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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **COUNTY OF LOS ANGELES**

15 JOSE GONZALEZ, an individual; IGNAIN
16 PEREZ, an individual; ANTONIO
SERRANO, an individual; on behalf of
17 themselves and all other similarly situated,

18 Plaintiff,

19 vs.

20 ROTO-ROOTER SERVICES COMPANY, an
21 Iowa corporation; and DOES 1 through 100,
inclusive,

22 Defendants.

CASE NO.: 22STCV34334

*Assigned for all purposes to Hon. Stephanie M.
Bowick, Dept. 19*

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT AND
SETTLEMENT OF PAGA CLAIM,
ATTORNEYS' FEES, COSTS, CLASS
REPRESENTATIVE SERVICE AWARD,
AND ENTERING OF FINAL JUDGMENT**

Date: May 13, 2024

Time: 8:30 a.m.

Location: Dept. 19

Action Filed: October 25, 2022

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California Rules of Court

Rule 3.7694

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 Plaintiffs Jose Gonzalez, Ignain Perez, and Antonio Serrano (hereinafter “Plaintiffs”) seek
4 final approval of the Stipulation of Class Action and PAGA Settlement (referred to hereinafter
5 “Settlement Agreement,” “Agreement,” or “Settlement Agreement” entered into by and between
6 Plaintiffs, on behalf of themselves and on behalf of all others similarly situated, on the one hand, and
7 Defendant Roto-Rooter Services Company (hereinafter “Defendant” or “Roto-Rooter”), on the other
8 hand (collectively, Plaintiff and Defendant are referred to as “Parties”) as well as an order and
9 judgment approving the attorneys’ fees, costs, and class representative service award requested by
10 Plaintiffs.

11 On November 14, 2023, this Court granted preliminary approval of the Settlement
12 Agreement. On December 22, 2023, the Court entered an Order Granting Stipulation to Amend
13 Order Granting Preliminary Approval of Class Action and PAGA Settlement. Pursuant to the
14 Court’s Order, on January 10, 2024, the Court-appointed Claims Administrator, CPT Group, Inc.,
15 mailed copies of the Class Notice to all 953 members of the settlement class. Class Members were
16 given 60 days (or up to and through March 11, 2024) to submit requests for exclusion or objections
17 to the Settlement. The class reaction to the Settlement has been overwhelmingly positive, and not
18 one class member has opted out or objected to the terms of the Settlement.

19 Plaintiffs, moving without opposition from Defendant, now seek final approval of the class
20 action settlement in this matter. The basic terms of the Settlement are as follows:

21 **Settlement Class:** The Settlement Class is defined as, “All current or former non-exempt
22 persons employed by Defendant in California during the Class Period who do not opt out of the
23 Settlement. The class expressly includes any non-exempt employee paid on an alleged commission
24 or piece- rate compensation system during the Class Period. However, the class shall exclude all
25 persons who were part of the *Lax v. Roto- Rooter Services Co. (“Lax”)* No. 18CV338652, through
26 the end of the class period in the *Lax* case. The Class Period is from May 10, 2018 to August 7,
27 2023.” See December 22, 2023 Order Granting Stipulation to Amend Order Granting Preliminary
28 Approval of Class Action and PAGA Settlement.

1 **Total Maximum Settlement Amount:** One Million, Five Hundred Thousand Dollars
2 (1,500,000.00). *See* Settlement Agreement at Section 1 subsection 1.22.

3 **Net Class Member Distribution Amount:** Assuming approval of the proposed attorneys’
4 fees and costs, PAGA payment, class representative enhancement, and claims administration
5 expenses, and based on the valid claims submitted by class members during the claims
6 administration process, a total of at least \$888,500 will be distributed to the participating class
7 members. *See* Declaration of CPT Group, Inc. Claims Administrator (hereinafter “CPT Decl.”) at
8 ¶. The total settlement results in an average estimated Individual Settlement Payment to be at least
9 \$XXX and ranging from an estimate of \$XXX, to \$XXX. CPT Decl. at ¶XX.

10 **Attorneys’ Fees and Costs:** Pursuant to the Settlement Agreement, Class Counsel applies
11 for attorneys’ fees in the amount of Five Hundred Thousand Dollars and No Cents (\$500,000.00).
12 *See* Settlement Agreement at Section 3.2.2; Declaration of John F. Litwin In Support of Motion for
13 Final Approval (“Litwin Decl.”), Exhibit A; Declaration of Aaron Bartz In Support of Motion for
14 Final Approval (“Bartz Decl.”). Additionally, Class Counsel applies for costs in the amount of
15 \$XXX. *See* Litwin Decl. at ¶XXX; Bartz Decl. at ¶XXX.

16 **Aggrieved Employees and PAGA Payment:** The PAGA Aggrieved Employees are
17 defined as, “all current or former non-exempt persons employed by Defendant in California during
18 the PAGA Period. The PAGA Group expressly includes any non-exempt employee paid on an
19 alleged commission or piece- rate compensation system. The PAGA Period is from May 10, 2021
20 to August 7, 2023.” *See* December 22, 2023 Order Granting Stipulation to Amend Order Granting
21 Preliminary Approval of Class Action and PAGA Settlement. Pursuant to the Settlement
22 Agreement, Fifty Thousand Dollars (\$50,000.00) will be allocated to the PAGA claims. The sum
23 of Thirty-Seven Thousand Five Hundred Dollars (\$37,500.00) will be sent to the California Labor
24 and Workforce Development Agency and the remaining Twelve Thousand Five Hundred Dollars
25 (\$12,500.00) will be distributed to the participating class members. *See* Settlement Agreement at
26 Section 3 subsection 3.2.5.

27 **Class Representative Enhancement:** Pursuant to the Settlement Agreement, this motion
28 seeks a Class Representative Enhancement Payment of Fifteen Thousand Dollars (\$15,000.00) to

1 each of the Plaintiffs Jose Gonzalez, Ignain Perez, and Antonio Serrano. *See* Settlement Agreement
2 at Section 3.2.1.

3 **Claims Administration Costs:** Claims administration costs of Fourteen Thousand Dollars
4 (\$14,000.00) to be paid to the mutually agreed upon class action claims administrator CPT Group,
5 Inc. *See* Settlement Agreement at Section 3.2.3; CPT Decl. at ¶¶XXX.

Commented [FJC1]: Same comment as the Notice and Order -
\$14k or \$25k?

6 **Released Class Claims.** Released Class Claims is defined as follows: All Participating Class
7 Members, on behalf of themselves and their respective former and present representatives, agents,
8 attorneys, heirs, administrators, successors, and assigns, release the Released Parties from (i) all
9 claims that were alleged, or reasonably could have been alleged, based on the factual allegations
10 and primary rights stated in the Operative Complaint and any amendments thereto, including all
11 claims for: 1) failure to pay all minimum wages; 2) failure to pay all overtime wages (including
12 failure to pay at the regular rate of pay); 3) meal period violations; 4) rest period violations; 5) wage
13 statement violations (including Lab. Code § 226(a)(1)-(9)) and failure to keep required records (Lab.
14 Code § 1174); 6) failure to timely pay wages during employment and upon separation of
15 employment; 7) failure to provide written commission agreements; 8) illegal non-compete / non-
16 solicit agreements; 9) failure to reimburse expenses, and 10) Unfair Competition Law violations.

17 **Released PAGA Claims:** Released PAGA Claims is defined as follows: All Aggrieved
18 Employees, the State of California, and the LWDA are deemed to release, on behalf of themselves
19 and their respective former and present representatives, agents, attorneys, heirs, administrators,
20 successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged,
21 or reasonably could have been alleged based on the factual allegations and primary rights stated in
22 the Operative Complaint and the PAGA Notices and any amendments thereto, including all claims
23 for: 1) failure to pay all minimum wages; 2) failure to pay all overtime wages (including failure to
24 pay at the regular rate of pay); 3) meal period violations; 4) rest period violations; 5) wage statement
25 violations (including Lab. Code § 226(a)(1)-(9)) and failure to keep required records (Lab. Code §
26 1174); 6) failure to timely pay wages during employment and upon separation of employment; 7)
27 failure to provide written commission agreements; 8) illegal non-compete / non-solicit agreements;
28 and 9) failure to reimburse expenses.

1 Plaintiffs submit that the relief negotiated on behalf of the Class and Aggrieved Employees
2 is fair, reasonable, and valuable. Plaintiffs, therefore, respectfully request that the Court: (1) grant
3 this Motion for Final Approval of the Settlement Agreement; (2) direct distribution of Individual
4 Settlement Payments (Individual Class Payment and Individual PAGA Payment) to all Participating
5 Class Members and Aggrieved Employees in accordance with the Settlement Agreement; (3)
6 approve the Administrator Expenses Payment; (4) approve the proposed Class Representative
7 Service Payments; (5) approve the PAGA Penalties to the Labor Workforce and Development
8 Agency of \$37,500 (75% of \$50,000.00); (6) award Class Counsel Fees Payment and Class Counsel
9 Litigation Expenses Payments in the amount requested; (7) enter judgment pursuant to the
10 Settlement Agreement; and (8) retain jurisdiction to enforce the Settlement.

11 II. FACTS AND PROCEDURE

12 Plaintiff Jose Gonzalez filed this Action on October 25, 2022, and amended his complaint on
13 May 17, 2023 to include additional claims and Plaintiffs Antonio Serrano and Ignain Perez. *See*
14 Liwin Decl. at ¶5. A related federal action, previously filed by Plaintiff Perez, Case No. 8:22-cv-
15 01508-CJC-ADS, remains stayed pending approval of this Motion. Plaintiffs' Operative Complaint
16 alleges claims for: 1.) Violation of California Labor Code § 2751; 2.) Violation of California Business
17 & Professions Code § 17200; 3.) Failure to Authorize or Permit Rest Periods 4.) Failure to Pay All
18 Wages; 5.) Failure to Provide Accurate Wage Statements; 6.) Failure to Provide Meal Periods; 7.)
19 Waiting Time Penalties; 8.) Failure to Reimburse Business Expenses; 9.) Unlawful Non-Solicitation
20 and Non-Compete Agreements; and 10.) PAGA Penalties. Defendants filed an Answer on December
21 5, 2022.

22 In the course of litigating the Action, Class Counsel has conducted an in-depth investigation
23 of the claims, including the analysis of timekeeping data, payroll data, policy memorandums, and
24 various other documents related to the Plaintiff's claims. *Id.* at ¶¶ 7-9. This Analysis included review
25 and quantitative analysis of approximately 130,000 timekeeping and payroll data entries and over
26 700 pages of Defendant's applicable policies and procedures. After Class Counsel's extensive review
27 and analysis of the timekeeping and payroll data and after completion of a full risk analysis, the
28 Parties participated in a full-day mediation on April 3, 2023, utilizing the services of the Michael D.

1 Young, a respected mediator with extensive experience and knowledge in the area of wage and hour
2 class action mediation. At mediation, the Parties engaged in arms’ length negotiations to try to come
3 to a resolution of this dispute. Through good-faith and arms-length negotiations at mediation, each
4 Party, represented by their respective counsel, recognized the substantial risk of an adverse result in
5 the Action and agreed to settle the Action and all other matters covered by this Settlement. The Parties
6 subsequently drafted and executed the Settlement Agreement.

7 Plaintiffs filed their motion for Preliminary Approval of the Settlement Agreement on July
8 11, 2023. *See* Litwin Decl. at ¶XXX. After reviewing Plaintiff’s motion, the Court issued an order
9 granting Preliminary Approval on November 14, 2023, and an Order Granting Stipulation to Amend
10 Order Granting Preliminary Approval of Class Action and PAGA Settlement on December 22, 2023.
11 *See* Litwin Decl. at ¶XXX.

12 III. ARGUMENT

13 a. Factors Considered in Determining Final Approval of Class Action

14 “Public policy generally favors the compromise of complex class action litigation.”
15 *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 110, 1118 (2009), *see also 7-Eleven Owners*
16 *for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1151 (2000) (“Voluntary
17 conciliation and settlement are the preferred means of dispute resolution ... [t]his is especially true
18 in complex class action litigation. ...”). Class action settlement approval occurs in two steps: (1) an
19 early (preliminary) review by the trial court, and (2) a subsequent (final) review after notice has
20 been distributed to Class Members for their comments and/or objections. Cal. Rule of Ct. 3.769.
21 Preliminary approval of the proposed settlement in this action was granted on November 14, 2023.
22 Plaintiffs now seek final approval.

23 In conducting the final review of a proposed settlement, fairness is presumed when: (1) the
24 settlement is reached through arms-length bargaining; (2) investigation and discovery are sufficient
25 to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation;
26 and (4) the percentage of objectors is low. *Nordstrom Comm’ Cases*, 186 Cal. App. 4th 576, 581
27 (2010).

28 By granting preliminary approval, this Court has already determined that the Settlement

1 Agreement is fair and reasonable, subject to objections. No class members submitted any disputes
2 or filed any objections to the settlement, and no class members requested to be excluded from the
3 settlement. The lack of objections establishes that the Court’s preliminary assessment has been
4 separately endorsed by the Settlement Class. Accordingly, this Court should grant final approval.

5 **b. Class Counsel Conducted a Thorough Investigation of the Factual and Legal Issues**
6 **and Were Able to Objectively Assess the Settlement’s Reasonableness**

7 Class Counsel have conducted a thorough investigation of both the factual and legal issues
8 affecting the strengths and weaknesses of Plaintiff’s claims, and the potential class recovery. Class
9 Counsel conducted fact interviews and thoroughly reviewed and analyzed the relevant employer
10 policies and handbooks. Litwin Decl. at ¶3. In preparation for mediation, Defendant provided Class
11 Counsel with an expansive set of time and payroll data that captured hours worked for all
12 classifications of employees in the settlement class as well as handbooks and policies. Defendant
13 also informally provided Class Member statistics, which provided: (1) the total number of
14 individuals who had worked as service technicians during the Class Period (953 total employees);
15 (2) the number of Class Members who separated employment during the three year statute of
16 limitations period relevant to Plaintiffs’ waiting time penalties claim (559 total employees); (3) the
17 total number of workweeks worked by all class members (currently 62,524); (4) The total number
18 of Class Members in the one year PAGA and wage statement penalties statutory period (currently
19 718); (5) the number of pay periods in the PAGA penalties period (currently 20,020) and (6) Class
20 Members’ average rate of pay (\$62.10 per hour); In aggregate, this data provided all information
21 necessary to evaluate the core wage claims alleged in this action. Additionally, Defendant produced
22 several spreadsheets (consisting of over 130,000 data points) providing a representative sample of
23 Defendant’s timekeeping and payroll records. *See* Litwin Decl. at ¶¶4-15. Class Counsel further
24 retained an expert to separately value the claims alleged in the case. Class Counsel thoroughly
25 interviewed Plaintiffs who held various positions with Defendant which was of great assistance
26 during the course of mediation. Class Counsels’ extensive factual investigation gave invaluable
27 insight into the nature and extent of the class claims and the reasonable range of settlement.

28 **c. The Settlement Was Reached Through Arm’s-Length Bargaining in Which All**

viii

1 **Parties Were Represented by Experienced Counsel**

2 “[W]hat transpires in settlement negotiations is highly relevant to the assessment of a
3 proposed settlement’s fairness.” *State v. Levi Strauss & Co.*, 41 Cal. 3d 460, 482 (1986). Courts
4 presume the absence of fraud or collusion in the negotiation of a settlement, unless evidence to the
5 contrary is offered; thus, there is a presumption that settlement negotiations are conducted in good
6 faith. *Nordstrom Commission Cases*, 186 Cal. App. 4th 576, 581 (2010) (*quoting Cellphone*
7 *Termination Fee Cases*, 180 Cal. App. 4th at 1117-1118).

8 The Parties also engaged in extensive settlement negotiations and participated in a mediation
9 conducted by Michael D. Young, a well-regarded mediator experienced in wage-and-hour class
10 actions, that was ultimately successful. *See* Litwin Decl. at ¶5. Throughout the litigation of this case
11 and in preparation for mediation, Class Counsel conducted a thorough investigation of both the
12 factual and legal issues affecting the strengths and weaknesses of Plaintiff’s claims, and the potential
13 class recovery. Class Counsel thoroughly reviewed and analyzed the relevant employer policies and
14 handbooks, consisting of nearly 1,000 pages of documents; thoroughly reviewed Defendant’s
15 financial documents and documents related to its business model. Defendant also provided Class
16 Counsel with their relevant Class Member statistics in advance of mediation. *Id.* This allowed Class
17 Counsel to analyze the viability of the core on-duty meal period, rest period, overtime, minimum
18 wage, and wage statement allegations. Class Counsel’s extensive factual investigation gave
19 invaluable insight into the nature and extent of the class claims and the reasonable range of
20 settlement. Due to Defendant’s broad production of policies and statistics in advance of mediation,
21 Class Counsel was able to undertake a thorough investigation and analysis of the core claims in this
22 litigation.

23 Arriving at a settlement that was acceptable to both Parties was not easy. Defendant and its
24 counsel felt strongly about their ability to prevail on the merits and at certification, and Plaintiff and
25 Class Counsel believed that they would be able to obtain class certification and prevail at trial. In
26 particular, among other defenses, Defendant’s position is that its wage and hour policies are
27 compliant with the principles stated in *Oman v. Delta Airlines, Inc.*, 9 Cal. 5th 762 (2020), which, if
28 correct, would defeat the majority of Plaintiffs’ unpaid wages claims, of which the other claims are

1 in large part derivative. Defendant contends that their payment policies and procedures lawfully
2 compensated for all hours work at or above the minimum wage, and compensated for all overtime
3 hours worked, in accordance with California law and *Oman*. Defendant further contends that it
4 enforces lawful meal and rest policies, which provide an opportunity for Plaintiffs and other non-
5 exempt California employees to take all applicable meal and rest periods. Defendant further
6 contends that it provides all equipment and tools required to conduct work. Defendant further denied
7 Plaintiff's remaining claims, and contends it provided lawful agreements to Plaintiffs and Class
8 Members. Finally, Defendant contends that the claims or some or all of the putative class are subject
9 to arbitration, which requires their claims to be arbitrated on an individual basis. After conducting
10 investigations, discovery, and settlement negotiations, the Parties have agreed that this case is well-
11 suited for settlement given the legal issues relating to Plaintiffs' principal claims, as well as the costs
12 and risks to both sides that would attend further litigation.

13 The proposed Settlement takes into account the strengths and weaknesses of each side's
14 position, the uncertainty of how the case might have concluded at certification and/or trial. *Id.* The
15 parties reached the proposed Settlement based on this large volume of facts, evidence, and
16 investigation. In addition, Class Counsel has extensive experience in employment class actions,
17 including significant experience in California wage-and-hour litigation. *Id.* at ¶¶ 29-37; Declaration
18 of Aaron A. Bartz ("Bartz Decl.") at ¶¶ 10-12.

19 **d. The Proposed Settlement is Reasonable Given the Strengths of Plaintiff's Claims**
20 **and the Risks and Expenses of Continued Litigation**

21 The Gross Settlement Fund of \$1,500,000.00 represents a fair, adequate, and reasonable
22 resolution of this case. The proposed Settlement was calculated using the information and data
23 uncovered during the litigation, informal discovery, case investigation, as well as the exchange of
24 information in the context of settlement negotiations. The proposed Settlement takes into account
25 the potential risks and rewards inherent in any case and, in particular, with this case.

26 Assuming that all of the fees, costs, and payments are approved and awarded in the full
27 amounts provided for by the proposed Settlement, the Net Settlement Fund is currently estimated to
28 be approximately **\$867,500** (inclusive of the individual PAGA payments). Settlement Class

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1 Members who do not opt out will receive a Settlement Award that is calculated on a pro rata basis,
2 based upon their respective number of weeks worked during the Settlement Period. There is no
3 reason to doubt the fairness of the proposed plan of allocation of the settlement funds for purposes
4 of preliminary approval. Even at the final approval stage, “[a]n allocation formula need only have a
5 reasonable, rational basis [to warrant approval], particularly if recommended by experienced and
6 competent class counsel.” *In re American Bank Note Holographics, Inc. Securities Litigation*, 127
7 F.Supp.2d 418, 429-430 (S.D.N.Y. 2001).

8 In light of the above considerations, Class Counsel believe that the proposed Settlement as
9 a whole is fair, reasonable, and adequate, and is in the best interest of the Class. Although the
10 recommendations of Class Counsel are not conclusive, the Court can properly take the
11 recommendations into account, particularly if Class Counsel appears to be competent, has
12 experience with this type of litigation, and significant discovery and investigation have been
13 completed. Newberg, §11.47.

14 Understanding that the maximum potential recovery only provides the most optimistic
15 valuation of a case’s worth, Class Counsel also undertook a risk analysis valuation of the claims in
16 this matter. The class data and information obtained in this case allowed Class Counsel and their
17 expert to develop a damages/valuation model and complete evaluation of the claims and Defendant’s
18 defenses thereto. As outlined in the Declaration of John F. Litwin, prior to entering into the proposed
19 Settlement, Class Counsel performed an extensive analysis of each claim, based on a volume of
20 documents and data produced by Defendant and obtained through other sources. *See* Litwin Decl.
21 at ¶¶3, 8-29. The results of the Kullar analysis returned a “Risk-Adjusted” Range of Recovery of
22 \$917,44.02 to \$5,623,780.46. The total settlement value achieved in this case of \$1,500,000.00 is
23 within this range. *See* Litwin Decl. at ¶ 27.

24 **e. The Settlement Class Has Responded Positively To The Settlement**

25 The Class Members’ response demonstrates their support for this settlement. The Claims
26 Administrator mailed notices of settlement to 953 class members. *See* CPT Decl. at ¶XXX. As of
27 March XXX, 2024, there have been no opt out requests or objections to the settlement. *See* CPT
28 Decl. at ¶¶XXX. Class members have been overwhelmingly positive regarding the settlement, as

1 evidenced by zero objections and a 100% participation rate. These are strong indicators of the
2 settlement's fairness.

3 **f. The Proposed PAGA Settlement is Reasonable**

4 Pursuant to the Settlement Agreement, \$50,000.00 from the Class Settlement Amount shall
5 be allocated to the resolution of the PAGA claim, of which 75% (\$37,500.00) will be paid directly
6 to the LWDA, and the remaining 25% (\$12,500.00) will be added to the Net Settlement Amount.
7 See Settlement Agreement at Section 3 subsection 3.2.5. This result was reached after good-faith
8 negotiation between the Parties with input from the mediator. Where PAGA penalties are negotiated
9 in good faith and "there is no indication that [the] amount was the result of self-interest at the
10 expense of other Class Members," such amounts are generally considered reasonable. *Hopson v.*
11 *Hanesbrands Inc.*, Case No. 08-00844, 2009 U.S. Dist. LEXIS 33900, at *24 (N.D. Cal. Apr. 3,
12 2009); see, e.g., *Nordstrom Com. Cases*, 186 Cal. App. 4th 576, 579 (2010) ("[T]rial court did not
13 abuse its discretion in approving a settlement which does not allocate any damages to the PAGA
14 claims."); *Villacres v. ABM Industries, Inc.*, 189 Cal. App. 4th 562 (2010) (Finding that a release of
15 "all claims" in class action settlement encompassed claims under the PAGA). Class Counsel further
16 submits that the PAGA allocation is reasonable and fair in light of the fact that each of the California
17 Labor Code violations alleged in the PAGA notice were also alleged as class claims and figured
18 separately in the litigation and evaluation of all claims alleged in this action.

19 **IV. THE REQUESTED PAYMENT TO THE CLAIMS ADMINISTRATOR IS**
20 **REASONABLE AND SHOULD RECEIVE FINAL APPROVAL**

21 Plaintiffs request final approval of claims administration costs in the amount of \$14,000.00
22 to be paid to CPT Group, Inc. CPT has promptly and properly distributed the Class Notice to all
23 Class Members and completed its duties in accordance with the Court's preliminary approval Order.

24 **V. THE NEGOTIATED CLASS REPRESENTATIVE ENHANCEMENT PAYMENT IS**
25 **FAIR AND REASONABLE**

26 The Settlement Agreement proposes a \$15,000.00 class representative enhancement per
27 Plaintiff to Plaintiffs Jose Gonzalez, Antonio Serrano, and Ignain Perez. See Settlement Agreement
28 at Section 3.2 subsection 3.2.1. This amount is fair and reasonable in consideration of the fact that

Commented [FJC2]: See comment above

1 it was Plaintiffs' sense of justice and initiative that led them to take steps that have resulted in the
2 Class Members being fairly compensated for the claims alleged in this matter. Plaintiffs have
3 sacrificed their time participating in multiple extended strategic conferences with Class Counsel,
4 and consulting with Class Counsel during mediation. Plaintiffs have agreed to provide Defendant
5 with a California Code of Civil Procedure section 1542 general release, and, therefore, are releasing
6 Defendant from a broader range of claims than the other Class Members. *See* Settlement Agreement
7 at Section 5.1.

8 In particular, Plaintiff Ignain Perez also took the day off work and was an active participant
9 in the entirety of the mediation. *See* previously-filed Declaration of Ignain Perez in Support of
10 Motion for Preliminary Approval at ¶¶13-15. Plaintiff Perez answered many questions posed by
11 the mediator, and was instrumental in attaining a favorable result for the class. Litwin Decl. at
12 ¶XXX. Further, Mr. Perez provided testimony and assisted in Plaintiff's Opposition to Defendant's
13 Motion to Compel arbitration, and was thus instrumental in the ability to bring this matter on a
14 collective basis at all. *Id.* Class representatives Jose Gonzalez and Antonio Serrano also connected
15 Class Counsel with other class members, assisted Class Counsel in the informal discovery exchange,
16 and were on-call during the Mediation. *See* Declarations of Jose Gonzalez ("Gonzalez Decl.") and
17 Antonio Serrano ("Serrano Decl."), ¶¶XX. In light of these factors, Class Counsel submits that the
18 proposed enhancement payments to each of the class representatives is fair and reasonable.

19 VI. THE COURT SHOULD APPROVE THE REQUESTED FEES AND COSTS

20 a. Plaintiff is Entitled to Reasonable Attorneys' Fees Under California's Fee-Shifting 21 Statutes

22 Plaintiffs are entitled to attorneys' fees under the fee-shifting provisions of California Labor
23 Code sections 226(e), 1194(a) and 2699(g)(1) as well as the fee authorizing provisions of the
24 California Private Attorney General Act, Code of Civil Procedure section 1021.5. These statutes
25 are designed to create financial incentives for qualified attorneys to take on meritorious cases in
26 which the recoveries may be so small that it would be unlikely for employees to find representation
27 on a percentage-of-recovery basis. *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553, 580 (2004);
28 *Ketchum v. Moses*, 24 Cal. 4th 1122, 1132 (2001); *see also, Lealao v. Beneficial California, Inc.*,

82 Cal. App. 4th 19, 41 (2000). The weight of legal authority indisputably supports Plaintiffs’ proposition that Class Counsel should be adequately compensated for successfully prosecuting an action on behalf of employees who would otherwise lack the financial incentive and/or means to vindicate their statutory rights.

b. The Requested Fee Award is Fair and Reasonable, Calculated as Percentage of a Common Fund

Class Counsel applies for an award of attorneys’ fees in the sum of \$500,000.00 (which is one-third of the Gross Settlement Amount. *See* Settlement Agreement at Section 3.2.2. California state and federal courts have recognized that an appropriate method for determining an award of attorneys’ fees is based on a percentage of the total value of benefits to Class Members by the settlement, also known as the “common fund” method. *Serrano v. Priest* 20 Cal.3d 25, 34 (1977) (*Serrano III*); *Boeing Co. v. Van Gemert* 444 U.S. 472, 478 (1980); *Vincent v. Hughes Air West, Inc.* 557 F.2d 759, 769 (9th Cir. 1977). “Despite its primacy, the lodestar method is not necessarily utilized in common fund cases.” *Lealao v. Beneficial California, Inc.* 82 Cal.App.4th 19, 27 (2000).

The purpose of the common fund/percentage approach is to “spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone.” *Vincent, supra*, 557 F.2d at 769. In *Quinn v. State of California* (1995) 15 Cal.3d 162, 167, the Court stated: “[O]ne who expends attorneys’ fees in winning a suit which creates a fund from which others derive benefits may require those passive beneficiaries to bear a fair share of the litigation costs.” As there is a defined and clearly traceable benefit to the Class, the Court can base an award of attorneys’ fees using a ‘common fund’ approach to compensate Class Counsel.

c. Application of a Lodestar Cross-Check in this Action Militates in Favor of Awarding the Requested Attorneys’ Fees

Class Counsel’s fee request is also reasonable when calculated using the lodestar method. The lodestar is produced by multiplying the number of hours reasonably expended by counsel by a reasonable hourly rate. *See Graciano v. Robinson Ford Sales, Inc.*, 144 Cal. App. 4th 140, 164 (2006). The court then engages in a multiplier analysis and determines whether the lodestar figure should be augmented. *See Ketchum*, 24 Cal. 4th at 1132. Under the lodestar method, “there is ‘no

1 mathematical rule requiring proportionality between compensatory damages and attorneys’ fees
2 award.” *Harman v. City and County of San Francisco*, 158 Cal. App. 4th 407, 421 (2007). While
3 “the attorney who takes [a fee-shifting] case can anticipate receiving full compensation or every
4 hour spent litigating a claim[.]” *Weeks v. Baker & McKenzie*, 63 Cal. App. 4th 1128, 1175 (1998),
5 courts should not be “enmeshed in a meticulous analysis of every detailed facet of the professional
6 representation.” *Serrano v. Unruh*, 32 Cal. 3d 621, 642 (1982); *see also*, *Fox v. Vice*, 131 S. Ct.
7 2205, 2216 (2001) (The essential goal in shifting fees ... is to do rough justice, not to achieve
8 auditing perfection”).

9 The starting point in determining the appropriate hourly fee is to discern the prevailing rate
10 for similar work in the pertinent geographic area. *PLCM Group v. Perez*, 22 Cal. 4th 1084, 1096-
11 1097 (2000) (using prevailing hourly rate in community for comparable legal services even though
12 party used in-house counsel). Class Counsel’s hourly rates are comparable to, or less than, those
13 charged by other class action plaintiffs’ counsel and are commensurate with the rates awarded to
14 Class Counsel in similar actions. *See* Litwin Decl. at ¶29; Bartz Decl. at ¶XXX.

15 Furthermore, the total attorney hours expended on this action are reasonable. Class Counsel
16 reasonably estimates a total of XXX hours expended by Barkhordarian Law Firm and XXX hours
17 expended by the Bartz Law Group, APC. *See* Litwin Decl. at ¶¶XXX, Exhibit A (detailed
18 breakdown of attorney time); Bartz Decl. at ¶¶XXX. Multiplying the total hours billed by Class
19 Counsel by their reasonable hourly rates yields a lodestar of \$XXX. Class Counsel therefore request
20 a reasonable lodestar multiplier of 1.XX.

21 The multiplier requested here is in line and well below other wage and hour complex actions.
22 Multipliers between 1 and 4 are common within the Ninth Circuit. *See Vizcaino v. Microsoft Corp.*,
23 290 F.3d 1043, 1051, n.6 (9th Cir. 2002); *Uschold v. NSMG Shared Servs., LLC*, 2020 WL 3035776,
24 at *16 (N.D. Cal. June 5, 2020) (applying multiplier of 4); *Ridgeway v. Wal-Mart Stores, Inc.* 269
25 F.Supp.3d 975, 999 (N.D. Cal. 2017) (applying multiplier of 2).

26 Accordingly, the total amount of attorneys’ fees requested in this action is reasonable and
27 warranted under the pertinent legal authority.

28 **d. The Requested Award of Attorneys’ Fees is Supported by Class Counsel’s**

1 **Prosecution of this Case on a Contingency Basis**

2 Recognizing that attorneys who represent clients under contingency-fee agreements
3 shoulder considerable risk of the possibility of minimal or low recovery, courts recognize that
4 contingent-fee attorneys should obtain a larger fee than the market-value of their services in order
5 to help assure skilled representation of class interests. *See Graham v. DaimlerChrysler Corp.*, 34
6 Cal. 4th at 580 (“[A] lawyer who both bears the risk of not being paid and provides legal services is
7 not receiving the fair market value of his work if he is paid only for the second of these functions.”);
8 *Ketchum v. Moses*, 24 Cal. 4th at 1132 (2001) (“[A] contingent fee contract, since it involves a
9 gamble on the result, may properly provide for larger compensation than would otherwise be
10 recoverable.”).

11 The risks faced by attorneys working on contingency are substantial. This is particularly
12 true in the context of class action litigation where there can be numerous hotly contested procedural
13 and substantive issues, considerable outlay of costs without guarantee of recovery, and the
14 possibility that intervening factors, such as the financial condition of the defendant, may limit the
15 scope of potential recovery. California courts thus recognize that “the experience of the marketplace
16 indicates that lawyers generally will not provide legal representation on a contingent basis unless
17 they receive a premium for taking that risk.” *Ketchum*, 24 Cal. 4th at 1136. “Given the unique
18 reliance of our legal system on private litigants to enforce substantive provisions of law through
19 class and derivative actions ... [attorneys] must be provided incentives roughly comparable to those
20 negotiated in the private bargaining that takes place in the legal marketplace, as it will otherwise be
21 economic for defendants to increase injurious behavior.” *Lealao*, 82 Cal. App. 4th at 47. These
22 policies support Plaintiffs’ fee request, as Class Counsel undertook substantial risk in prosecuting
23 this case.

24 **e. The Requested Award of Attorneys’ Fees is Supported by the Results Achieved on**
25 **Behalf of the Class**

26 Courts assess the reasonableness of a request for attorneys’ fees by examining the results
27 achieved on behalf of the Class. *See Serrano*, 20 Cal. 3d at 49. This settlement represents a
28 substantial recovery for the Settlement Class in light of the compelling defenses to liability.

As set forth above and in the supporting Declaration of John F. Litwin, Class Counsel undertook a thorough analysis of the claims in this action including spending hundreds of hours of legal research and data analysis to develop the novel core theories of liability in this case. Using this data, Class Counsel was able to determine that the maximum settlement amount of \$1,500,000.00 was well within the range of the “Risk Adjusted” valuation of the potential recovery. Class Counsel also expended substantial efforts and resources contacting settlement class members, in order to maximize the total amount claimed by class members under the settlement. The result is that participating Class Members will receive over \$XXX in total settlement payments at an average recovery of \$XXX. Accordingly, the cumulative benefits achieved by the Settlement favor approval of the requested fees.

f. The Requested Award of Attorneys’ Fees is Supported by Class Counsel’s Experience, Reputation, and Skill

The “skill and experience of the attorneys and nature of work performed” are also evaluated under California law in connection with a fee motion. *Northwest Energetic Services, LLC v. Cal. Franchise Tax Bd.*, 159 Cap. App. 4th 841, 880 (2008). Class Counsel regularly litigate wage and hour claims and have considerable experience settling wage and hour class actions. *See* Litwin Decl. at ¶¶28-29; Bartz Decl. at ¶27.

g. The Requested Costs are Reasonable

Class Counsel has incurred a total of \$ in costs and expenses that would normally be billed to a fee-paying client. These costs consist of the following:

Cost and Expense Category	Amount
Filing & Service Fees	\$
Expert Fees	\$
Mediation Fees	\$
Grand Total	\$

The majority of costs incurred in this action relate to filing fees, and mediator fees, costs that are reasonable and necessary to the litigation of this case. In accordance with the Settlement

1 Agreement, Class Counsel requests an award of \$XXX, which is less than the costs Preliminarily
2 Approved by the Court in this Action of \$25,000.00. Accordingly, the requested costs should also
3 be awarded.

4 **VII. CONCLUSION**

5 The Parties have negotiated a fair and reasonable settlement of claims. Having appropriately
6 presented the materials and information necessary for preliminary approval, the Parties
7 respectfully request that the Court grant final approval of the Settlement Agreement and issue
8 Judgment as proposed by Plaintiffs.

11 DATED: April 19, 2024

**BARKHORDARIAN LAW FIRM
PLC**

14 By: _____
15 John F. Litwin
16 Attorneys for Plaintiff IGNAIN
17 PEREZ, on behalf of himself and
18 all others similarly situated

20 DATED: April 19, 2024

BARTZ LAW GROUP, PC

22 By: _____
23 Aaron A. Bartz
24 Attorneys for Plaintiffs JOSE GONZALEZ and
25 ANTONIO SERRANO, on behalf of themselves
26 and all others similarly situated