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Members*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MERCED**

ISAAC ALVAREZ, individually, and on behalf
of all others similarly situated,

Plaintiff,

v.

VALLEY CONNECTION, LLC DBA CARL'S
JR., a California limited liability company; and
DOES 1 through 10, inclusive,

Defendants.

Case No.: 22CV-00985

CLASS ACTION

*[Assigned for all purposes to the Honorable
Brian McCabe, Courtroom 8]*

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

*[Filed with Declaration of Justin F. Marquez,
Declaration of Veronica Olivares,
Declaration of Plaintiff Isaac Alvarez, and
Proposed Judgment]*

FINAL APPROVAL HEARING

Date: April 27, 2023
Time: 8:15 a.m.
Dept. 8

1 **TO THE COURT AND TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 PLEASE TAKE NOTICE that on April 27, 2023 at 8:15 a.m., in Department 8 of Merced
3 County Superior Court, 627 W. 21st Street, Merced, California 95340, pursuant to Code of Civil
4 Procedure § 382 and California Rules of Court 3.769 *et seq.*, Plaintiff Isaac Alvarez (“Plaintiff”)
5 will move the Court for an Order granting final approval of the proposed class action settlement
6 between Plaintiff and Defendant Valley Connection, LLC dba Carl’s Jr. (“Defendant”). Plaintiff
7 further moves the Court for an Order:

- 8 1. Certifying a Class for settlement purposes;
- 9 2. Approving the settlement as fair and reasonable and finding that class members were
10 given notice of the settlement, and advised of their right to participate in the
11 settlement, object to the settlement, or exclude themselves from the settlement, in a
12 reasonable manner;
- 13 3. Appointing Plaintiff Isaac Alvarez as Class Representative for settlement purposes,
14 and approving payment of \$8,000 to Plaintiff for his services as the Class
15 Representative;
- 16 4. Appointing Plaintiff’s Counsel, the law firm of Wilshire Law Firm, PLC, as Class
17 Counsel for settlement purposes;
- 18 5. Approving payment of settlement administrative expenses to CPT Group, Inc. in the
19 amount of \$11,500;
- 20 6. Approving payment of \$101,666.67 in attorney’s fees, which is 33 1/3% of the
21 Settlement Amount, and costs of \$12,500.00 for litigating this action to Class
22 Counsel;
- 23 7. Approving the PAGA Settlement in the amount of \$12,700;
- 24 8. Directing that the clerk of the Court enter the Court’s order as a final judgment; and,
- 25 9. Without affecting the finality of the final judgment, reserving continuing jurisdiction
26 over the parties for the purposes of implementing, enforcing and/or administering the
27 Settlement or enforcing the terms of the judgment.

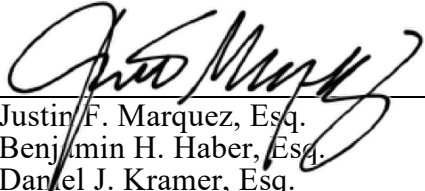
28 The motion will be based upon this notice, the attached memorandum of points and

1 authorities, filed concurrently herewith, the records and files in this action, and any other further
2 evidence or argument that the Court may properly receive at or before the hearing.

3
4 Dated: April 5, 2023

Respectfully submitted,

5 **WILSHIRE LAW FIRM, PLC**

6
7 By:  _____

Justin F. Marquez, Esq.
Benjamin H. Haber, Esq.
Daniel J. Kramer, Esq.

8
9 *Attorneys for Plaintiff*

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I. INTRODUCTION

The proposed settlement satisfies all the criteria for settlement approval under California law. A presumption of fairness exists as the Settlement was reached through extensive, mediated arm's-length negotiations, sufficient investigation and discovery allowed Class Counsel to act intelligently, and Class Counsel is experienced in similar wage-and-hour litigation. The settlement will provide substantial monetary payments to approximately 752 class members. Upon the Court's approval of the settlement, participating class members will receive an **estimated average net payment of \$211.23**. (Declaration of Vanessa Olivares of with Respect to Notice and Settlement Administration ["Olivares Decl."], ¶ 17.) Among the participating class members, the **estimated highest net payment will be \$1,346.70**. (*Id.*) As of filing this Motion, *there was only one valid request for exclusion and no objections to the settlement*. (*Id.* at ¶¶ 12-14.) There were also only two written disputes as to the calculated workweeks for the Class Members, with one being approved and the other invalidated. (*Id.* at ¶ 13.) Thus, the proposed Settlement is fair, reasonable, and adequate and is in the best interests of the Settlement Class Members.

Accordingly, Plaintiff respectfully requests the Court grant final approval of the Settlement.

2

II. SUMMARY OF THE LITIGATION AND SETTLEMENT

A. Plaintiff's Claims

This is a wage and hour class action and PAGA representative action. Plaintiff seeks to represent a class of individuals who were employed by Defendant in California and performed work for Defendant in California as a non-exempt employee at any time during the period of March 30, 2018 through October 15, 2022.

Plaintiff alleges that Defendant's payroll, timekeeping, and wage and hour practices resulted in Labor Code violations. (Declaration of Justin F. Marquez ["Marquez Decl."], ¶ 3.) Plaintiff alleges that Defendant's payroll, timekeeping, and wage and hour practices resulted in Labor Code violations. (*Id.*) Plaintiff further alleges that Defendant failed to provide compliant meal and rest periods, resulting in liability for unpaid wages. (*Id.*) Plaintiff also alleges that Defendant did not have adequate written policies providing employees with meal periods and authorizing and permitting employees to take rest periods. (*Id.*) Finally, Plaintiff alleges that Defendant failed to reimburse employees for work attire and supplies. (*Id.*) Based on these allegations, Plaintiff has claims for failure to pay overtime wages, failure to pay minimum and straight time wages, failure to provide meal periods, failure to authorize and permit rest periods, failure to indemnify business expenses, inaccurate wage statements, failure to pay all final wages at termination, unfair business practices, and civil penalties under the Private Attorneys General Act (PAGA). (*Id.*)

On March 30, 2022, Plaintiff filed a putative wage-and-hour class action complaint against Defendant for: (1) failure to pay minimum and straight time wages (Labor Code §§ 204, 1194, 1194.2, and 1197); (2) failure to pay overtime wages (Labor Code §§ 1194, and 1198); (3) failure to provide meal periods (Labor Code §§ 226.7 and 512); (4) failure to authorize and permit rest periods (Labor Code §§ 226.7); (5) failure to timely pay final wages at termination (Labor Code §§ 201-203); (6) failure to provide accurate itemized wage statements (Labor Code § 226); (7) failure to indemnify employees for expenditures; and (8) unfair business practices (Business and Professions Code 17200 et seq.). (Marquez Decl., ¶ 4.) On October 14, 2022, the Court approved the parties' stipulation permitting Plaintiff to file a First Amended Complaint adding an additional

claim for civil penalties under the Private Attorneys General Act (Labor Code § 2698 et seq.). (*Id.* at ¶ 5.)

B. Discovery and Investigation

Following the filing of the Complaint, the parties exchanged documents and information before mediating this action. (*Id.* at ¶ 6.) Defendant produced a sampling of time and pay records for class members. (*Id.*) Defendant also provided its wage and hour policies and practices during the class period, and information regarding the total number of current and former employees. (*Id.*)

After reviewing documents regarding Defendant’s wage and hour policies and practices, and analyzing Defendant’s time and pay records, Class Counsel was able to evaluate the probability of class certification, success on the merits, and Defendant’s maximum monetary exposure for all claims. (*Id.* at ¶ 7.) Class Counsel also investigated the applicable law regarding the claims and defenses asserted in the litigation. (*Id.*) Class Counsel reviewed these records and prepared a damage analysis prior to mediation. (*Id.*)

C. Settlement Negotiations

On July 12, 2022, the parties participated in private mediation with experienced class action mediator Gig Kyriacou, Esq. (*Id.* at ¶ 8.) After extensive negotiations and discussions regarding the strengths and weaknesses of Plaintiff’s claims and Defendant’s defenses, the Parties were able to reach a resolution, the material terms of which are encompassed within the Settlement Agreement. (*Id.*, Ex. 1 [Stipulation of Settlement].)

Class Counsel submitted the proposed settlement to the LWDA before filing this Motion for Final Approval. (*Id.* at ¶ 13.)

D. Key Terms of the Proposed Settlement

Under the Settlement, Defendant had agreed to pay a Settlement Amount of \$305,000 to resolve this litigation. (Settlement Agreement, § XI(C); Olivares Decl., ¶ 16.) This amount is all-inclusive and no money will revert back to Defendant. The Settlement’s key terms include:

1. Settlement Class: The proposed Settlement Class contains approximately 751 members and is defined as: “All persons who worked for Defendant in California as an hourly-

1 paid or non-exempt employee during the Settlement Period of March 30, 2018 through October
2 15, 2022, and who have not signed an arbitration agreement with Defendant.” (Settlement, § I (R).)

3 2. Settlement Period: The Settlement Period means the period of time from March 30,
4 2018 through October 15, 2022. (Settlement, § I (S).)

5 3. Settlement Amount: This amount is \$305,000.00, which is inclusive of attorneys’
6 fees and Litigation costs approved by the Court, any enhancement to Plaintiff approved by the
7 Court, the Administrative Costs, the PAGA Settlement, and amounts paid to participating
8 Settlement Class Members and Aggrieved Employees. (Settlement, § I (Q); *see also* Olivares Decl.
9 ¶ 16.) The settlement amount excludes Defendant’s share of employer taxes, which will be paid
10 separately by Defendant. (Settlement § XV.)

11 4. No Reversion: This is a non-reversionary settlement. Settlement checks shall remain
12 negotiable for 180 days from the date of the mailing. (Settlement, § XI (C).) Any uncashed or
13 returned checks shall be treated as a *cy pres* distribution to California Rural Legal Assistance, Inc.
14 pursuant to Code of Civil Procedure Section 384. (Settlement, § XI (C).)

15 5. Release: The class release is limited to “any and all wage-related claims that were
16 alleged in the Litigation or which could have been alleged in the Litigation based on the facts
17 asserted in the Litigation arising during the Settlement Period against Defendant, and its divisions,
18 affiliates, predecessors, successors, shareholders, officers, directors, employees, agents, trustees,
19 representatives, administrators, fiduciaries, assigns, subrogees, executors, partners, parents,
20 subsidiaries, joint employers, insurers, and related corporations.” (Settlement, § VII (A).)

21 6. PAGA Employee. For settlement purposes, the Parties agreed to the definition of a
22 PAGA Employee, or “Aggrieved Employee” as: “All persons who worked for Defendant in
23 California as an hourly-paid or non-exempt employee during the PAGA Settlement Period of April
24 8, 2021 through October 15, 2022, and who have not signed an arbitration agreement with
25 Defendant.”

26 7. PAGA Settlement: \$12,700.00 shall be allocated as a settlement of Plaintiff’s claims
27 under PAGA, 75% of which (\$9,525.00) will be paid to the LWDA and 25% (\$3,175.00) of which
28 will be paid to Aggrieved Employees. (Settlement, § I (M).) Class Counsel submitted the proposed

1 settlement and accompanying papers to the LWDA before filing the Motion for Final Approval.
2 (Marquez Decl., ¶ 13.)

3 8. Net Settlement Amount: The Net Settlement Fund is the amount that remains and
4 that shall be paid to Settlement Class Members after the following amounts are subtracted: (1)
5 attorneys' fees and Litigation costs, (2) Administrative Costs, (3) enhancement to Named Plaintiff,
6 and (4) the PAGA Settlement. (Settlement, § I (K).)

7 9. Distribution Formula: Participating class members will receive a lump sum payment
8 determined by the Settlement Administrator in accordance with the provisions of this Settlement
9 as good and valuable consideration for the waiver and release of claims set forth above. The lump
10 sum payment to each member of the Settlement Class not excluding him/ herself will be determined
11 in accordance with the procedure set forth in Section X of the Settlement. (Settlement, § XI (A).)

12 10. Tax Allocation: Net Settlement Payments to Settlement Class Members will be
13 allocated 33 1/3% as wages and 66 2/3% as penalties. (Settlement, § XV.)

14 11. Enhancement: Subject to Court approval, Plaintiff shall be paid an enhancement
15 award not to exceed \$8,000. (Settlement, § XIV.) This amount is for Plaintiff's time and effort in
16 bringing and presenting the action, and in exchange for a general release of all claims, known or
17 unknown, pursuant to Civil Code Section 1542. (Settlement, § VII (B).)

18 12. Attorneys' Fees and Costs: The Settlement provides that Defendant will not oppose
19 a fee application of up to 33 1/3% (\$101,666.67) of the Settlement Amount, plus out-of-pocket
20 costs not to exceed \$12,500. (Settlement, § XIII.) At this time, Class Counsel's costs are
21 approximately \$12,490.99. (Marquez Decl., ¶ 11.) Wilshire Law Firm, PLC has no fee-splitting
22 agreement with any other counsel in this case. (*Id.* at ¶ 23.)

23 13. Notice of Proposed Settlement: The Notice sets forth in plain terms, a statement of
24 the case, the terms of the Settlement Agreement, the approximate amount of attorneys' fees, costs,
25 and enhancement being sought, and an explanation of how the settlement allocations are calculated.
26 (Settlement, § (XIII)-(XV).) The Notice also sets forth each class member's total workweeks, as
27 well as the approximate amount of money they would receive in the event all class members
28 participate in the settlement. (*Id.*) Class Members were notified by first class mail of the

1 settlement. (Settlement, § IX (A); *see also* Olivares Decl. at ¶ 7.) CPT Group, Inc., the Settlement
2 Administrator, undertook its best efforts to ensure that the notice was provided to the current
3 addresses of class members, including conducting a national change of address search and re-
4 mailing the notice to updated addresses. (Settlement, § IX (A); *see also* Olivares Decl. at ¶¶ 6-10.)
5 Settlement Administration costs shall not exceed \$11,500.00.

6 14. Workweek Dispute Procedure: The notice procedure also permitted class members
7 to dispute their number of workweeks. (Settlement, § X.)

8 **E. Preliminary Settlement Approval, Class Notice, and Settlement**
9 **Administration.**

10 This Court issued an Order Granting Plaintiff’s Motion for Preliminary Approval of Class
11 Action Settlement on November 30, 2022. (Marquez Decl., ¶ 12.)

12 Altogether, notices explaining class member rights were mailed out to all 752 class
13 members. (Olivares Decl., ¶ 7.) To date, eleven (11) notice packets remain undeliverable. (*Id.* at
14 ¶ 10.) *There were only one valid request for exclusion received and no objections to the*
15 *settlement.* (*Id.* at ¶¶ 12-14.) If the Court approves the settlement, participating class members
16 will receive an **estimated average net payment of \$211.23**, with the estimated **highest net**
17 **payment being \$1,346.70**. (*Id.* at ¶ 17.)

18 **III. THE SETTLEMENT MERITS FINAL APPROVAL**

19 The law favors the settlement of lawsuits, particularly in class actions and other complex
20 cases. (*See e.g., Neary v. Regents of Univ. of California* (1992) 3 Cal.4th 272, 277-81.) Factors
21 to be considered in evaluating a class action settlement include “the strength of plaintiffs’ case, the
22 risk, expense, complexity and likely duration of further litigation, the risk of maintaining class
23 action status through proceedings, the experience and views of counsel, the presence of a
24 government participant, and the reaction of the class members to the proposed settlement.” (*Kullar*
25 *v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128.) A presumption that a settlement is
26 fair and reasonable exists where, as here, the following four factors are present: “(1) the settlement
27 is reached through arm’s length bargaining; (2) investigation and discovery are sufficient to allow
28 counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4)

1 the percentage of objectors is small.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th
2 224, 245.)

3 Whether a class action settlement should be approved is a question committed to the trial
4 court’s broad discretion. (*Id.* at pp. 234-35.) In exercising its discretion, the Court should give
5 “[d]ue regard ...to what is otherwise a private consensual agreement between the parties.” (*Dunk*
6 *v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) “The inquiry ‘must be limited to the extent
7 necessary to reach a reasoned judgment that the agreement is not the product of fraud or
8 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a
9 whole, is fair, reasonable and adequate to all concerned.” (*Id.* [internal citations omitted].)

10 **A. The Settlement Reflects a Reasonable Compromise.**

11 The Settlement represents a significant percentage of the maximum damages that may have
12 been awarded to the class in this case if they had prevailed at trial. The Settlement, of course,
13 reflects a compromise. The amount of settlement benefits takes into account all the litigation risks
14 related to obtaining class certification, proving Defendant’s liability, and proving Class Members’
15 damages. In light of all the defenses asserted by Defendant which posed substantial litigation risks,
16 a compromise effectively awarding Class Members a significant percentage of the maximum value
17 of their claims is eminently fair and reasonable.

18 Because of the Settlement, and through the efforts of Plaintiff and Class Counsel, Class
19 Members will receive timely, guaranteed relief and will avoid the risk of an unfavorable judgment.

20 To be sure, Defendant ultimately has to pay less under the settlement than it would have
21 had to pay if Plaintiff had achieved a judgment on claims at trial. But an ideal settlement requiring
22 a defendant to pay the full amount of its potential damages is rarely achieved. As the Ninth Circuit
23 has observed, “the very essence of a settlement is compromise, ‘a yielding of absolutes and an
24 abandoning of highest hopes.”’ (*Officers for Justice v. Civil Service Commission of City and*
25 *County of San Francisco* (9th Cir. 1982) 688 F.2d 615, 624.) Thus, a proposed settlement “is not
26 to be judged against a hypothetical or speculative measure of what might have been achieved by
27 the negotiators.” (*Id.* at p. 625.) A court’s “intrusion upon what is otherwise a private consensual
28 agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to

1 reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or
2 collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair,
3 reasonable and adequate to all concerned.” (*Id.*)

4 **B. The Settlement was Reached After Arms-Length Negotiations Following**
5 **Informal Discovery.**

6 The Settlement was reached following extensive negotiations between Class Counsel and
7 Defendant’s counsel. (Marquez Decl., ¶ 8.) Prior to the mediation, Defendant provided Class
8 Counsel with class-wide information and documents, including its wage and hour policies and
9 practices during the class period and a sampling of time and pay records for class members. (*Id.*)
10 After several days of negotiation following the mediation, the Parties agreed to a global resolution,
11 the material terms of which are encompassed within the Settlement Agreement. (*Id.*, Ex. 1.)

12 Counsel participated in lengthy arms-length settlement negotiations that involved
13 numerous discussions, exchanges of information and candid evaluation of the respective Parties’
14 strengths and weaknesses. (Marquez Decl., ¶ 8.) There is no evidence to suggest that the Parties
15 did not have sufficient information to make informed decisions about the value of this case or that
16 the Settlement is a product of fraud, overreaching or collusion.

17 **C. Plaintiff’s Counsel Has Substantial Class Action Experience.**

18 Class Counsel has considerable experience and has demonstrated competence with
19 litigating wage and hour class actions. (*Id.* at ¶¶ 25-36.) Class Counsel has substantial experience
20 in all facets of litigation in state and federal court, including discovery, law and motion, trial,
21 appeals, arbitration and mediation. Class Counsel has litigated numerous class actions on behalf
22 of plaintiffs and have been lead counsel or otherwise exercised significant case handling
23 responsibilities in numerous cases resulting in millions of dollars in class action settlements. (*Id.*)

24 Based on Class Counsel’s experience as employment and class action attorneys, Class
25 Counsel is eminently qualified to evaluate the strength of Plaintiff’s claims, the strength of
26 Defendant’s defenses against certification, the strength of Defendant’s defenses on the merits, and
27 the fairness of the Settlement. Their opinion that final approval of the Settlement would be in the
28 best interests of class members in light of the significant risks of litigation is entitled to great

weight. (*See Kullar, supra*, 168 Cal.App.4th at 129 [“The court undoubtedly should give considerable weight to the competency and integrity of counsel and the involvement of a neutral mediator in assuring itself that a settlement agreement represents an arms-length transaction entered without self-dealing or other potential misconduct”].)

D. There Are No Objections To The Settlement.

No class member has objected to the Settlement and only one valid request for exclusion from the Settlement was received. (Olivares Decl., ¶¶ 12-14.) The overwhelmingly positive response of the class strongly supports final approval of the Settlement. (*See, e.g., In re Lifelock, Inc. Marketing and Sales Practices Litigation* (D. Ariz. 2010) 2010 WL 3715138, *6 [relatively few objections and requests for exclusion support approval].)

Factors to be considered in evaluating a class action settlement include “the reaction of the class members to the proposed settlement.” (*Kullar, supra*, 168 Cal.App.4th at p. 128.) The reaction here has been overwhelmingly positive. Courts have approved class action settlements in lesser circumstances. (*See, e.g., Hughes v. Microsoft Corp.* (W.D.Wash. 2001) 2001 U.S. Dist. LEXIS 5976, 2001 WL 34089697, *8 [court found that the “class members overwhelmingly support[ed] the settlement” where there were over 37,000 notices sent out, 2,745 class members participated in the settlement, “only nine objections were submitted”, and there were 86 timely opt-outs and over 20 additional defective or untimely opt-outs, “these indicia of the approval of the class of the terms of the settlement support a finding of fairness under Rule 23”], *citing Hanlon v. Chrysler Corp.* (9th Cir.1998) 150 F.3d 1011, 1027 [despite vigorous objections and appeal by objectors, “fact that the overwhelming majority of the class willingly approved the offer and stayed in the class presents at least some objective positive commentary as to its fairness”, court did not abuse its discretion in approving settlement].)

IV. THE COURT SHOULD AWARD PLAINTIFF THE REQUESTED AMOUNTS OF ATTORNEYS’ FEES, COSTS AND AN ENHANCEMENT PAYMENT.

Under the Settlement, subject to the Court’s approval, Defendant has agreed not to oppose Class Counsel’s request for reasonable attorneys’ fees in the amount of \$101,666.67, which is 33 1/3% of the Settlement Amount, and Litigation costs in an amount not to exceed \$12,500.00 for

1 litigating this Action, which shall be paid from the Settlement Amount. In addition, Defendant
2 will not oppose an application for the payment of Administrative Costs in the amount of \$11,500
3 and a Class Representative Enhancement payment in the amount of \$8,000, to be paid from the
4 Settlement Amount. The proposed attorneys' fees and expenses were disclosed to the Class
5 Members in the Notice of Proposed Class Action Settlement.

6 "In general, questions whether a settlement was fair and reasonable, whether certification
7 of the class was proper, and whether the attorney fee award was proper are matters addressed to
8 the trial court's broad discretion." (*Wershba, supra*, 91 Cal.App.4th at pp. 234-235.) "Courts
9 recognize two methods for calculating attorney fees in civil class actions: the lodestar/multiplier
10 method and the percentage of recovery method." (*Id.* at p. 254; *Vincent v. Hughes Air West, Inc.*
11 (9th Cir. 1977) 557 F.2d 759, 769.)

12 **A. Counsel Requests an Award of Fees Based on the "Common Fund" Method.**

13 California courts have long awarded attorneys' fees as a percentage of the benefit created
14 by counsel in pursuing claims on behalf of a class. The California Supreme Court held that "when
15 a number of persons is entitled in common to a specific fund, and an action brought by a plaintiff
16 or plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff
17 or plaintiffs may be awarded attorneys' fees out of the fund." (*Serrano v. Priest* (1977) 20 Cal.3d
18 25, 34 [quoting *D'Amico v. Board of Medical Examiners* (1974) 11 Cal. 3d 1.]

19 Class Counsel intends to seek an award of attorneys' fees on the "percentage of recovery/
20 common fund" theory. The purpose of the common fund/percentage approach is to "spread
21 litigation costs proportionally among all the beneficiaries so that the active beneficiary does not
22 bear the entire burden alone." (*Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769.)
23 In *Quinn v. State of California* (1995) 15 Cal. 3d 162, 167, the California Supreme Court stated:
24 "[O]ne who expends attorneys' fees in winning a suit which creates a fund from which others
25 derive benefits may require those passive beneficiaries to bear a fair share of the litigation costs."
26 Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, 110, the California
27 Supreme Court recognized that the common fund doctrine has been applied "consistently in
28 California when an action brought by one party creates a fund in which other persons are entitled

1 to share.”

2 The California Supreme Court affirmed in *Laffitte v. Robert Half Int’l Inc.* (2016) 1 Cal.5th
3 480 that, “when class action litigation establishes a monetary fund for the benefit of the class
4 members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the
5 court may determine the amount of a reasonable fee by choosing an appropriate percentage of the
6 fund created.” (*Id.* at p. 503.) The court explained: “The recognized advantages of the percentage
7 method—including relative ease of calculation, alignment of incentives between counsel and the
8 class, a better approximation of market conditions in a contingency case, and the encouragement
9 it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation—
10 convince us the percentage method is a valuable tool that should not be denied our trial courts.”
11 (*Id.* [internal citations omitted].)

12 Several courts have expressed frustration with the alternative “lodestar” approach for
13 deciding fee awards, which usually involves wading through voluminous and often indecipherable
14 time records. Commenting on the lodestar approach, Chief Judge Marilyn Hall Patel wrote: “This
15 court is compelled to ask, ‘Is this process necessary?’ Under a cost-benefit analysis, the answer
16 would be a resounding, ‘No!’” (*In re Activision Securities Litigation* (N.D. Cal 1989) 723 F. Supp.
17 1373, 1375.) The percentage approach is preferable to the lodestar because: (1) it aligns the
18 interests of class counsel and absent class members; (2) it encourages efficient resolution of the
19 litigation by providing an incentive for early, yet reasonable, settlement; and (3) it reduces the
20 demands on judicial resources. (*Id.* at pp. 1378-79.) The Ninth Circuit now routinely uses the
21 percentage of the common fund approach to determine the award of attorney’s fees. (*See, e.g. In*
22 *re Pacific Enterprises Securities City and County of San Francisco Litigation* (9th Cir. 1994) 47
23 F.3d 373, 378-79 [approving attorney’s fee of 33 1/3%].)

24 **1. The Standard Fee Award in Class Actions Has Resolved Itself As One-**
25 **Third Of The Recovery In Common Fund Cases.**

26 According to a leading treatise on class actions, “No general rule can be articulated on what
27 is a reasonable percentage of a common fund. Usually 50% of the fund is the upper limit on a
28 reasonable fee award from a common fund in order to assure that the fees do not consume a

disproportionate part of the recovery obtained for the class, although somewhat larger percentages are not unprecedented.” (See Conte & Newberg, Newberg on Class Actions (3rd Ed.) § 14.03.) Attorneys’ fees that are fifty percent of the fund are typically considered the upper limit, with *thirty to forty percent commonly awarded in cases where the settlement is relatively small*. (See *Id.*; see also, *Van Vranken v. Atlantic Richfield Company* (N.D. Cal. 1995) 901 F. Supp. 294 [stating that most cases where 30-50 percent was awarded involved “smaller” settlement funds of under \$10 million].)

The settled-for 33 1/3% fee award is consistent with the average fee award in class actions. Indeed, the custom and practice in class actions is to award approximately one-third of a fund as a fee award. (See *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, n.11 [“Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.”].) Thus, Plaintiff’s fee request is in line with the prevailing guidelines established in California case law and academic literature, and is consistent with awards in California. Accordingly, Plaintiff requests that the Court approve the attorneys’ fees as negotiated by the Parties and requested herein.

2. This Matter Involves A “Fee-Shifting” Provision of the Labor Code.

Class Counsel is entitled to recover fees under Labor Code § 1194, which provides, in part:

[A]ny employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.

(Lab. Code § 1194.)

As this litigation culminated in a settlement that provided for a recovery of unpaid wages, including unpaid minimum wages and overtime compensation, Plaintiff is entitled to recover reasonable attorneys’ fees and costs under the California Labor Code.

Class Counsel is also entitled to a fee award under California’s private attorney general statute, Code of Civil Procedure § 1021.5. “The award of attorneys fees is proper under Section 1021.5 if ‘(1) plaintiffs’ action ‘has resulted in the enforcement of an important right affecting the public interest,’ (2) ‘a significant benefit, whether pecuniary or nonpecuniary, has been conferred

1 on the general public or a large class of persons’ and (3) ‘the necessity and financial burden of
2 private enforcement are such as to make the award appropriate.’” (*Press v. Lucky Stores* (1983)
3 34 Cal.3d 311, 317-318.) The fundamental objective of the statute is “to encourage suits enforcing
4 public policies by providing substantial attorneys’ fees to successful litigants in such cases.”
5 (*Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 565.)

6 This action resulted in the enforcement of an important right affecting the public interest,
7 as Plaintiff sought to enforce Settlement Class Members’ rights to recover statutory wages arising
8 from Defendant’s failure to pay all wages and failure to provide meal and rest breaks. (*See Murphy*
9 *v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1113 [noting that “health and safety
10 concerns” are what motivated the Industrial Welfare Commission to adopt mandatory meal and
11 rest periods].)

12 This action also conferred a significant benefit on a large class of persons. Notice was sent
13 to 752 Class Members, and no Class Member objected to the Settlement and only one Class
14 Member sent a valid request for exclusion. The Settlement provides a significant monetary benefit,
15 in that it permits all persons who worked for Defendant during the applicable class period to obtain
16 significant compensation for unpaid wages and missed meal and rest periods.

17 Finally, the necessity and financial burden of private enforcement render an award
18 appropriate. Without the incentive of an attorneys’ fee award, Plaintiff could not have afforded to
19 hire counsel to pursue this case, as the cost of litigating this matter far outweighed Plaintiff’s
20 potential recovery. (*See Ryan v. California Interscholastic Federation* (2001) 94 Cal.App.4th
21 1033, 1044 [“As to the necessity and financial burden of private enforcement, an award is
22 appropriate where the cost of the legal victory transcends the claimants’ personal interest; in other
23 words, where the burden of pursuing the litigation is out of proportion to the plaintiff’s individual
24 stake in the matter.”].)

25 **3. The Experience, Reputation and Ability of Class Counsel Support the**
26 **Fee Award.**

27 As demonstrated by their past experience in pursuing class actions on behalf of consumers
28 and employees, Class Counsel possesses considerable expertise in litigating class action matters.

1 Class Counsel has been involved as lead counsel or co-counsel in dozens of class actions resulting
2 in a multitude of beneficial results to class members in California. Because it is reasonable to
3 compensate class counsel commensurate with their skill, reputation and experience, a fee award of
4 33 1/3% of the Maximum Settlement Amount, a percentage considered within the norm in class
5 action practice, is certainly justified here.

6 Class Counsel's experience in wage and hour class actions was integral in evaluating the
7 strengths and weaknesses of the case against Defendant and the reasonableness of the settlement.
8 Practice in the narrow field of wage and hour litigation requires skill and knowledge concerning
9 the rapidly evolving substantive law (state and federal), as well as the procedural law of class
10 action litigation. Based on these and other factors, Class Counsel has frequently received fee
11 awards amounting to 33 1/3% of the recovery for the class. Therefore, the requested fee award is
12 reasonable and fair.

13 **B. While the Lodestar Method is Not Necessary in Common Fund Cases, Courts**
14 **May Perform a Cross-Check to Award Fees.**

15 "Despite its primacy, the lodestar method is not necessarily utilized in common fund cases."
16 (*Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 27.) Courts have criticized the
17 lodestar method as a drain on the judicial system and a disincentive on attorneys to take on high-
18 risk, challenging cases. (*Id.* at p. 29.) Indeed, the lodestar approach: "(1) 'increases the workload
19 of an already overtaxed judicial system,' (2) is 'insufficiently objective and produce[s] results that
20 are far from homogenous,' (3) 'creates a sense of mathematical precision that is unwarranted in
21 terms of the realities of the practice of law,' (4) 'is subject to manipulation by judges who prefer
22 to calibrate fees in terms of percentages of the settlement fund or the amounts recovered by the
23 plaintiffs or of an overall dollar amount,' (5) 'encourages lawyers to expend excessive hours, and
24 . . . engage in duplicative and unjustified work,' (6) 'creates a disincentive for the early settlement
25 of cases,' (7) deprives trial courts of 'flexibility to reward or deter lawyers so that desirable
26 objectives, such as early settlement, will be fostered,' (8) 'works to the particular disadvantage of
27 the public interest bar,' and (9) results in 'confusion and lack of predictability.'" (*Id.*)

28 ///

1 Although California supports the common fund doctrine, the lodestar method can be used
2 to cross-check fee awards. “It may be appropriate in some cases, assuming the class benefit can
3 be monetized with a reasonable degree of certainty, to “cross-check” or adjust the lodestar in
4 comparison to a percentage of the common fund to ensure that the fee awarded is reasonable and
5 within the range of fees freely negotiated in the legal marketplace in comparable litigation.”(*In re*
6 *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557.)

7 Applying the lodestar method requires a two-step process. The first step is to multiply the
8 number of hours reasonably expended by a reasonable hourly rate. The second step is to apply a
9 multiplier to the lodestar to take into account various factors. “The purpose of such adjustment is
10 to fix a fee at the fair market value for the particular action. In effect, the court determines,
11 retrospectively, whether the litigation involved a contingent risk or required extraordinary legal
12 skill justifying augmentation of the unadorned lodestar in order to approximate the fair market rate
13 for such services.” (*Id.* at pp. 556-57.) “Under certain circumstances, a lodestar calculation may
14 be enhanced on the basis of a percentage-of-the-benefit analysis.” (*Id.* at p. 557.)

15 Wilshire Law Firm’s current lodestar is \$100,700 based on approximately 173 hours of
16 work performed by Class Counsel. (Marquez Decl., ¶ 16.) Accordingly, the requested fee of
17 \$101,666.67 is reasonable and fair as it is based on a multiplier of approximately 1.0.

18 **1. Class Counsel’s Rates Have Been Approved by Several Courts.**

19 Class Counsel provides a declaration to support their lodestar hourly rates. “Affidavits of
20 the plaintiffs’ attorney and other attorneys regarding prevailing fees in the community, and rate
21 determinations in other cases, particularly those setting a rate for the plaintiffs’ attorney, are
22 satisfactory evidence of the prevailing market rate.” (*United Steelworkers of America v. Phelps*
23 *Dodge Corp.* (9th Cir. 1990) 896 F.2d 403, 407.) Class Counsel has received final approval of
24 their hourly rates in other wage and hour class action settlements. These rates are not opposed or
25 challenged.

26 **2. The Lawsuit Provided a Public Benefit.**

27 Class Counsel’s choice to litigate this matter provided a public benefit to 751 California
28 employees. Indeed, California Labor Code section 90.5(a) states:

1 It is the policy of this state to vigorously enforce minimum labor standards in order
2 to ensure employees are not required or permitted to work under substandard unlawful
3 conditions...and to protect employers who comply with the law from those who
attempt to gain a competitive advantage at the expense of their workers by failing to
comply with minimum labor standards.

4 Moreover, the California Supreme Court stated that “Labor Code section 1194 confirms “a clear
5 public policy ... that is specifically directed at the enforcement of California's minimum wage and
6 overtime laws for the benefit of workers.” [citation omitted].” (*Sav-on Drug Stores, Inc. v. Super.*
7 *Ct.* (2004) 34 Cal.4th 319, 340.) Given the financial risks and numerous attorney hours attendant
8 to the litigation of Plaintiff’s claims, this factor supports Class Counsel’s fee request and
9 encourages the private enforcement of legal rights for the general good.

10 **C. Costs Are Reasonable.**

11 Class Counsel requests reimbursement of \$12,500 in expenses. (Marquez Decl., ¶ 11.)
12 Defendant has agreed that it will not oppose any cost award request up to \$12,500. The categories
13 of costs are set forth in the accompanying Declaration of Justin Marquez, and these costs are easily
14 seen to be both reasonable and necessary.

15 **D. The Enhancement Payment to Plaintiff is Reasonable.**

16 Named plaintiffs in class action lawsuits “are eligible for reasonable incentive payments to
17 compensate them for the expense or risk they have incurred in conferring a benefit on other
18 members of the class.” (*Munoz, supra*, 86 Cal.App.4th at p. 412.) Courts routinely grant approval
19 of class action settlement agreements containing enhancements for the class representatives, which
20 are necessary to provide incentive to represent the class, and are appropriate given the benefit the
21 class representatives help to bring about for the class. (*See Rodriguez v. W. Publ’g Corp.* (9th Cir.
22 2009) 563 F.3d 948, 958-59.)

23 Service awards are particularly important to plaintiffs in wage and hour cases because they
24 promote the important public policies underlying the wage and hour laws. This strong policy is
25 codified in California Labor Code section 90.5, which provides, “it is the policy of this state to
26 vigorously enforce minimum labor standards in order to ensure employees are not required or
27 permitted to work under substandard unlawful conditions....”).

28 ///

1 Under the Settlement Agreement, subject to the Court’s approval, Defendant agreed not to
2 oppose an enhancement to Plaintiff in the amount of \$8,000. (Settlement, § XIV.) This amount is
3 also in exchange for Plaintiff’s general release of all claims against Defendant. Plaintiff has
4 submitted a declaration demonstrating that he devoted a great deal of time and work assisting
5 counsel in the case, including in-person meetings with Class Counsel and numerous phone calls to
6 discuss the case, case strategy, mediation, and settlement. (*See generally*, Declaration of Plaintiff
7 Isaac Alvarez [“Alvarez Decl.”] (showing at least 45 hours of estimated time devoted to this case).)

8 When compared with the amounts awarded in typical class action cases, the amount
9 requested here is particularly reasonable. Indeed, a **2006** study examining the average incentive
10 award given to class action plaintiffs from **1993 to 2002** found that the “average award per class
11 representative was \$15,992 and the median award per class representative was \$4,357.” (Theodore
12 Eisenberg & Jeffrey P. Miller, “Incentive Awards to Class Action Plaintiffs: An Empirical Study”,
13 53 UCLA L. Rev. 1303, 1308 (2006).) That same study found that named plaintiffs in employment
14 discrimination class actions received an average award of \$69,850 and a median award of \$31,081,
15 while named plaintiffs in other employment class actions received an average award of \$12,121
16 and a median award of \$13,059. (*Id.* at p. 1334.) The authors of the study found that higher awards
17 in employment cases reflected the “courts’ wish to make representative plaintiffs whole by
18 compensating them for the high costs of their service to the class, including risks of stigmatization
19 or retaliation on the job.” (*Id.* at p. 1308.)

20 Another factor that supports the awarding of service awards is whether the class
21 representative’s service resulted in notoriety or other personal difficulties. (*See, e.g., Schaffer*
22 *v. Litton Loan Servicing, LP* (C.D. Cal. 2012) 2012 WL 10274679, at *18.) The California
23 Supreme Court has recognized that “retaliation against employees for asserting statutory rights
24 under the Labor Code is widespread,” despite anti-retaliation statutes designed to protect
25 employees. (*Gentry v. Superior Court* (2007) 42 Cal.4th 443, 460-61.) In this context, class
26 representatives should be rewarded for assuming the risk of retaliation for the sake of class
27 members. (*See Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 F.R.D. 174, 187.)

28 Here, Plaintiff has lent his name to this case and thus subjected himself to public

1 attention. He has also risked his reputation in the community and with regard to future
2 employment opportunities as a result of stepping forward publicly in a class action. When a
3 class representative shoulders some degree of personal risk in joining the litigation, such as
4 workplace retaliation or financial liability, an incentive award is especially important. (See
5 *Staton v. Boeing Co.* (9th Cir. 2003) 327 F.3d 938, 977; *Weeks v. Kellogg Co.* (C.D. Cal. 2013)
6 2013 WL 6531177, *36.) Plaintiff has been subject to the rigors of litigation and has had to
7 devote his own time and expenses in participating in the case. (Alvarez Decl., ¶¶ 4-14.)

8 **E. Administrative Costs Should be Approved.**

9 CPT Group, Inc., the Settlement Administrator, estimates that it will incur a total of
10 \$11,500.00 in costs associated with the administration of this Settlement. (Olivares Decl., ¶ 19.)
11 These expenses are reasonable, based upon the size of the class and the additional tasks associated
12 with claim and exclusion tracking and Class Member payment processing.

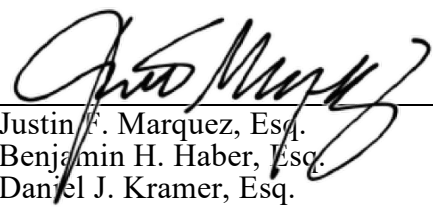
13 **V. CONCLUSION**

14 For the foregoing reasons, Plaintiff respectfully requests that the Court grant final approval
15 of the proposed settlement.

16
17 Dated: April 5, 2023

Respectfully submitted,

18 **WILSHIRE LAW FIRM, PLC**

19
20 By: 

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21
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Alvarez v. Valley Connection, LLC dba Carl's Jr., et al.
22CV-00985

I, Ashley Narinyans, state that I am employed in the aforesaid County, State of California; I am over the age of eighteen years and not a party to the within action; my business address is 3055 Wilshire Blvd., 12th Floor, Los Angeles, California 90010. My electronic service address is anarinyans@wilshirelawfirm.com.

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(X) **BY UPLOAD:** I hereby certify that the documents were uploaded by my office to the State of California Labor and Workforce Development Agency Online Filing Site.

(X) **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known email address or e-mail of record in this action.

I declare under the penalty of perjury under the laws of the State of California, that the foregoing is true and correct.

Executed on April 5, 2023, at Los Angeles, California.


Ashley Narinyans