968-3), the
20 court awarded a 40% fee; in *Elliott v. Clothestime* (Orange County Super. Ct., Case No. 01-
21 CC00333), the Honorable Jonathan Cannon awarded a 40% fee in a wage-and-hour class action
22 which had not yet proceeded to the class certification stage; and in both *Rippee v. Boston Market*
23 *Corporation* (C.D. Cal. Case No.: 05 CV 1359 BTM (JMA)) and *Barile v. Boston Market*
24 *Corporation* (C.D. Cal. Case No.: 05 CV 1360 BTM (JMA)), the Honorable Judge Barry T.
25 Moskowitz awarded a 40% fee to plaintiffs' counsel in wage and-hour class actions that had not
26 proceeded to the class-certification stage.

27 In this case, 35% of the Settlement in attorney's fees is fair and reasonable in light of the
28 time spent by Class Counsel litigating this case and the substantial benefit received by class

1 members. Moreover, the award is approved by the class representative and Defendants, and to
2 date no class members have objected to the requested attorney's fees. Accordingly, the fee
3 request here is warranted and should be granted.

4 **2. The Lodestar Approach Demonstrates the Fee Request is Justified**

5 Some California courts also use a lodestar approach, with a multiplier, in awarding
6 attorneys' fees and costs. The lodestar method is often used to cross-check the propriety of the
7 common fund award. *Lealao, supra*, 82 Cal.App.4th at 49; *Salton Bay Marina, Inc. v. Imperial*
8 *Irrigation Dist.* (1985) 172 Cal.App.3d 914, 954. The issue here is not why the court should
9 award a fee commensurate with 35% of the fund, but why the court should not award such a fee.

10 The lodestar method requires that a trial court first determine a "lodestar" figure based on
11 a "careful compilation of the time spent in reasonable hourly compensation for each attorney
12 involved in the presentation of the case." *Serrano*, 20 Cal.3d at 48. Presently, the "lodestar"
13 figure is over \$47,152.00. (Bass Decl., ¶¶ 56-57). The lodestar figure may then be increased by
14 the application of a "multiplier." *Id.* This settlement comes after protracted litigation, and Class
15 Counsel has provided this Court with both a summary of their hourly rates and hours billed in this
16 matter that attest to their diligent efforts. To summarize the lodestar, Class Counsel's time
17 summaries show that they worked over 62.2 hours on this case, not even including all the hours
18 spent on this motion, for the final approval hearing, and through the distribution and accounting
19 process thereafter. (Bass Decl., ¶¶ 56-58). Based on their hourly rates, the lodestar calculation
20 produces over \$47,152.00. in fees, not even requiring a multiplier. (Bass Decl., ¶¶ 56-57).

21 **3. Application of a Positive Multiplier Is Appropriate, but Unnecessary.**

22 The lodestar amount may be increased by applying a multiplier. *See Serrano*, 20 Cal.3d at
23 49; *Beasley v. Wells Fargo Bank* (1991) 235 Cal.App.3d 1407. In California, "[m]ultipliers can
24 range from two to four or even higher" and are routinely applied in the range requested by Class
25 Counsel. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 254; *see also Chavez v.*
26 *Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 (upholding 2.5 multiplier); *Glendora Community*
27 *Redevelopment Agency v. Demeter* (1984) 155 Cal.App.3d 465 (affirming a fee award that
28 included a 12.0 multiplier); *Craft v. County of San Bernardino* (C.D. Cal. 2008) 624 F.Supp.2d

1 1113, 1125 (awarding a common fund fee which amounted to a 5.2 multiplier); *Vizcaino v.*
2 *Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051 (approving a 3.65 multiplier); *Van Vranken*
3 *v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 298-299 (approving multiplier of
4 3.6). Some of the factors a trial court considers when determining whether to apply a multiplier
5 are: “(1) the novelty and difficulty of the questions involved, (2) the skill displayed in presenting
6 them, (3) the extent to which the nature of the litigation precluded other employment by the
7 attorneys, (4) the contingent nature of the fee award.” *See Ketchum v. Moses* (2001) 24 Cal.4th
8 1122, 1132 (citations omitted). The ultimate goal is “to entice competent counsel to undertake
9 difficult public interest cases.” *San Bernardino Valley Audubon Soc. v. County of San*
10 *Bernardino* (1985) 155 Cal.App.3d 738, 755. Fee awards that are too small “chill the private
11 enforcement essential to the vindication of many rights....” *Lealao v. Beneficial California, Inc.*
12 (2000) 82 Cal.App.4th 19, 53. Recently, the Honorable Amy D. Hogue approved a multiplier of
13 3.25 based on similar factors in *Sofia Lopez v. Citris Valley Health Partners, Inc.*, Los Angeles
14 Superior Court case number BC544139 (Final approval granted November 19, 2015).

15 In *Ketchum*, the California Supreme Court held that fee enhancement in contingency cases
16 is necessary to (1) fully compensate counsel for the “loan” of legal services in light of the
17 inherent high risk of “default” posed by losing the case, and (2) encourage competent counsel to
18 take on fee award cases. *Ketchum*, 24 Cal.4th at 1132-1133. As the court noted, “A lawyer who
19 both bears the risk of not being paid and provides legal services is not receiving the fair market
20 value of his work if he is paid only for the second of these functions. If he is paid no more,
21 competent counsel will be reluctant to accept fee award cases.” *Id.* at 1133 (citations omitted).
22 Similarly, in *Greene v. Dillingham Construction N.A., Inc.* (2002) 101 Cal.App.4th 418, 426, the
23 Court of Appeal held that the trial court erred by refusing to consider contingent risk as a factor in
24 the decision to apply a multiplier. The court recognized that “[t]he adjustment to the lodestar
25 figure, e.g., to provide a fee enhancement reflecting the risk that the attorney will not receive
26 payment if the suit does not succeed, constitutes earned compensation; unlike a windfall, it is
27 neither unexpected nor fortuitous. Rather, it is intended to approximate market-level
28

1 compensation for such services, which typically includes a premium for the risk of nonpayment
2 or delay in payment of attorney fees.” *Id.* (citations omitted).

3 Application of a multiplier would be appropriate but is unnecessary. Having filed the case
4 on April 29, 2022, Class Counsel will have been litigating this case for nearly 2 years before
5 receiving any reimbursement, expending significant time and resources which could have been
6 directed towards other cases. Class Counsel agreed to litigate this case on a contingent fee basis,
7 and in the process assumed considerable risk given the uncertain proposition these types of cases
8 entail. (Bass Decl., ¶ 53). As the results in other cases demonstrate, the risk presented in this case
9 was significant. Courts frequently dismiss class and representative allegations and compel
10 arbitration in similar cases. Class Counsel takes multiple risks while trying to vindicate the rights
11 of workers and serve to illustrate the recognition by the California Supreme Court in *Ketchum*
12 that, if multipliers are not awarded to class counsel in the cases that are successfully settled,
13 counsel’s fees are essentially being cut because the lodestar in and of itself would not account for
14 contingent risk. Thus, application of a multiplier would be appropriate given the contingent risk
15 incurred by Class Counsel, the difficulty of the questions involved, the substantial benefit
16 conferred on the Class and State as a result of the Settlement, and the skill displayed by Class
17 Counsel. Plaintiff respectfully requests that the Court award Class Counsel the requested fees of
18 \$ 17,500.00, under the common fund theory with a lodestar cross-check without a multiplier.

19 **C. Class Counsel’s Costs Are Reasonable and Were Incurred for the Class**

20 In the course of this litigation, Class Counsel have incurred costs totaling \$4,903.75 and
21 will incur additional expenses in filing this motion and through the completion of the
22 disbursement and accounting process (including, but not limited to, filing this Motion and
23 appearance at the hearing, and other appearances and communications regarding final
24 accounting). Such litigation-related costs are reimbursable in class action cases. *In re United*
25 *Energy Corp. Sec. Litig.*, 1989 U.S. Dist. LEXIS 19146 at *16 (C.D. Cal. 1989) [quoting
26 Newberg, Attorney Fee Awards § 2:19 (1987)].

27 As one commentator has noted, “the prevailing view is that expenses are awarded in
28 addition to the fee percentage.” Conte, Attorney Fee Awards, § 2:08 at 50-51 (2d ed. 1977); *In re*

1 *GNC Shareholder Litig.*, 668 F.Supp. 450, 452 (W.D. Pa. 1987). As such, the costs incurred by
2 Plaintiff's Counsel in this litigation are reasonable and appropriate as they served the class.

3 **D. The Proposed Service Award to the Plaintiff is Reasonable**

4 The parties have agreed to a service award of no more than \$5,000.00 to Plaintiff (Bass
5 Decl., Exh. A). The service award is proper for several reasons. First, service awards "are not
6 uncommon and can serve an important function in promoting class action settlements." *Sheppard*
7 *v. Consolidated Edison Co. of New York, Inc.*, 2002 WL 2003206, * 5 (E.D.N.Y. 2002); see also
8 *Petrovic v. Amoco Oil Co.*, 200 F.3d 1140 (8th Cir. 1999) (noting that class representatives
9 frequently receive substantial incentive payments); *In re Southern Ohio Correctional Facility*,
10 175 F.R.D. 270, 272 (S.D. Ohio 1997) ("[c]ourts routinely approve incentive awards to
11 compensate named plaintiffs for the services they provided and the risks they incurred during the
12 course of the class action litigation").

13 Second, the incentive is proper considering that Plaintiff spent a substantial amount of her
14 own time to ensure that the class claims could proceed and to ensure that class members received
15 a benefit in this case. (Bass Decl., ¶¶ 62-63). Plaintiff worked with counsel to assist in this case.
16 (Declaration of Martha Padilla ("Padilla Decl.") ¶¶ 6-7). Specifically, Plaintiff met with her
17 attorneys before the lawsuit was filed and discussed her experience working for Defendants.
18 Plaintiff also searched for all documents related to her employment with Defendant. *Id.*
19 Throughout the litigation, Plaintiff remained in close contact with counsel and engaged in
20 numerous telephone conversations regarding the claims in the case and Defendants' defenses to
21 those claims. *Id.* Plaintiff assisted in preparation for mediation. *Id.* Plaintiff had numerous
22 conversations with counsel regarding the potential of the lawsuit, as well as the terms of the
23 ultimate Settlement Agreement which Plaintiff reviewed the drafts and versions thereof. *Id.* It is
24 estimated that over the course of the lawsuit, Plaintiff spent well over 60 hours working on the
25 case for the benefit of both herself and the other members of the class. *Id.* at ¶ 6.

26 Third, the parties - who conducted arms-length settlement negotiations - have agreed that
27 the incentive is fair and reasonable in light of: (i) Class Representative's efforts as plaintiff in the
28 Litigation and (ii) her execution of a full, general release.

1 Fourth, notice was provided to the class that the service award would be paid, and no class
2 member has objected. The other class members, who undertook none of the risks which Plaintiff
3 did, stand to substantially benefit from the Plaintiff's willingness to come forward.

4 Lastly, courts have frequently approved substantial incentive payments to class members
5 for their participation in class action lawsuits. See *In re Southern Ohio Correctional Facility*,
6 *supra*, 175 F.R.D. at 272 (recognizing that "[c]ourts routinely approve incentive awards to
7 compensate named plaintiffs for the services they provided and the risks they incurred during the
8 course of the class action litigation."); *Ingram v. The Coca-Cola Co.*, 200 F.R.D. 685, 694 (N.D.
9 Ga. 2001) (\$300,000 incentive award to each named plaintiff); *Enterprise Energy Corp. v.*
10 *Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 250-251 (S.D. Ohio 1991) (incentive
11 payments of \$50,000 to each class representative); *In re Dunn & Bradstreet Credit Services*
12 *Consumer Litigation*, 130 F.R.D. 366, 373-374 (S.D. Ohio 1990) (incentive payments amounting
13 to \$35,000 to \$55,000 for each class representative); see also, *Van Vranken v. Atlantic Richfield*
14 *Co.*, 901 F.Supp. 294, 299-300 (N.D. Cal. 1995) (approving \$50,000 participation award); *Lo Re*
15 *v. Chase Manhattan Corp.*, 1979 U.S. Dist. LEXIS 12210, *16-17 (S.D.N.Y. 1979) (payment of
16 \$229,000 out of \$1,579,000 settlement fund to settle named plaintiffs claims did not cause the
17 settlement to be unreasonable).

18 In sum, the named Plaintiff took risks, bore hardships, and made sacrifices that absent
19 class members did not. Rewarding her efforts is a proper incentive for individuals who come
20 forward to challenge employment practices on a class-wide level, thus fulfilling the policies and
21 purposes underlying the Labor Code.

22 **E. Submission to the LWDA and Review by Defendants**

23 Concurrently with this submission to the Court, Plaintiff's Counsel uploaded this motion,
24 supportive declarations, Proposed Order and Proposed Judgment to the LWDA's website. (Bass
25 Decl., ¶ 65, Exh. E).

1 **VI. CONCLUSION**

2 For the foregoing reasons, Plaintiff respectfully requests that the Court grant final
3 approval the proposed settlement, certifying the Settlement Class, and entering the Proposed
4 Order and Proposed Judgment submitted concurrently herewith.

5
6 Dated: February 6, 2024

MAKAREM & ASSOCIATES, APLC

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8 By: *Daniel Bass*
9 Daniel J. Bass
10 Attorney for Martha Padilla
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