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

JOHN ARIAS, individually, and on behalf of all
others similarly situated; and JEFFREY
HENSLEY, individually, and on behalf of all
others similarly situated,

Plaintiffs,

v.

FLOWSERVE US, INC.; and DOES 1 through
10, inclusive,

Defendants.

Case No.: 22STCV27829

**CLASS AND REPRESENTATIVE
ACTION**

*[Assigned for all purposes to: Hon. Laura
Seigle, Dept. 17]*

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

*[Filed with Memorandum of Points and
Authorities the Declaration of Nicol E.
Hajjar, and Proposed Order]*

FINAL APPROVAL HEARING

Date: October 17, 2024

Time: 9:00 a.m.

Dept: 17

Complaint filed: August 25, 2022

Trial date: None set

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

2 PLEASE TAKE NOTICE that on October 17, 2024 at 9:00 a.m., in Department 17 of Los
3 Angeles County Superior Court, 312 North Spring Street, Los Angeles, CA 90012, pursuant to
4 Code of Civil Procedure § 382 and California Rules of Court 3.769 *et seq.*, Plaintiffs JOHN ARIAS
5 and JEFFREY HENSLEY of the above-entitled matter and Plaintiff ESTEBAN ROMO of the
6 Related¹ case (“Plaintiffs”) will move the Court for an Order granting final approval of the
7 proposed class action settlement between Plaintiffs and FLOWSERVE US, INC. (“Defendant”).
8 Plaintiffs further moves the Court for an Order:

- 9 1. Certifying a Class for settlement purposes;
- 10 2. Approving the settlement as fair and reasonable and finding that class members were
11 given notice of the settlement, and advised of their right to participate in the settlement,
12 object to the settlement, or exclude themselves from the settlement, in a reasonable
13 manner;
- 14 3. Appointing Plaintiffs JOHN ARIAS; JEFFREY HENSLEY; and ESTEBAN ROMO as
15 Class Representative for settlement purposes;
- 16 4. Appointing Plaintiffs’ Counsel, Wilshire Law Firm, PLC, and Work Lawyers, PC as
17 Class Counsel for settlement purposes;
- 18 5. Approving payment of \$15,000.00 as a Service Award for Plaintiffs ARIAS,
19 HENSLEY, AND ROMO (\$5,000.00 per Plaintiff);
- 20 6. Approving payment of administrative expenses to CPT Group Inc. as the Settlement
21 Administrator; and
- 22 7. Approving payment of \$365,898.03 in attorney’s fees, which is 33 1/3% of the
23 Maximum Settlement Amount, and costs of approximately \$14,642.68 for litigating this
24 action to Class Counsel;
- 25 8. Approving the payment to the California Labor Workforce Development Agency in the
26 amount of \$37,500.00;

27
28 ¹ On June 13, 2023, the Court in the above-entitled action Related the *Romo v. Flowserve*
US, Inc., Case No. 22STCV27551. (Hajjar Decl. ¶ 4.)

- 1 9. Approving the payment of the PAGA settlement to the Class in the amount of \$12,500;
2 10. Directing that the clerk of the Court enter the Court's order as a final judgment; and,
3 11. Without affecting the finality of the final judgment, reserving continuing jurisdiction
4 over the parties for the purposes of implementing, enforcing and/or administering the
5 Settlement or enforcing the terms of the judgment.

6 The motion will be based upon this notice, the attached memorandum of points and
7 authorities, the Declaration of Nicol E. Hajjar and the Declaration of Emilio Cofinco, filed
8 concurrently, the records and files in this action, and any other further evidence or argument that
9 the Court may properly receive at or before the hearing.

10
11 Dated: September 20, 2024

WILSHIRE LAW FIRM

12
13 By:  _____

14 Nicol E. Hajjar, Esq.
15 Tina Petrosian, Esq.

16 *Attorneys for Plaintiffs*
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I. INTRODUCTION

Plaintiffs JOHN ARIAS and JEFFREY HENSLEY of the above-entitled matter and Plaintiff ESTEBAN ROMO of the Related² case (“Plaintiffs”) seek final approval of a proposed \$1,097,694.10 non-reversionary, wage and hour class action and PAGA representative action settlement with Defendant FLOWSERVE US, INC. (“Defendant,” and together with Plaintiffs, the “Parties”).

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 371 class members. Upon the Court’s approval of the settlement, participating class members will receive an estimated average gross payment of at least \$1,717.78, with the estimated highest gross payment being approximately \$3,388.25. (Declaration of Emilio Cofinco Regarding Notice and Settlement Administration [“Cofinco Decl.”], ¶ 16.) *The deadline to opt-out or object to the settlement was September 16, 2024; as of September 20, 2024, there were two requests for exclusion and no objections to the settlement.* (Id. at ¶¶ 12, 14.) Thus, the proposed Settlement is fair, reasonable, and adequate and is in the best interests of the Settlement Class Members.

Plaintiffs’ request for attorneys’ fees in the amount of \$365,898.03, reimbursement of attorney costs and expenses in the amount of \$14,642.68, a service award in the amount of \$5,000.00 per Named Plaintiff (totaling \$15,000.00), Settlement Administration Costs in the amount of \$9,500.00, a payment to the California Labor Workforce Development Agency (“LWDA”) in the amount of \$37,500.00, and a payment of the PAGA settlement to the Class in the amount of \$12,500 are also reasonable and thus should be approved by the Court.

² On June 13, 2023, the Court in the above-entitled action Related the *Romo v. Flowserve US, Inc.*, Case No. 22STCV27551. (Hajjar Decl. ¶ 4.)

1 Accordingly, Plaintiffs respectfully request that the Court grant final approval of the
2 Settlement.

3 **II. SUMMARY OF THE LITIGATION AND SETTLEMENT**

4 **A. Plaintiffs' Claims**

5 This is a wage and hour class action and PAGA representative action. Plaintiffs Hensley
6 and Arias and putative class members worked in California as non-exempt employees for
7 Defendant during the class period. Plaintiff Romo worked as an exempt employee for Defendant
8 during the class period. Defendant manufactures industrial pumps, valves and seals and operates
9 from multiple locations in California. (Declaration of Nicol E. Hajjar in Support of Plaintiffs'
10 Motion for Final Approval of Class Action Settlement ["Hajjar Decl."], ¶ 2.)

11 Plaintiffs allege that Defendant's payroll, timekeeping, and wage and hour practices
12 resulted in Labor Code violations. Plaintiffs allege that Defendant failed to include all
13 renumeration in the employees' overtime rate and meal and rest period premiums. Plaintiffs
14 further allege that Defendant failed to provide employees with legally compliant meal and rest
15 periods. Plaintiffs also alleged that Defendant failed to reimburse necessary business expenses.
16 Based on these allegations, Plaintiffs assert claims against Defendant for failure to pay
17 minimum and straight time wages, failure to pay overtime wages, failure to provide meal
18 periods, failure to authorize and permit rest periods, failure to timely pay all final wages at
19 termination, failure to provide accurate itemized wage statements, unfair business practices, and
20 civil penalties under PAGA. (*Id.* at ¶ 3.)

21 On August 24, 2021, Plaintiff Romo filed a representative action against Defendant
22 alleging similar violations as the Arias Action (defined below), and an additional claim for
23 failure to reimburse all business expenses pursuant to Labor Code § 2802 and PAGA. ("Romo
24 Action"). (*Id.* at ¶ 4.)

25 On August 25, 2022, Plaintiffs Henley and Arias filed a putative wage-and-hour class
26 action complaint against Defendant for: (1) failure to pay minimum and straight time wages
27 (Cal. Lab. Code §§ 204, 1194, 1194.2, and 1197); (2) failure to pay overtime wages (Cal. Lab.
28 Code §§ 1194 and 1198); (3) failure to provide meal periods (Cal. Lab. Code §§ 226.7 and 512);

(4) failure to authorize and permit rest periods (Cal. Lab. Code §§ 226.7); (5) failure to timely pay final wages at termination (Cal. Lab. Code §§ 201-203); (6) failure to provide accurate itemized wage statements (Cal. Lab. Code § 226); (7) unfair business practices (Cal. Bus. & Prof. Code §§ 17200, et seq.); and (8) for civil penalties under PAGA. (*Id.* at ¶ 4.). (“Arias Action”). (*Id.* at ¶ 4.)

B. Discovery and Investigation

Following the filing of the Complaint, the parties informally exchanged documents and information before mediating this action. Defendant produced raw timekeeping and payroll records (i.e. not a sampling) for approximately 283 putative class members in electronic format, covering the time period of April 15, 2019 to December 18, 2022. The data Defendant provided covered approximately 32,537 workweeks and 16,817 pay periods. Defendant also provided documents of their wage and hour policies and practices during the class period, and information regarding the total number of current and former employees. (*Id.* at ¶ 5.)

After reviewing documents regarding Defendant’s wage and hour policies and practices, analyzing Defendant’s timekeeping and payroll 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 ¶ 6.) Class Counsel also investigated the applicable law regarding the claims and defenses asserted in the litigation. (*Id.*) Notably, Defendant maintained a compliant meal period policy in writing however, its practices resulted in missed meal periods. (*Id.*) Class Counsel reviewed these records and utilized an expert to prepare a damages analysis prior to mediation. (*Id.*)

C. Settlement Negotiations, Preliminary Approval, and Increased Class Size.

On May 26, 2023, the Parties participated in private mediation with experienced class action mediator, Kelly Knight, Esq. (*Id.* at ¶ 7.) The mediation was conducted via Zoom. After extensive negotiations and discussions regarding the strengths and weaknesses of Plaintiffs’ claims and Defendant’s defenses, the Parties were able to reach a resolution, the material terms of which are encompassed within the Memorandum of Understanding (“MOU”). (*Id.* at ¶ 8, Ex. 1 [MOU].) The parties continued to work together to draft a long-form Settlement Agreement.

(Id. at ¶ 9; Ex. 2 [CLASS ACTION AND PAGA SETTLEMENT AGREEMENT (“Agreement”)].)

Class Counsel has conducted a thorough investigation into the facts of this case. Based on the foregoing discovery and their own independent investigation and evaluation, Class Counsel is of the opinion that the Settlement is fair, reasonable, and adequate and is in the best interests of the Settlement Class Members in light of all known facts and circumstances, the risk of significant delay, the defenses that could be asserted by Defendant both to certification and on the merits, trial risk, and appellate risk. (*Id.* at ¶ 19.)

On May 23, 2024, the Court granted preliminary approval of a \$1,000,000.00 class action settlement. (*Id.* at ¶ 10.)

Since then, the total number of Class Members has increased from 317 to 371, the Settlement Amount increased by 9.76% (Cofinco Decl., ¶ 6.) The Escalator Clause in Section 8 of the Agreement (“Escalator Clause”) provides for a proportional increase if the actual Class size is more than 10% of this estimate:

Based on its records, Flowserve estimates that, as of the date of this Settlement Agreement, (1) there are approximately 317 Settlement Class Members and (2) there are approximately 240 Aggrieved Employees. If, as of the end of the Class Period, the actual Class size is more than 10% of this estimate (i.e., 347 or more Settlement Class Members), the Gross Settlement Amount shall increase based on the average gross payout paid to individual Settlement Class Members. For example, if the average payout based on 317 Settlement Class Members is \$1,000 per Settlement Class Member and there are 30 additional Settlement Class Members (347 total Settlement Class Members), Flowserve will increase the Gross Settlement Amount by \$30,000.00.

Pursuant to this provision, the gross settlement amount should increase to \$1,097,694.10 (\$1,000,000.00 + \$97,694.10). (Hajjar Decl., ¶ 11.)

If the Court applies the Escalator Clause and increases the gross settlement amount by 9.76% to \$1,097,694.10, there will be no prejudice to class members even though the class notice disclosed a lower amount. (Hajjar Decl., ¶ 12.) Such an increase will result in each class member receiving a larger settlement share. (*Id.*). Since there are no objections and only two opt-outs to the settlement, participating class members are presumably pleased with the lower estimated amount that was disclosed in the notice, and so one can assume that they will be even more pleased to receive additional money. (*Id.*)

1 Applying the Escalator Clause, the \$1,097,694.10 the Settlement represents 45% of **the**
2 **realistic maximum recovery of \$2,210,970.00.** (*Id.* at ¶ 27.) This is plainly an excellent result
3 for the Class. Indeed, because of the proposed Settlement, class members will receive timely,
4 guaranteed relief and will avoid the risk of an unfavorable judgment.

5 Class Counsel submitted the proposed settlement to the LWDA before filing this Motion
6 for Final Approval. (*Id.* at ¶ 17.)

7 **D. Key Terms of the Proposed Settlement**

8 Under the Settlement, Defendant agreed to pay \$1,000,000.00 to resolve this litigation.
9 Now that the Escalator Clause was triggered, Defendant will pay a total Gross Settlement
10 Amount of \$1,097,694.10. (Hajjar Decl., ¶ 11.) This amount is all-inclusive, and does not include
11 Defendant’s employer-side taxes. The Settlement’s key terms include:

12 1. Settlement Class: For settlement purposes only, the Parties agree to the certification
13 of a class pursuant to California Code of Civil Procedure § 382 defined as: “All persons employed
14 by Flowserve in California as an hourly paid or non-exempt employee during the Settlement Class
15 Period.” (Ex. 2: Agreement ¶ 1.43.)

16 2. Settlement Class Period: The Settlement Period means the period August 25, 2018
17 through May 23, 2024, the date of preliminary approval. (Ex. 2: Agreement ¶ 1.45.)

18 3. Settlement Amount: This amount is \$1,097,694.10, which shall be paid by
19 Defendant, for all claims, including wages, interest, the Net Settlement Payments, the Class
20 Counsel Award, litigation costs, Administrative Costs, payment to the Labor and Workforce
21 Development Agency (“LWDA”) for the alleged PAGA penalties, all other penalties, and the Class
22 Representative Service Awards. (Ex. 2: Agreement ¶¶ 1.19, 1.25.)

23 4. No Reversion: This is a non-reversionary settlement. Settlement checks will be valid
24 for one hundred and eighty (180) days from the date of issuance. Pursuant to California Code of
25 Civil Procedure § 384(a), any unpaid cash residue or unclaimed or abandoned class member funds,
26 plus any accrued interest thereon, will be sent to Legal Aid Foundation of Los Angeles at 1550 W.
27 8th Street, Los Angeles, CA 90017. (Ex. 2: Agreement ¶¶ 4.4.1, 4.4.3.)

1 5. Released Class Claims: The Settlement Agreement provides that, “All Participating
2 Settlement Class Members ... will release all claims that were alleged, or reasonably could have
3 been alleged, based on the [Settlement] Class Period facts stated [in the Arias Action and Romo
4 Action]³ and ascertained in the course of the Action[s]... The Released Class Claims do not include
5 any Released PAGA Claims.” (Ex. 2; Agreement ¶ 5.2)

6 6. Released PAGA Claims: The Settlement Agreement provides that, “All Aggrieved
7 Employees are deemed to release...all claims for PAGA penalties that were alleged, or reasonably
8 could have been alleged based on the PAGA Period [...], and the PAGA Notice and ascertained in
9 the court of the Class Action and PAGA Action ...” (Ex. 2; Agreement ¶ 5.3)

10 7. Release as to All Class Representatives (Arias, Hensley, and Romo): The Settlement
11 Agreement provides that Plaintiffs Arias, Hensley, and Romo agree to a full and complete release
12 pursuant California Civil Code section 1542. (Ex. 2: Agreement ¶ 5.1.1); See also, Ex 1: MOU §
13 8 (“Plaintiffs John Arias, Jeffrey Hensley, and Esteban Romo agree to a full and complete release
14 of any claims that they, and each of them, may have arising out of their employment with
15 Defendant, including a Civil Code section 1542 release”).

16 8. PAGA Allocation: The settlement includes \$50,000.00 allocated to Plaintiffs’
17 claims under PAGA, with 75% (\$37,500.00) being paid to the LWDA and 25% (\$12,500.00) being
18 paid to the Aggrieved Employees (Ex. 2: Agreement ¶ 3.2.5.1.) Class Counsel submitted the
19 proposed settlement to the LWDA before filing the Motion for Preliminary Approval. (Hajjar
20 Decl., ¶ 14.)

21 9. Net Settlement Fund: The “Net Settlement Fund” or “Net Settlement Amount” is
22 the amount that remains and that shall be paid to Settlement Class Members after the following
23 amounts are subtracted: (1) attorneys’ fees and Litigation costs, (2) Administrative Costs, (3)
24 employer’s share of payroll taxes, (4) enhancement to the Named Plaintiffs, and (5) the payment
25 to the Labor and Workforce Developmental Agency. (Ex. 2: Agreement ¶ 1.25.)
26
27

28 ³ The Parties refer to both the *Arias* Action and *Romo* Action in their releases.

1 10. Distribution Formula: Members of the Settlement Class not opting out will receive
2 a lump sum payment as good and valuable consideration for the waiver and release of claims as
3 set forth in Section D (5), above, in an amount determined by the Settlement Administrator in
4 accordance with the provisions as outlined in section 3.2.4 of the Agreement.

5 11. Tax Allocation: Any settlement money paid to Settlement Class Members will be
6 allocated as 33.3% wages, 33.3% penalties, and 33.4% interest. (Ex. 2: Agreement ¶ 3.2.4.1.)

7 12. Class Representative Service Award: Subject to Court approval, Plaintiffs shall be
8 paid an enhancement award not to exceed \$5,000.00 each (\$15,000 total), which will be paid from
9 the Settlement Amount. (Ex. 2: Agreement ¶ 3.2.1.) This amount is for Plaintiffs' time and effort
10 in bringing and presenting the action.

11 13. Attorneys' Fees and Costs: The Settlement provides that Defendant will not oppose
12 a fee application of up to 33 1/3% (\$333,000.00) of the Settlement Amount, plus actual out-of-
13 pocket Litigation costs not to exceed \$20,000.00. (Ex. 2: Agreement ¶ 3.2.2.) However, the
14 Escalator Clause was triggered, bringing the total amount of attorney fees to \$365,898.03. At this
15 time, Class Counsel's costs are approximately \$14,642.68. (Hajjar Decl., ¶ 43.)

16 14. Notice of Proposed Class Action Settlement: The Notice sets forth in plain terms,
17 a statement of the case, the terms of the Settlement Agreement, the approximate amount of
18 attorneys' fees, costs, and service award being sought, and an explanation of how the settlement
19 allocations are calculated. (Settlement, Ex. A.) The Notice also sets forth the approximate amount
20 of money the class members would receive in the event all class members participate in the
21 settlement. (*Id.*) The Notice also provides a clear procedure for class members to opt-out in the
22 event they decide to not participate in the settlement. (*Id.*) Class Members will be notified by first
23 class mail of the settlement. (Ex. 3: Agreement ¶ 4.4.1.)

24 15. Workweek Disputes: The Notice set forth each class member's total workweeks
25 and stated a clear procedure for class members to dispute their allocated number of total workweeks
26 in the event they wish to do so. (Settlement, Ex. B.)

1 **E. Preliminary Settlement Approval, Class Notice and Settlement**
2 **Administration.**

3 This Court granted preliminary approval on May 23, 2023. (Hajjar Decl., ¶ 10.) Notices
4 explaining class member rights were mailed out to all 371 class members. (Cofinco Decl., ¶ 8.)
5 To date, one notice packet remains undeliverable. (*Id.* at ¶ 11.) ***There were two requests for***
6 ***exclusion and no objections to the settlement.*** (*Id.* at ¶¶ 12, 14.)

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

8 The law favors the settlement of lawsuits, particularly in class actions and other complex
9 cases. (*See e.g., Neary v. Regents of Univ. of California* (1992) 3 Cal.4th 272, 277-81.) Factors
10 to be considered in evaluating a class action settlement include “the strength of plaintiffs’ case, the
11 risk, expense, complexity and likely duration of further litigation, the risk of maintaining class
12 action status through proceedings, the experience and views of counsel, the presence of a
13 government participant, and the reaction of the class members to the proposed settlement.” (*Kullar*
14 *v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128.) A presumption that a settlement is
15 fair and reasonable exists where, as here, the following four factors are present: “(1) the settlement
16 is reached through arm’s length bargaining; (2) investigation and discovery are sufficient to allow
17 counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4)
18 the percentage of objectors is small.” (*Wershba v. Apple Computers, Inc.* (2001) 91 Cal.App.4th
19 224, 245.)

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

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

2 A settlement is not judged against what a plaintiff might recover had she prevailed at trial,
3 nor does the settlement have to provide 100% of the damages sought to be fair and reasonable.
4 (*Wershba, supra*, 91 Cal.App.4th at pp. 246, 250 [“Compromise is inherent and necessary in the
5 settlement process...even if the relief afforded by the proposed settlement is substantially narrower
6 than it would be if the suits were to be successfully litigated, this is no bar to a class settlement
7 because the public interest may indeed be served by a voluntary settlement in which each side
8 gives ground in the interest of avoiding litigation.”].)

9 The settlement obviates the risk that this Court may deny certification of all or some of
10 Plaintiffs’ claims. (Hajjar Decl., ¶ 34.) While Plaintiffs are confident in the merits of their claims,
11 a legitimate controversy exists as to each cause of action. (*Id.* at ¶ 28.) Plaintiffs also recognizes
12 that proving the amount of wages due to each class member would be an expensive, time-
13 consuming, and uncertain proposition. (*Id.*) Furthermore, even if Plaintiffs obtained certification
14 of all or some of the claims, continued litigation would be expensive, involving a trial and possible
15 appeals, and would substantially delay and reduce any recovery by the class. (*Id.* at ¶¶ 29.)

16 The proposed settlement of \$1,097,694.10 therefore represents a substantial recovery when
17 compared to Plaintiffs’ reasonably forecasted recovery. (*Id.* at ¶¶ 19-31.) Because of the proposed
18 Settlement, class members will receive timely, guaranteed relief and will avoid the risk of an
19 unfavorable judgment. When considering the risks of litigation, the uncertainties involved in
20 achieving class certification, the burdens of proof necessary to establish liability, the probability
21 of appeal of a favorable judgment, it is clear that the settlement amount of \$1,097,694.10 is within
22 the “ballpark” of reasonableness, and final settlement approval is appropriate. (*Id.*) To be sure,
23 Defendant ultimately has to pay less under the settlement than they would have had to pay if
24 Plaintiffs had achieved a judgment after trial. But an ideal settlement requiring a defendant to pay
25 the full amount of its potential damages is rarely achieved. As the Ninth Circuit has observed, “the
26 very essence of a settlement is compromise, ‘a yielding of absolutes and an abandoning of highest
27 hopes.’” (*Officers for Justice v. Civil Service Commission of City and County of San Francisco*
28 (9th Cir. 1982) 688 F.2d 615, 624.) Thus, a proposed settlement “is not to be judged against a

hypothetical or speculative measure of what might have been achieved by the negotiators.” (*Id.* at p. 625.) A court’s “intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” (*Id.*)

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

The Settlement was reached following extensive negotiations following a full-day mediation session with experienced employment mediator Kelly Knight, Esq. (Hajjar Decl. ¶ 7.) The settlement negotiations were at arm’s length and, although conducted in a professional manner, were adversarial. (*Id.*) The parties went into the mediation willing to explore the potential for a settlement of the dispute, but each side was also prepared to litigate their or its position through trial and appeal if a settlement had not been reached. (*Id.*)

Before reaching this settlement, Class Counsel conducted informal discovery concerning the claims set forth in the Litigation, such as a sample of class member timekeeping and payroll records, Defendant’s policies and procedures concerning the payment of wages, the provision of meal and rest breaks, issuance of wage statements, and providing all wages at separation, as well as information regarding the number of putative class members and the mix of current versus former employees, the wage rates in effect, and the amount of meal and rest period premium wages paid to class members. (*Id.* at ¶¶ 5-6.) In conjunction with their extensive factual investigation, Class Counsel investigated the applicable law regarding the claims and defenses asserted in the litigation. (*Id.*) Thus, Plaintiffs and Class Counsel were able to act intelligently and effectively in negotiating the proposed Settlement. (*Id.*) There is no evidence to suggest that the Parties did not have sufficient information to make informed decisions about the value of this case or that the Settlement is a product of fraud, overreaching or collusion.

1 **C. Plaintiffs' Counsel Has Substantial Class Action Experience.**

2 Class Counsel also has considerable experience and has demonstrated competence with
3 litigating wage and hour class actions. (*Id.* at ¶¶ 45-52.) Class Counsel has substantial experience
4 in all facets of litigation in state and federal court, including discovery, law and motion, trial,
5 appeals, arbitration and mediation. Class Counsel has litigated numerous class actions on behalf
6 of plaintiffs and have been lead counsel or otherwise exercised significant case handling
7 responsibilities in numerous cases resulting in millions of dollars in class action settlements. (*Id.*)

8 Based on Class Counsel's experience as employment and class action attorneys, Class
9 Counsel is eminently qualified to evaluate the strength of Plaintiffs' claims, the strength of
10 Defendant's defenses against certification, the strength of Defendant's defenses on the merits, and
11 the fairness of the Settlement. Their opinion that final approval of the Settlement would be in the
12 best interests of class members in light of the significant risks of litigation is entitled to great
13 weight. (*See Kullar, supra*, 168 Cal.App.4th at 129 ["The court undoubtedly should give
14 considerable weight to the competency and integrity of counsel and the involvement of a neutral
15 mediator in assuring itself that a settlement agreement represents an arms' length transaction
16 entered without self-dealing or other potential misconduct"].)

17 **D. The Overwhelmingly Positive Reaction from the Class Further Supports**
18 **Settlement Approval.**

19 No class member has objected to the Settlement, and only two class members have
20 requested exclusion from the Settlement. (Cofinco Decl., ¶¶ 12, 14.) The overwhelmingly positive
21 response of the class strongly supports final approval of the Settlement. (*See, e.g., In re Lifelock,*
22 *Inc. Marketing and Sales Practices Litigation* (D. Ariz. 2010) 2010 WL 3715138, *6 [relatively
23 few objections and requests for exclusion support approval].)

24 Factors to be considered in evaluating a class action settlement include "the reaction of the
25 class members to the proposed settlement." (*Kullar, supra*, 168 Cal.App.4th at p. 128.) The
26 reaction here has been overwhelmingly positive. Courts have approved class action settlements in
27 lesser circumstances. (*See, e.g., Hughes v. Microsoft Corp.* (W.D.Wash. 2001) 2001 U.S. Dist.
28 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 PLAINTIFFS THE REQUESTED AMOUNTS OF FEES, COSTS AND A SERVICE AWARD.

Under the Settlement, subject to the Court’s approval, Defendant agreed to pay Class Counsel reasonable attorneys’ fees in the amount of \$365,898.03, which is 33 1/3% of the Maximum Settlement Amount, and costs up to \$20,000.00 for litigating this Action. However, the Escalator Clause of the Settlement Agreement was triggered. (Agreement, 8.) Since then, the total number of Class Members has increased from 317 to 371, after the Parties analyzed updated timekeeping and payroll data provided by Defendant through the date of preliminary approval. (Hajar Decl., ¶ 11.) Since the Settlement Amount was increased by 9.76%, the increased Settlement Amount is \$1,097,694.10 (\$1,000,000 + \$97,694.10). (*Id.*) In addition, Defendant will not oppose an application for the payment of Settlement Administration Costs and a Class Representative Enhancement Award. Settlement Administration Costs are estimated at \$9,500.00, and Plaintiffs will apply for a Service Award in the amount of \$5,000.00 for each Named Plaintiff⁴, totaling \$15,000.00. The proposed attorneys’ fees and expenses were disclosed to the Class Members in the proposed Notice of Proposed Class Action Settlement.

“In general, questions whether a settlement was fair and reasonable, whether certification of the class was proper, and whether the attorney fee award was proper are matters addressed to

⁴ Plaintiff Romo will receive an Enhancement Award for his service in bringing forth his Related case. Given his former exempt employee status, he will not receive a settlement payment as agreed by the Parties.

1 the trial court’s broad discretion.” (*Wershba, supra*, 91 Cal.App.4th at pp. 234-235.) “Courts
2 recognize two methods for calculating attorney fees in civil class actions: the lodestar/multiplier
3 method and the percentage of recovery method.” (*Id.* at p. 254; *Vincent v. Hughes Air West, Inc.*
4 (9th Cir. 1977) 557 F.2d 759, 769.)

5 **A. Counsel Requests an Award of Fees Based on the “Common Fund” Method.**

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

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

23 The California Supreme Court affirmed in *Laffitte v. Robert Half Int’l Inc.* (2016) 1 Cal.5th
24 480 that, “when class action litigation establishes a monetary fund for the benefit of the class
25 members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the
26 court may determine the amount of a reasonable fee by choosing an appropriate percentage of the
27 fund created.” (*Id.* at p. 503.) The court explained: “The recognized advantages of the percentage
28 method—including relative ease of calculation, alignment of incentives between counsel and the

1 class, a better approximation of market conditions in a contingency case, and the encouragement
2 it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation—
3 convince us the percentage method is a valuable tool that should not be denied our trial courts.”
4 (*Id.* [internal citations omitted].)

5 Several courts have expressed frustration with the alternative “lodestar” approach for
6 deciding fee awards, which usually involves wading through voluminous and often indecipherable
7 time records. Commenting on the lodestar approach, Chief Judge Marilyn Hall Patel wrote: “This
8 court is compelled to ask, ‘Is this process necessary?’ Under a cost-benefit analysis, the answer
9 would be a resounding, ‘No!’” (*In re Activision Securities Litigation* (N.D. Cal 1989) 723 F. Supp.
10 1373, 1375.) The percentage approach is preferable to the lodestar because: (1) it aligns the
11 interests of class counsel and absent class members; (2) it encourages efficient resolution of the
12 litigation by providing an incentive for early, yet reasonable, settlement; and (3) it reduces the
13 demands on judicial resources. (*Id.* at pp. 1378-79.) The Ninth Circuit now routinely uses the
14 percentage of the common fund approach to determine the award of attorney’s fees. (*See, e.g. In*
15 *re Pacific Enterprises Securities City and County of San Francisco Litigation* (9th Cir. 1994) 47
16 F.3d 373, 378-79 [approving attorney’s fee of 33 1/3%].)

17 **1. The Standard Fee Award in Class Actions Has Resolved Itself as One-**
18 **Third Of The Recovery In Common Fund Cases.**

19 According to a leading treatise on class actions, “No general rule can be articulated on what
20 is a reasonable percentage of a common fund. Usually 50% of the fund is the upper limit on a
21 reasonable fee award from a common fund in order to assure that the fees do not consume a
22 disproportionate part of the recovery obtained for the class, although somewhat larger percentages
23 are not unprecedented.” (*See Conte & Newberg, Newberg on Class Actions* (3rd Ed.) § 14.03.)
24 Attorneys’ fees that are fifty percent of the fund are typically considered the upper limit, with *thirty*
25 *to forty percent commonly awarded in cases where the settlement is relatively small.* (*See Id.*;
26 *see also, Van Vranken v. Atlantic Richfield Company* (N.D. Cal. 1995) 901 F. Supp. 294 [stating
27 that most cases where 30-50 percent was awarded involved “smaller” settlement funds of under
28 \$10 million].)

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

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

10 Class Counsel is entitled to recover fees under Labor Code § 1194, which provides, in part:
11 [A]ny employee receiving less than the legal minimum wage or the legal overtime
12 compensation applicable to the employee is entitled to recover in a civil action the
13 unpaid balance of the full amount of this minimum wage or overtime compensation,
14 including interest thereon, reasonable attorney’s fees, and costs of suit.
(Cal. Lab. Code § 1194.)

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

18 Class Counsel is also entitled to a fee award under California’s private attorney general
19 statute, Code of Civil Procedure § 1021.5. “The award of attorneys’ fees is proper under Section
20 1021.5 if ‘(1) plaintiffs’ action ‘has resulted in the enforcement of an important right affecting the
21 public interest,’ (2) ‘a significant benefit, whether pecuniary or nonpecuniary, has been conferred
22 on the general public or a large class of persons’ and (3) ‘the necessity and financial burden of
23 private enforcement are such as to make the award appropriate.’” (*Press v. Lucky Stores* (1983)
24 34 Cal.3d 311, 317-318.) The fundamental objective of the statute is “to encourage suits enforcing
25 public policies by providing substantial attorneys’ fees to successful litigants in such cases.”
(*Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 565.)

26 This action resulted in the enforcement of an important right affecting the public interest,
27 as Plaintiffs sought to enforce Settlement Class Members’ rights to recover statutory wages arising
28 from Defendant’s failure to pay all wages and failure to provide meal and rest breaks. (*See Murphy*

1 *v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1113 [noting that “health and safety
2 concerns” are what motivated the Industrial Wage Commission to adopt mandatory meal and rest
3 periods].)

4 This action also conferred a significant benefit on a large class of persons. Notice was sent
5 to 371 Settlement Class Members, and only two Settlement Class Members requested exclusion.
6 (Confinco Decl., ¶¶ 12, 14). The Settlement provides a significant monetary benefit, in that it
7 permits all persons who worked for Defendant during the applicable class period to obtain
8 compensation for unpaid wages and missed meal and rest periods.

9 Finally, the necessity and financial burden of private enforcement render an award
10 appropriate. Without the incentive of an attorneys’ fee award, Plaintiffs could not have afforded
11 to hire counsel to pursue this case, as the cost of litigating this matter far outweighed Plaintiffs’
12 potential recovery. (*See Ryan v. California Interscholastic Federation* (2001) 94 Cal.App.4th
13 1033, 1044 [“As to the necessity and financial burden of private enforcement, an award is
14 appropriate where the cost of the legal victory transcends the claimants’ personal interest; in other
15 words, where the burden of pursuing the litigation is out of proportion to the plaintiff’s individual
16 stake in the matter.”].)

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

19 As demonstrated by their past experience in pursuing class actions on behalf of consumers
20 and employees, Class Counsel possesses considerable expertise in litigating class action matters.
21 Class Counsel has been involved as lead counsel or co-counsel in dozens of class actions resulting
22 in a multitude of beneficial results to class members in California. Because it is reasonable to
23 compensate class counsel commensurate with their skill, reputation and experience, a fee award of
24 33 1/3% of the Maximum Settlement Amount, a percentage considered within the norm in class
25 action practice, is certainly justified here.

26 Class Counsel’s experience in wage and hour class actions was integral in evaluating the
27 strengths and weaknesses of the case against Defendant and the reasonableness of the settlement.
28 Practice in the narrow field of wage and hour litigation requires skill and knowledge concerning

1 the rapidly evolving substantive law (state and federal), as well as the procedural law of class
2 action litigation. Based on these and other factors, Class Counsel has frequently received fee
3 awards amounting to 33 1/3% of the recovery for the class. Therefore, the requested fee award is
4 reasonable and fair.

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

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

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

21 To be sure, trial courts have substantial discretion in adjusting the lodestar to account for
22 various factors. (*See Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 26, 39-45;
23 *see also Serrano, supra*, 20 Cal.3d at p. 49.) In addition, it has been held that “[m]ultipliers can
24 range from 2 to 4 or even higher.” (*See Wershba*, 91 Cal.App.4th at p. 255; *see also Van Vranken*,
25 *supra*, 901 F. Supp. At p. 298 “[m]ultipliers in the 3-4 range are common in lodestar awards for
26 lengthy and complex class action litigation”].)

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

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

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

10 Class Counsel’s choice to litigate this matter provided a public benefit to 371 California
11 employees. Moreover, the California Supreme Court stated that “Labor Code section 1194 confirms
12 “a clear public policy ... that is specifically directed at the enforcement of California's minimum wage
13 and overtime laws for the benefit of workers.” [citation omitted].” (*Sav-on Drug Stores, Inc. v.*
14 *Super. Ct.* (2004) 34 Cal.4th 319, 340.) Given the financial risks and numerous attorney hours
15 attendant to the litigation of Plaintiffs’ claims, this factor supports Class Counsel’s fee request and
16 encourages the private enforcement of legal rights for the general good.

17 **C. Costs Are Reasonable.**

18 Class Counsel requests reimbursement of up to \$14,642.68 in expenses. (Hajjar Decl., ¶
19 43.) As of the date of filing this Motion, Class Counsel has incurred around \$14,142.68 in costs,
20 and they anticipate incurring at least \$500.00 in additional costs up to the time the Court enters a
21 judgment in this action and schedules a hearing on distribution. (*Id.*) Accordingly, Class Counsel
22 respectfully requests reimbursement of \$14,642.68 in costs. (*Id.*) Notably, Defendants have
23 agreed that it will not oppose any cost award request up to \$20,000.00. The categories of costs are
24 set forth in the accompanying Declaration of Nicol Hajjar, and these costs are easily seen to be
25 both reasonable and necessary.

26 **D. The Enhancement Payment to the Plaintiffs Are Reasonable.**

27 Named plaintiffs in class action lawsuits “are eligible for reasonable incentive payments to
28 compensate them for the expense or risk they have incurred in conferring a benefit on other

1 members of the class.” (*Munoz, supra*, 86 Cal.App.4th at p. 412.) Courts routinely grant approval
2 of class action settlement agreements containing enhancements for the class representatives, which
3 are necessary to provide incentive to represent the class, and are appropriate given the benefit the
4 class representatives help to bring about for the class. (*See Rodriguez v. W. Publ'g Corp.* (9th Cir.
5 2009) 563 F.3d 948, 958-59.) The California Supreme Court has also noted that “retaliation against
6 employees for asserting statutory rights under the Labor Code is widespread,” despite anti-
7 retaliation statutes designed to protect employees. (*Gentry v. Super. Ct.* (2007) 42 Cal.4th 443,
8 460-61.) Plaintiffs should therefore be rewarded for assuming the risk of retaliation for the sake
9 of class members. (*See Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 F.R.D. 174, 187.)

10 Under the settlement agreement, subject to the Court’s approval, Defendant agreed to pay
11 a Service Award in the amount of \$5,000.00 to each Named Plaintiff, totaling \$15,000.00.
12 (Agreement ¶ 3.2.1.) This amount is also in exchange for Plaintiffs’ general release of all claims
13 against Defendants. Plaintiffs have submitted declarations demonstrating that they devoted
14 approximately 12 hours of time and work assisting counsel in the case, communicated with counsel
15 very frequently for litigation and to prepare for mediation. (*See* Declarations of Plaintiffs Arias,
16 Hensley, and Romo.)

17 When compared with the amounts awarded in typical class action cases, the amount
18 requested here is particularly reasonable. Indeed, a **2006** study examining the average incentive
19 award given to class action plaintiffs from **1993 to 2002** found that the “average award per class
20 representative was \$15,992 and the median award per class representative was \$4,357.” (Theodore
21 Eisenberg & Jeffrey P. Miller, “Incentive Awards to Class Action Plaintiffs: An Empirical Study”,
22 53 UCLA L. Rev. 1303, 1308 (2006).)

23 **E. Administration Expenses Should be Approved.**

24 CPT Group, Inc., the Settlement Administrator, estimates that it will incur a total of
25 \$9,500.00 in costs associated with the administration of this Settlement. (Cofinco Decl., ¶ 18.)
26 These expenses are reasonable, based upon the size of the class, claim and exclusion tracking, and
27 Class Member payment processing.
28

1 **V. CONCLUSION**

2 For the foregoing reasons, Plaintiffs respectfully request that the Court grant final approval
3 of the proposed settlement.

4
5 Dated: September 20, 2024

Respectfully submitted,

6 **WILSHIRE LAW FIRM, PLC**

7
8 By: _____

Nicol E. Hajjar, Esq.
Tina Petrosian, Esq.

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10 Attorneys for Plaintiffs
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John Arias, et al. v. FLOWSERVE US, INC.
Case No.: 22STCV27829

I, Chris Silmon, 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.

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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.

Executed on **September 20, 2024**, at Los Angeles, California.

/s/ Chris Silmon
Chris Silmon