

Aaron A. Bartz, (SBN 198722)
aaron@bartzlawgroup.com
BARTZ LAW GROUP, APC
5151 California Avenue, Suite 100
Irvine, CA 92617-3205
Telephone: (949) 504-4413
Facsimile: (949) 656-7760

Attorneys for Plaintiffs JOSE GONZALEZ and ANTONIO SERRANO, on behalf of themselves and all others similarly situated

Gregory P. Wong (SBN: 204502)
greg@barklawfirm.com
John F. Litwin (SBN: 301611)
john@barklawfirm.com
BARKHORDARIAN LAW FIRM, PLC
6047 Bristol Parkway, Second Floor
Culver City, CA 90230
Telephone: (323) 450-2777
Facsimile: (310) 215-3416

Attorneys for Plaintiff IGNAIN PEREZ, on behalf of himself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

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

Plaintiffs,

vs.

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

Defendants.

CASE NO.: 22STCV34334

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

CLASS ACTION

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Date: September 12, 2023

Time: 8:30 a.m.

Location: Dept. 19

Reservation ID: 898032856207

Action Filed: October 25, 2022

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

I. INTRODUCTION1

II. FACTS AND PROCEDURE.....2

III. SUMMARY OF THE SETTLEMENT TERMS.....3

IV. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION
SETTLEMENTS.....5

V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT.....6

 A. The Proposed Settlement Resulted from Arm’s-Length Negotiations Based Upon
 Extensive Investigation7

 B. The Proposed Settlement Is Fair, Reasonable, and Adequate.....8

 C. The Settlement Is of Significant Value.....9

VI. CERTIFICATION OF THE PROPOSED CLASS IS APPROPRIATE.....9

 A. The Proposed Class Is Ascertainable and Sufficiently Numerous.....10

 B. The Class Members Share a Well-Defined Community of Interest.....10

VII. ALLOCATION FOR ATTORNEYS’ FEES AND COSTS.....11

VIII. THE PROPOSED NOTICE IS ADEQUATE.....14

IX. APPOINTMENT OF CPT AS THE SETTLEMENT ADMINISTRATOR.....15

X. PROPOSED DEADLINES FOR THE NOTICE AND SETTLEMENT
ADMINISTRATION PROCESS.....16

XI. APPOINTMENT OF CLASS REPRESENTATIVES AND APPROVAL OF THE
ENHANCEMENT AWARDS.....17

XII. CONCLUSION.....17

1 **TABLE OF AUTHORITIES**

2 Cases

3		
4	<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> 85 Cal.App.4th 1135 (2008)	7
5	<i>Bartold v. Glendale Federal Bank</i> 81 Cal.App.4th 816 (2008)	10
6	<i>Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.</i> 480 F.Supp. 1195 (S.D. N.Y. 1979). 13	
7		
8	<i>Capitol People First v. Department of Developmental Services</i> 155 Cal.App.4th 676 (2007)	10
9		
10	<i>Cartt v. Superior Court</i> 50 Cal.App.3d 960 (1975)	14, 15
11	<i>Chavez v. Netflix, Inc.</i> 162 Cal.App.4th 43 (2008)	13
12		
13	<i>City of Detroit v. Grinnell Corporation</i> 495 F.2d 448 (2d Cir. 1974)	6
14	<i>Class Plaintiffs v. City of Seattle</i> 955 F.2d 1268 (9 th Cir. 1982).....	5
15		
16	<i>Dunk v. Ford Motor Co.</i> 48 Cal.App.4th 1794 (1996).....	5, 6, 7
17	<i>Estrada v. Dr. Pepper/Seven-Up</i> , Los Angeles County Superior Court, Case No.: BC 262247 (May	
18	2005).....	13
19		
20	<i>Ghazaryan v. Diva Limousine, Ltd.</i> , 169 Cal.App.4th 1524 (2008)	11
21	<i>Hanlon v. Chrysler Corp.</i> 150 F.3d 1011 (9 th Cir. 1998).....	5, 7
22		
23	<i>Hicks v. Kaufman & Broad Home Corp.</i> , 89 Cal.App.4th 908 (2001)	10
24	<i>In re American Bank Note Holographics, Inc., Securities Litigation</i> 127 F.Supp.2d 418 (S.D.N.Y.	
25	2001).....	8
26		
27	<i>In re Ampicillin Antitrust Litigation</i> , 526 F.Supp.494 (D. D.C. 1981)	13
28	<i>Ketchum v. Moses</i> 24 Cal. 4th 1122 (2001)	12

1	<i>Kullar v. Foot Locker Retail, Inc.</i> 168 Cal.App.4th 116 (2008)	9
2	<i>Laffitte v. Robert Half Int’l, Inc.</i> 1 Cal.5th 480 (2016)	12, 13
3		
4	<i>Lealao v. Beneficial Cal., Inc.</i> 82 Cal.App.4th 19 (2000).....	12
5	<i>Linder v. Thrifty Oil Co.</i> 23 Cal.4th 429 (2000)	10
6		
7	<i>Mendoza v. United States</i> 623 F.2d 1338 (9 th Cir. 1980).....	14
8	<i>Moore v. IKEA</i> , Los Angeles Superior Court, Case No.: BC 263646 (Sept. 2006).....	13
9		
10	<i>Officers for Justice v. Civil Service Commission of City and County of San Francisco</i> 688 F.2d 615	
11	(9 th Cir. 1982).....	6
12	<i>Oman v. Delta Airlines, Inc.</i> , 466 P. 3d 325 (2020)	9
13		
14	<i>Sav-on Drug Stores, Inc. v. Superior Court</i> 34 Cal.4th 319 (2004).....	9, 10
15	<i>Vasquez v. Superior Court</i> 4 Cal.3d 800 (1971)	5
16		
17	<i>Vranken v. Atlantic Richfield Co.</i> 901 F.Supp. 294, 299 (N.D. Cal. 1995)	17
18	<i>Wershba v. Apple Computer, Inc.</i> 91 Cal.App.4th 224 (2001)	5, 6
19		

Statutes

20		
21	Code Civ. Proc. § 1781	14
22		
23	Code Civ. Proc. § 1781(f)	5
24		
25	Code Civ. Proc. § 382	9

Other Authorities

26		
27	Conte & Newberg, <i>Newberg on Class Actions</i> § 11.24 (4th Ed.).....	6
28		

1	Conte & Newberg, Newberg on Class Actions § 11.25 (4th Ed.).....	6
2		
3	Conte & Newberg, Newberg on Class Actions § 11.26 (4th Ed.).....	16
4	Conte & Newberg, Newberg on Class Actions § 11.47 (4th Ed.).....	9
5	Conte & Newberg, Newberg on Class Actions § 14.03 (4th Ed.).....	12
6		
7	Conte & Newberg, Newberg on Class Actions § 8.21 (4th Ed.).....	15
8	Conte & Newberg, Newberg on Class Actions § 8.39 (4th Ed.).....	15
9		
10	<i>Manual for Complex Litigation</i> (4th ed. 2007) § 21.311	14, 15
11	<i>Manual for Complex Litigation</i> (4th ed. 2007) § 21.312	15
12		
13	<u>Rules</u>	
14		
15	Cal. R. Ct. 3.769(g)	6
16	Fed. R. Civ. P. 23 (c)(2)	15
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 Plaintiffs Jose Gonzalez, Ignain Perez, and Antonio Serrano (hereinafter “Plaintiffs”) seek
4 preliminary approval of the Stipulation of Class and PAGA Settlement Agreement and Notice
5 (hereinafter “Settlement” or “Agreement”) entered into by and between Plaintiffs, on behalf of
6 themselves and on behalf of all others similarly situated and all other aggrieved employees, on the
7 one hand, and Roto-Rooter Services Company (“Defendant” or “Roto-Rooter”), on the other hand
8 (collectively, Plaintiff and Defendant are referred to as “Parties”).

9 Defendant is engaged in business of plumbing repair, sewer and drain services, and water
10 damage cleanup services to residential and commercial customers in California. Plaintiffs are or were
11 “Service Technicians” employed by Defendant for various periods during the four years preceding
12 the filing of the Complaint. *See* Declaration of Jose Gonzalez (“Gonzalez Decl.”) at ¶3; Perez Decl.
13 at ¶2. Plaintiffs’ job duties generally encompassed plumbing services, in addition to selling
14 Defendant’s products and services to customers. *Id.*

15 Plaintiffs allege in this action that they and the Class Members were not separately
16 compensated for non-productive time, were not provided meal or rest periods, were not paid all wages
17 or overtime owed, were not paid timely upon their termination, and were not provided accurate
18 itemized wage statements along with other related penalties. Plaintiffs further allege that Defendant
19 failed to provide signed commission agreements, failed to reimburse expenses, and required unlawful
20 non-solicit and non-compete agreements.

21 Defendant denies all substantive allegations and denies that class certification is warranted in
22 this Action.

23 In order to resolve this dispute and subject to court approval, Plaintiffs and Defendant have
24 agreed to settle this lawsuit for a Gross Settlement Amount of \$1,500,000.00. *See* Settlement
25 Agreement at § 3.1 attached hereto as “**Exhibit “1”**” to the Declaration of John F, Litwin (Litwin
26 Decl.). The Gross Settlement Amount includes the following: (1) Litigation Costs subject to court
27 approval of no more than Twenty-Five Thousand Dollars (\$25,000); (2) Settlement Administration
28 Costs of no more than Twenty-Five Thousand Dollars (\$25,000); (3) attorneys’ fees, subject to Court

1 approval, not to exceed the greater of one third of the gross settlement amount, or five hundred
2 thousand dollars and zero cents (\$500,000), which represents one third of the Settlement Amount; (4)
3 Service Payment to the Class Representative not to exceed fifteen thousand dollars (\$15,000.00 each,
4 or forty-five thousand dollars total (\$45,000.00); and (5) fifty thousand dollars (\$50,000) for the
5 PAGA payment, which shall be allocated 75% to the LWDA and 25% to the individual PAGA
6 payments to the aggrieved employees. *Id.* at § 3.2.1-3.2.5.

7 Plaintiffs also seek to provisionally certify the following class, set forth at § 1.5 of the
8 Settlement, for settlement purposes only, which Defendant does not oppose:

9 All current or former non-exempt persons employed by
10 Defendant in California who do not opt out of the Settlement. The
11 class expressly includes any non-exempt employee paid on an
12 alleged commission or piece- rate compensation system.
13 However, the class shall exclude all persons who were part of the
14 *Lax v. Roto- Rooter Services Co.*, ("Lax") No. 18CV338652,
15 through the end of the class period in the Lax case.

16 Plaintiffs also seek to provisionally certify the following class period, set forth at § 1.12 of
17 the Settlement, for settlement purposes only, which Defendant does not oppose:

18 the period from May 10, 2018, to (a) the date the Court grants
19 preliminary approval, or (b) a date prior of Defendant's choosing
20 as set forth in [the escalator clause set forth in § 8].

21 However, Defendant retains the right to shorten the class period as set forth in § 8 of the
22 Settlement, as follows:

23 Based on its records, Defendant estimates that, as of March 30,
24 2023, (1) there are 907 Class Members and 57,154 Total
25 Workweeks during the Class period. If the size of the workweeks
26 during the Class Period exceeds 57,154 by more than 10%, the
27 Gross Settlement Amount will increase by a proportionate
28 percentage (i.e., if the workweeks increased by 12%, the Gross

1 Settlement Amount would increase by 2%). In the alternative,
2 Defendant may elect to shorten the Class Period in order to stay
3 within the 10% cushion.

4 Plaintiffs also seek approval of the settlement of the PAGA claim, for which \$50,000 shall be
5 allocated from the Gross Settlement Amount, of which 75% will be remitted to the LWDA, and the
6 remaining 25% distributed on a pro rata basis to aggrieved employees who worked during the PAGA
7 period. *Id.* at § 3.2.5-3.2.5.2. Plaintiffs seek approval of the following PAGA period as set forth in
8 § 1.31 of the Settlement:

9 the period from May 10, 2021, to (a) the date the Court grants preliminary
10 approval, or (b) a date prior of Defendant's choosing as set forth in [the
11 escalator clause in § 8].

12 Class Members who do not timely opt out of the Settlement (hereinafter “Participating Class
13 Members”) will receive a lump-sum share of the Net Settlement Fund determined by dividing the Net
14 Settlement Amount by the total number of Eligible Workweeks calculated for all members of the
15 Settlement Class during the Class Period (the “Workweek Amount”) and then multiplying the
16 Workweek Amount by the number of Eligible Workweeks by the individual Class member, less any
17 applicable withholding taxes based on the Parties stipulated allocation of the Net Settlement Amount.
18 *Id.* at § 3.2.4-3.2.4.2. The Net Settlement Amount refers to the Gross Settlement Amount, less the
19 following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA
20 PAGA Payment, Class Representative Service Payments, Class Counsel Fees Payment, Class
21 Counsel Litigation Expenses Payment, and the Administration Expenses Payment. *Id.* at § 1.28.
22 Because there is no mechanism to opt out of a PAGA Settlement, aggrieved employee Class Members
23 who opt out of the Class Action settlement will nevertheless receive their individual PAGA payment
24 and be bound by the PAGA release. *Id.* at § 7.5.4.

25 Plaintiffs submit that the proposed Settlement, arrived at after substantial investigation and
26 analysis of the claims and through arms’ length bargaining, provides a substantial benefit to a class.
27 As set forth below, Plaintiffs submit that the settlement terms are fair and warrant preliminary
28 approval.

1
2 **II. FACTS AND PROCEDURE**

3 Plaintiff Jose Gonzalez originally filed this Action on October 25, 2022, which was amended
4 on May 17, 2023 to include additional claims and Plaintiffs Antonio Serrano and Ignain Perez. *See*
5 Litwin Decl. at ¶ 5. A related federal action, previously filed by Plaintiff Perez, Case No. 8:22-cv-
6 01508-CJC-ADS, remains stayed pending approval of this Motion. Plaintiffs' Operative Complaint
7 alleges claims for: 1.) Violation of California Labor Code § 2751; 2.) Violation of California Business
8 & Professions Code § 17200; 3.) Failure to Authorize or Permit Rest Periods 4.) Failure to Pay All
9 Wages; 5.) Failure to Provide Accurate Wage Statements; 6.) Failure to Provide Meal Periods; 7.)
10 Waiting Time Penalties; 8.) Failure to Reimburse Business Expenses; 9.) Unlawful Non-Solicitation
11 and Non-Compete Agreements; and 10.) PAGA Penalties. Defendant filed an Answer on December
12 5, 2022, and the parties have agreed that no further answer is required by Defendant. *Id.*

13 In the course of litigating the Action, Plaintiffs' Counsel have conducted an in-depth
14 investigation of the claims, including the analysis of timekeeping data, payroll data, policy
15 memorandums, and various other documents related to the Plaintiffs' claims. *Id.* at ¶¶ 7-9. This
16 analysis included review and quantitative analysis of approximately 130,000 timekeeping and payroll
17 data entries and over 700 pages of Defendant's applicable policies and procedures. *Id.* After Class
18 Counsel's extensive review and analysis of the financial documents and timekeeping/payroll data and
19 after completion of a full risk analysis, the parties participated in a full-day mediation on April 3,
20 2023 with Michael D. Young, Esq., a respected mediator with extensive experience and knowledge
21 in the area of wage and hour class action mediation. *Id.* at ¶6. At mediation, the Parties engaged in
22 arms' length negotiations to try to come to a resolution of this dispute. *Id.* Through good-faith and
23 arms-length negotiations at mediation, each Party, represented by their respective counsel, recognized
24 the substantial risk of an adverse result in the Action and agreed to settle the Action and all other
25 matters covered by this Settlement. *Id.* The Parties subsequently drafted and executed the Settlement.
26 *Id.*

27 **III. SUMMARY OF SETTLEMENT TERMS**

28 Under the terms of the proposed Settlement, Defendant will pay a Maximum Settlement

1 Amount of \$1,500,000.00. *See* Settlement at § 3.1. The Net Settlement Fund will be calculated by
2 deducting the following amounts from the Gross Settlement Fund: (1) Litigation Costs subject to
3 court approval of no more than Twenty-Five Thousand Dollars (\$25,000); (2) Settlement
4 Administration Costs of no more than Twenty-Five Thousand Dollars (\$25,000); (3) attorneys’ fees,
5 subject to Court approval, not to exceed the greater of one third of the gross settlement amount, or
6 five hundred thousand dollars and zero cents (\$500,000), which represents one third of the Settlement
7 Amount; (4) Service Payment to the Class Representative not to exceed fifteen thousand dollars
8 (\$15,000.00 each, or forty-five thousand dollars total (\$45,000.00); and (5) fifty thousand dollars for
9 the PAGA payment, which shall be allocated 75% to the LWDA and 25% to the individual PAGA
10 payments to the aggrieved employees. *Id.* at § 3.2.1-3.2.5. The Parties have agreed to retain CPT
11 Group (hereinafter, “CPT” or “Settlement Administrator”) to handle the notice and settlement
12 administration process. *Id.* at § 1.2.

13 The Parties have agreed that the Settlement Administrator will calculate the gross estimated
14 payment that each Class Member is eligible to receive as his or her portion of the Net Settlement
15 Fund (hereinafter “Settlement Award”). The Individual Settlement Shares paid to Class Members
16 shall be allocated 20% to settlement of wages claims, and 80% to penalties and interest. *Id.* at §3.2.4.1.
17 The portion allocated to wages shall be reported on an IRS Form W-2 and the portions allocated to
18 interest and penalties shall be reported on an IRS form 1099 by the Claims Administrator. *Id.*
19 Individual PAGA payments will be allocated entirely to penalties and reported on an IRS form 1099.
20 *Id.* at § 3.2.5.1.

21 All Settlement Award checks issued to the settlement class members will remain valid and
22 negotiable for one hundred and eighty (180) days from the date of mailing (hereinafter the “Void
23 Date”). *Id.* at § 4.4.1. If a check is returned as undeliverable, the administrator will conduct Class
24 Member Address Search and remail checks to a forwarding address or address ascertained through
25 the search. *Id.* at 4.4.2. If the check remains uncashed by the Check Cashing Deadline, or if it is
26 returned as undeliverable after an address search and remailing, the Settlement Administrator shall
27 transfer the value of the uncashed checks (“Unclaimed Residual”) to the State Controller’s Office –
28 Unclaimed Property Fund, under the unclaimed property laws in the name of the Settlement Class

1 member. *Id* at § 4.4.3.

2 Any Class Member who wishes to “opt-out” of and be excluded from the Settlement may do
3 so by submitting a timely and valid written Request for Exclusion to the Settlement Administrator.
4 *See* Settlement at § 7.5.1. To be timely, any such request for exclusion must bear a post-mark date
5 that is no later than the Response Deadline, which is 60 days from the date the Class Notice is mailed
6 (plus an additional 14 days for Class Members whose notice is remailed as a result of a returned
7 notice and address search). *Id.* at § 7.5.1.

8 Class Members who do not submit a timely and valid request for exclusion (i.e., Settlement
9 Class Members) may object to the Settlement, including contesting the deductions from the Gross
10 Settlement Amount. *Id.* at § 7.7.1. To object, a Settlement Class Member may send a written
11 objection to the Claims Administrator by the response deadline, or may appear at the Final Approval
12 Hearing. *Id.* at § 7.7.2.

13
14 **IV. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION**
15 **SETTLEMENTS**

16 The settlement of a class action requires court approval. *Dunk v. Ford Motor Co.* 48
17 Cal.App.4th 1794, 1800 (1996); Code Civ. Proc. § 1781(f). California courts look to federal authority
18 for guidance with class action settlements. *Dunk, supra*, 48 Cal.App.4th at p. 1801, n.7 (citing
19 *Vasquez v. Superior Court* 4 Cal.3d 800, 821 (1971). The decision to approve or reject a proposed
20 settlement is within the court’s discretion. *Wershba v. Apple Computer, Inc.* 91 Cal.App.4th 224,
21 234-35 (2001) (“In general, questions whether a settlement was fair and reasonable, whether
22 certification of the class was proper, and whether the attorney fee award was proper are matters
23 addressed to the trial court’s broad discretion.”). Accordingly, a court’s decision to approve a class
24 action settlement may be reversed only upon a strong showing of “clear abuse of discretion.” *Hanlon*
25 *v. Chrysler Corp.* 150 F.3d 1011, 1026 (9th Cir. 1998); *Class Plaintiffs v. City of Seattle*) 955 F.2d
26 1268, 1276 (9th Cir. 1982).

27 Courts review class action settlements in a two-step process: (1) an earlier conditional review
28 by the court; and (2) a later detailed review after the period during which notice is distributed to class

1 members for their comment or objections. Conte & Newberg, *Newberg on Class Actions* § 11.24
2 (4th ed. 2002). Both federal and state courts commonly utilize this procedure, which assures class
3 members of the protection of procedural due process safeguards and enables the court to fulfill its
4 role as the guardian of the interest of the class.

5 Accordingly, preliminary approval does not require a court to make a final determination that
6 the settlement is fair, reasonable, and adequate. Rather, that decision is made only at the final
7 approval stage, after notice of the settlement has been given to the class members and they have had
8 an opportunity to voice their views of the settlement or to exclude themselves from the settlement.
9 See Cal. R. Ct. 3.769(g). In considering a potential class settlement, the court need not reach any
10 ultimate conclusions on the issues of fact and law that underlie the merits of the dispute (see *City of*
11 *Detroit v. Grinnell Corporation* 495 F.2d 448, 456 (2d Cir. 1974)), and need not engage in a trial on
12 the merits. See *Officers for Justice v. Civil Service Commission of City and County of San Francisco*
13 688 F.2d 615, 625 (9th Cir. 1982). Neither formal notice nor a hearing is required for the trial court
14 to grant provisional class certification and preliminary approval; the court may grant such relief upon
15 an informal application by the settling parties and may conduct any necessary hearing in court or in
16 chambers, at the court's discretion. *Newberg*, § 11.25.

17 18 **V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT**

19 To grant preliminary approval of a class action settlement, the trial court must determine
20 whether the settlement is fundamentally fair, adequate, and reasonable. *Dunk, supra*, 48 Cal.App.4th
21 at p. 1800. The trial court has broad powers to determine whether a proposed settlement is fair under
22 the circumstances of the case. *Id.* at p. 1801. To make this fairness determination, courts must
23 consider several relevant factors, including “the strength of the plaintiff’s case, the risk, expense,
24 complexity and likely duration of further litigation, the risk of maintaining class action status through
25 trial, the amount offered in settlement, the extent of discovery completed by plaintiff, the experience
26 and view of counsel, the presence of a governmental participant, and the reaction of the class members
27 to the proposed settlement.” *Dunk, supra*, 48 Cal.App.4th at p. 1801. “The list of factors is not
28 exclusive and the court is free to engage in a balancing and weighing of the factors depending on the

1 circumstances of each case.” *Wershba, supra*, 91 Cal.App.4th at p. 245. Furthermore, courts give
2 “proper deference to the private consensual decision of the parties.” *Hanlon, supra*, 150 F.3d at p.
3 1027 (citation omitted).

4 The proponent of the settlement has the burden to show that it is fair and reasonable. *Wershba,*
5 *supra*, 91 Cal.App.4th at p. 245. “A presumption of fairness exists where: (1) the settlement is
6 reached through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow
7 counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the
8 percentage of objectors is small.” *Id.*; *Dunk, supra*, 48 Cal.App.4th at p. 1802; *7-Eleven Owners for*
9 *Fair Franchising v. Southland Corp.* 85 Cal.App.4th 1135, 1151 (2000).

10 A. **The Proposed Settlement Resulted from Arm’s-Length Negotiations Based Upon**
11 **Extensive Investigation.**

12 Throughout the litigation of this case and in preparation for mediation, Class Counsel
13 conducted a thorough investigation of both the factual and legal issues affecting the strengths and
14 weaknesses of Plaintiffs’ claims, and the potential class recovery. Class Counsel thoroughly
15 reviewed and analyzed the relevant employer policies and handbooks, consisting of over 700 pages
16 of documents and over 130,000 spreadsheet data entries; thoroughly reviewed Defendant’s wage
17 and hour policies; and retained an expert to assist in the interpretation of the information provided.
18 *See* Litwin Decl. at ¶¶ 7-8. Defendant also provided Class Counsel with their relevant Class
19 Member statistics in advance of mediation. *Id.* This allowed Class Counsel to analyze the viability
20 of the core claims for unpaid wages, failure to provide compliant rest and meal periods, and failure
21 to reimburse expenses allegations on a granular level that provided insight not just into the overall
22 potential violation rate, but also class certification issues such as the distribution and character of
23 the potential violations. *Id.* at ¶¶ 9-27. Class Counsel’s extensive factual investigation gave
24 invaluable insight into the nature and extent of the class claims and the reasonable range of
25 settlement. Due to Defendant’s broad production of policies and statistics in advance of mediation,
26 Class Counsel was able to undertake a thorough investigation and analysis of the core claims in this
27 litigation.

1 Arriving at a settlement that was acceptable to both Parties was not easy. Defendant and its
2 counsel felt strongly about their ability to prevail on the merits and at certification, and Plaintiffs and
3 Class Counsel believed that they would be able to obtain class certification and prevail at trial. In
4 particular, among other defenses, Defendant's position is that its wage and hour policies are compliant
5 with the principles stated in *Oman v. Delta Airlines, Inc.*, (2020) 466 P. 3d 325, which, if correct,
6 would defeat the majority of Plaintiffs' unpaid wages claims, of which the other claims are in large
7 part derivative. Defendant contend that their payment policies and procedures lawfully compensated
8 for all hours work at or above the minimum wage, and compensates for all overtime hours worked,
9 in accordance with California law and *Oman*. Defendant further contends that it enforces lawful meal
10 and rest policies, which provide an opportunity for Plaintiffs and other non-exempt California
11 employees to take all applicable meal and rest periods. Defendant further contends that it provides all
12 equipment and tools required to conduct work. Finally, Defendant contends that the claims or some
13 or all of the putative class are subject to arbitration, which requires their claims to be arbitrated on an
14 individual basis. After conducting investigations, discovery, and settlement negotiations, the Parties
15 have agreed that this case is well-suited for settlement given the legal issues relating to Plaintiffs'
16 principal claims, as well as the costs and risks to both sides that would attend further litigation.

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

23 **B. The Proposed Settlement Is Fair, Reasonable, and Adequate.**

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

1 Assuming that all of the fees, costs, and payments are approved and awarded in the full
2 amounts provided for by the proposed Settlement, the Net Settlement Fund is currently estimated to
3 be approximately \$867,500 (inclusive of the individual PAGA payments). Settlement Class
4 Members who do not opt out will receive a Settlement Award that is calculated on a *pro rata* basis,
5 based upon their respective number of weeks worked during the Settlement Period. There is no
6 reason to doubt the fairness of the proposed plan of allocation of the settlement funds for purposes of
7 preliminary approval. Even at the final approval stage, “[a]n allocation formula need only have a
8 reasonable, rational basis [to warrant approval], particularly if recommended by experienced and
9 competent class counsel.” *In re American Bank Note Holographics, Inc., Securities Litigation* 127
10 F.Supp.2d 418, 429-430 (S.D.N.Y. 2001).

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

17 **C. The Settlement Is of Significant Value.**

18 Pursuant to *Kullar v. Foot Locker Retail, Inc.* 168 Cal.App.4th 116 (2008), Class Counsel
19 conducted significant formal and informal discovery, including extensive review and analysis of a
20 volume of documents and data, including, but not limited to over 700 pages of relevant documents,
21 130,000 spreadsheet data entries. The class data and information obtained in this case allowed Class
22 Counsel to develop a damages/valuation model and complete evaluation of the claims and
23 Defendant’s defenses thereto. Prior to entering into the proposed Settlement, Class Counsel
24 performed an extensive analysis of each claim pursuant to *Kullar*, based on a volume of documents
25 and data produced by Defendant and obtained through other sources, and retained an expert to ensure
26 that Class Counsel’s calculations and conclusions were reasonable based on the data. The results of
27 the Kullar analysis returned a “Risk-Adjusted” Range of Recovery of \$917,444.02-\$5,623,780.46.
28 The total settlement value achieved in this case of \$1,500,000.00 is within this range. *See* Litwin

Decl. at ¶¶ 9-27.

VI. CERTIFICATION OF THE PROPOSED CLASS IS APPROPRIATE

For settlement purposes, the requisites for establishing class certification are met, and the Parties have stipulated to certification of the Class for settlement purposes only. California Code of Civil Procedure section 382 “authorizes class actions when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court.” Cal. Code Civ. Proc. § 382; *Sav-On Drug Stores, Inc. v. Superior Court* 34 Cal.4th 319, 326 (2004). California courts certify class actions where the plaintiff identifies “both [1] an ascertainable class and [2] a well-defined community of interest among class members.” *Id.*

Plaintiffs contend the Class is ascertainable and numerous as to make it impracticable to join all Class Members, and there are common questions of law and fact that predominate over any questions affecting any individual Class Member. Further, Plaintiffs contend the claims are typical of the claims of the Class Members, and Class Counsel will fairly and adequately protect the interests of the Class. Finally, Plaintiffs contend prosecution of separate actions by individual Class Members would create the risk of inconsistent or varying adjudications, and a class action is superior to other available means for the fair and efficient adjudication of the case. The Class is amenable to class certification for settlement purposes, as discussed below.

A. The Proposed Class Is Ascertainable and Sufficiently Numerous.

“Ascertainability is required in order to give notice to putative class members as to whom the judgment in the action will be res judicata.” *Hicks v. Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908, 914. “A class is ascertainable if it identifies a group of unnamed plaintiffs by describing a set of common characteristics sufficient to allow a member of that group to identify himself or herself as having a right to recover based on the description.” *Bartold v. Glendale Federal Bank* 81 Cal.App.4th 816, 828 (2000). The proposed class must also be sufficiently numerous. *Linder v. Thrifty Oil Co.* 23 Cal.4th 429, 435 (2000).

This action involves 907 Class Members. While established case law provides that there is no prescribed minimum number of aggrieved persons required to meet the numerosity requirement,

1 Plaintiffs submit that a proposed class of over 900 is sufficiently numerous to merit class treatment.
2 *See Hebbard v. Colgrove*, 28 Cal.App.3d 1017, 1030 (1972) (“there is no set number required as a
3 matter of law for the maintenance of a class action”). All Class Members can and will be identified
4 by Defendant to the Settlement Administrator through a review of Defendant’s employment records
5 regarding individuals employed in the State of California during the Settlement Class Period. As
6 such, the proposed Class is ascertainable and sufficiently numerous.

7 **B. The Class Members Share a Well-Defined Community of Interest.**

8 The community of interest requirement “embodies three factors: (1) predominant common
9 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3)
10 class representatives who can adequately represent the class.” *Sav-On*, supra, 34 Cal.4th at p. 326.
11 “[T]he community of interest requirement for certification does not mandate that class members have
12 uniform or identical claims.” *Capitol People First v. Department of Developmental Services* 155
13 Cal.App.4th 676, 692 (2007) (emphasis in original). Rather, courts focus on the defendant’s internal
14 policies and “pattern and practice . . . in order to assess whether that common behavior toward
15 similarly situated plaintiffs renders class certification appropriate.” *Id.* (citing *Sav-On*, supra, 34
16 Cal.4th at p. 333).

17 The “common issues” requirement “involves analysis of whether the proponent’s ‘theory of
18 recovery’ is likely to prove compatible with class treatment.” *Id.* at p. 690 (citing *Sav-On*, supra, 34
19 Cal.4th at p. 327). Furthermore, the commonality inquiry centers on the “reasonableness” of the
20 defendant’s labor policies as applied to the potential class. *Ghazaryan v. Diva Limousine, Ltd.*, 169
21 Cal.App.4th 1524, 1534 (2008).

22 Here, Plaintiffs maintain that common issues of fact and law predominate as to each of the
23 claims alleged by Plaintiffs, for settlement purposes. Plaintiffs seek to represent a class comprised
24 entirely of non-exempt employees who were subjected to the same unlawful practices. These
25 violations, which Defendant denies, fall into several broad categories as follows:

26 **Failure to Pay Wages:** Throughout the relevant time period, Plaintiffs’ contend that
27 Defendant paid Class Members on a commissions-only basis, but did not separately compensate their
28 rest periods and other non-productive time. As a result, Plaintiffs contend Defendant has failed to

1 pay Class Members all accrued overtime and minimum wages. Plaintiffs further contend that
2 Defendant failed to properly pay all overtime at the regular rate of pay based on its payroll and
3 compensation systems. While Defendant disputes these allegations, and contend it lawfully
4 compensated employees, Plaintiff contends this is a common issue.

5 **Failure to Provide a Written Signed Commission Agreement:** Plaintiffs contend
6 Defendant compensated many Class Members on a commissions-only basis, but did not provide
7 Plaintiffs or Class Members with a written, signed agreement that listed, among other things, the
8 terms of the compensation agreements by which Plaintiffs and the Class Members' wages would be
9 calculated. Plaintiffs contend that since this claim pertain to Defendant's pay plans, it presents
10 common issues.

11 **Failure to Reimburse Business Expenses:** Throughout the relevant time period,
12 Plaintiffs contend Class Members were required to purchase tools in order to complete their job
13 duties, but were not reimbursed for these expenses. As a result, Defendant has failed to reimburse
14 Class Members for their reasonable business expenses. While Defendant disputes these allegations,
15 and contends it lawfully compensated employees, Plaintiffs contend the reimbursement of Class
16 Members for various expenses, including tools, presents common issues.

17 **Failure to Provide Rest and/or Meal Periods:** Plaintiffs allege, and Defendant
18 denies, that Plaintiffs and Class Members and Aggrieved Employees were not authorized or permitted
19 to take rest or meal periods, regardless of the amount of hours worked. While Defendant disputes
20 these allegations, Plaintiff contend that Defendant's meal and rest period practices present common
21 issues.

22 **Unlawful Non-Compete / Non-Solicit Agreement:** Plaintiffs contend Defendant
23 further required Plaintiffs and Class Members to sign unlawful non-compete and non-solicitation
24 agreements as a condition of employment. While Defendant disputes these allegations, Plaintiff
25 contend that these alleged agreements present common issues.

26 **Derivative Penalties:** In addition to the principal claims advanced by Plaintiffs on
27 behalf of the class, the operative Complaint seeks recovery for derivative waiting time penalties, wage
28 statement penalties, and PAGA penalties. Plaintiffs contend that since these claims derive from the

underlying claims, they present common issues.¹

VII. ALLOCATION FOR ATTORNEYS' FEES AND COSTS

Class Counsel's application for attorneys' fees in light of the facts and circumstances surrounding this lawsuit is well within the range of reasonableness. The proposed Settlement establishes a Gross Settlement Fund of \$1,500,000.00 and provides for Class Counsel to apply to the Court for an award of attorneys' fees in an amount of up to \$500,000 or one third of the Gross Settlement Fund plus reimbursement of litigation costs and expenses in an amount of up to \$25,000.00. The attorneys' fees requested are commensurate with (1) the risk the Class Counsel took in bringing and litigating this case, (2) the time, effort, and expense dedicated to the case, (3) the skill and determination Class Counsel has shown, (4) the results Class Counsel has achieved throughout the litigation, (5) the value of the Settlement that Class Counsel has achieved for the Settlement Class, and (6) the other cases Class Counsel had to turn down in order to devote their time and efforts to this matter. The proposed Class Notice provides the Class Members with information about the amount allocated toward attorneys' fees and litigation costs and expenses, and that an attorneys' fee award will be sought, as provided for by the Settlement.

Trial courts have "wide latitude" in assessing the value of attorneys' fees and their decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v. Beneficial Cal., Inc.* 82 Cal.App.4th 19, 41 (2000). Indeed, it is long settled that the "experienced trial judge is the best judge of the value of professional services rendered in his court." *Ketchum v. Moses* 24 Cal. 4th 1122, 1132 (2001). California law provides that attorney fee awards should be equivalent to fees paid in the legal marketplace to compensate for the result achieved and risk incurred. *Laffitte v. Robert Half Int'l, Inc.* 1 Cal.5th 480, 503 (2016) (citing *Lealao, supra*, 82 Cal.App.4th at p. 48-49). In *Lealao*, the court held that when an action leads to a recovery that can be "monetized" with a

¹ While Defendants reserve all rights to dispute that the Plaintiffs can satisfy these requirements, the Parties agree that Defendants will not dispute that these requirements may be satisfied in this case for purposes of settlement only and therefore, the proposed Class should be certified for purposes of this settlement only. Defendant does not dispute, for purposes of preliminary approval, that that proposed Class may be certified solely for purposes of settlement.

1 reasonable degree of certainty, the trial court should “ensure that the fee awarded is within the range
2 of fees freely negotiated in the legal marketplace in comparable litigation.” *Leolao, supra*, 82
3 Cal.App.4th at p. 50.

4 The propriety of calculating and awarding attorneys’ fees as a percentage of a monetary fund
5 that has, by litigation, been preserved or recovered for the benefit of others, has recently been
6 confirmed by the California Supreme Court. *Laffitte, supra*, 1 Cal.5th 480 at pp. 486 & 506. The
7 California Supreme Court has taken the position that “[t]rial courts have discretion to conduct a
8 lodestar cross-check on a percentage fee,” “they also retain the discretion to forgo a lodestar cross-
9 check and use other means to evaluate the reasonableness of a requested percentage fee[,]” and “[t]he
10 percentage of fund method survives in California.” *Id.* (internal quotation marks omitted).

11 Historically, courts have awarded fees as high as fifty percent (50%) of the common fund,
12 depending on the circumstances of the case. *Newberg*, § 14.03; *see also In re Ampicillin Antitrust*
13 *Litig.* 526 F.Supp.494 (D.D.C. 1981) (awarding attorneys’ fees in the amount of 45% of the \$7.3
14 million settlement fund); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* 480 F.Supp. 1195
15 (S.D.N.Y. 1979) (awarding approximately 53% of the settlement fund as attorney fees). California
16 Courts routinely approve class action attorneys’ fee awards “averag[ing] around one-third of the
17 recovery.” *Chavez v. Netflix, Inc.* 162 Cal.App.4th 43, 66 n.11 (2008) (lower court found 20 to 40
18 percent range of contingency fee in marketplace was appropriate in class actions); *see also Estrada*
19 *v. Dr. Pepper/Seven-Up*, Los Angeles County Superior Court Case No. BC262247 (May 2005) (wage
20 and hour); *Moore v. IKEA*, Los Angeles Superior Court Case No. BC263646 (Sept. 2006) (wage and
21 hour).

22 Class Counsel have litigated this case aggressively since its inception and have conducted
23 significant investigation and analysis of the facts and issues and meaningful informal discovery. In
24 the related federal action that has now been consolidated in this case, Plaintiff Perez opposed and
25 ultimately won a motion to compel arbitration filed by Defendant. Defendant has appealed this ruling
26 and contends the claims are subject to arbitration, but the parties have agreed to this Settlement as a
27 means of resolving disputed claims. If Defendant had been successful in obtaining an order
28 compelling arbitration, this settlement would not have been possible on a class action basis.

1 The ongoing work since the inception of the related cases has been extensive, demanding, and
2 ultimately successful in achieving a substantial settlement resolution. Class Counsel conducted
3 informal discovery and investigation into the facts of the case. Class Counsel engaged in multiple
4 interviews and strategy sessions with each of the Plaintiffs, met and conferred with defense counsel,
5 reviewed and analyzed all data and documents provided by Defendant and prepared a
6 valuation/damages model for settlement negotiations, among other tasks.

7 Class Counsel is well-experienced in wage-and-hour class action litigation and used that
8 experience to obtain a great result for the Class. Class Counsel has borne all of the risks and costs of
9 litigation and will not receive any compensation until recovery is obtained. Class Counsel will
10 provide extensive evidence as to the time worked, litigation efforts, and further argument at the time
11 of filing Plaintiffs' motion for final approval of the proposed Settlement and the requests for an award
12 of attorneys' fees and reimbursement of litigation costs and expenses, enhancement awards, and the
13 settlement administration fees to be heard at the Final Approval Hearing. The fees and costs provided
14 for by the Settlement are reasonable, considering the amounts at issue, the work performed, the risks
15 incurred, and the results achieved, and as such, should be awarded.

16 **VIII. THE PROPOSED NOTICE IS ADEQUATE**

17 California statutory and case law vests the Court with broad discretion in fashioning
18 appropriate class notice. *See* Code Civ. Proc. § 1781; *Cartt v. Superior Court* 50 Cal.App.3d 960,
19 973-74 (1975). A class notice is adequate if it "present[s] a fair recital of the subject matter and
20 proposed terms" of the Settlement. *Mendoza v. United States* 623 F.2d 1338, 1351 (9th Cir. 1980)
21 (quoting *Marshall v. Holiday Magic* (9th Cir. 1977) 550 F.2d 1173, 1177).

22 The proposed Notice provides information on, among other things, the meaning and nature of
23 the proposed Class; the terms and provisions of the proposed Settlement; the relief that the proposed
24 Settlement will provide to the Settlement Class Members; the allocations for an award of attorneys'
25 fees, reimbursement of litigation costs and expenses, service enhancement award, and settlement
26 administration fees; and the date, time, and place of the Final Approval Hearing. The proposed Notice
27 also set forth the procedures and deadlines for submitting a Request for Exclusion to the Settlement
28 Administrator and filing a written objection with the Court and serving it upon counsel for the parties.

1 The proposed Notice will be mailed to the Class Members at the addresses that Defendant will provide
2 to the Settlement Administrator. *See* Settlement at 10:24-11:9.

3 The notice procedure provided by the proposed Settlement fulfills the requirement of
4 neutrality in class notices. “Sufficient information about the case should be provided to enable class
5 members to make an informed decision about their participation.” *Manual for Complex Litigation*
6 (4th ed. 2004) § 21.311. Here, the proposed Notice recognizes that the Court has not yet granted final
7 approval and states the parties’ respective positions with respect to the Settlement. The proposed
8 Notice also apprises the Class Members of, *inter alia*, how to object to the proposed Settlement, how
9 to request exclusion from the proposed Settlement, how Class Members’ Settlement Awards are
10 calculated, what their estimated monetary recovery will be, and how to dispute the information
11 provided on the Class Notice.

12 The Notice complies with the standards of fairness, completeness, and neutrality. Fed. R.
13 Civ. P. 23 (c)(2) & (e); *Newberg*, §§ 8.21, 8.39; *Manual*, §§ 21.311, 21.312; see *Cartt*, *supra*, 50
14 Cal.App.3d at p. 960 (“The essentials of due process of law in class suits would appear to be afforded
15 by fair representation in the assertion of claims of class members against the opposing parties in any
16 lawsuit, and notice of the pending suit.”). The proposed notice procedure satisfies all due process
17 requirements and is consistent with notice procedures approved by numerous state and federal courts.
18 Accordingly, the Court should approve the proposed Notice.

19 **IX. APPOINTMENT OF CPT GROUP AS THE SETTLEMENT ADMINISTRATOR**

20 The Parties have selected CPT Group as the Settlement Administrator to administer the
21 proposed Settlement. The parties estimate that the proposed Class is comprised of 907 individuals.

22 If a Notice is returned from the initial notice mailing, the Settlement Administrator will submit
23 the applicable and available information, including name, social security number, and original
24 mailing address, to a company that specializes in address skip tracing in an attempt to locate a more
25 current address. If the Settlement Administrator is successful in locating a new address, it will re-
26 mail the Notice to the Settlement Class member. Further, any Notices returned with a forwarding
27 address to the Settlement Administrator, as non-deliverable before the deadline date, shall be sent to
28 the forwarding address affixed thereto. *See* Settlement at § 7.4.3. The Settlement Administrator will

1 receive, review, and process Requests for Exclusion. *Id.* at § 7.5.1-7.5.2. The Settlement
2 Administrator will maintain the Gross Settlement Fund and handle inquiries regarding the proposed
3 Settlement; calculate the Class Members’ estimated Settlement Awards; withhold applicable
4 employment and payroll taxes; transmit the payments provided by the Settlement; provide necessary
5 declarations; and perform other usual and customary duties for administering a class action
6 settlement. *Id.* at § 7, *et seq.*

7 Pursuant to the Settlement, the settlement administration fees, in an amount of up to
8 \$25,000.00 shall be paid out of the Gross Settlement Fund to the Settlement Administrator. *Id.* at §
9 3.2.3. Accordingly, the Court is respectfully requested to appoint CPT Group as the Settlement
10 Administrator and direct the mailing of the Notice Packet in the manner outlined and based on the
11 proposed deadlines as described herein and set forth in the Settlement Agreement.

12 **X. PROPOSED DEADLINES FOR THE NOTICE AND SETTLEMENT**
13 **ADMINISTRATION PROCESS**

14 At this preliminary approval stage, Plaintiffs also seeks approval of the proposed deadlines
15 for the notice process. *Newberg*, at § 11.26. The notice process entails mailing of the Notice Packet,
16 in the form approved by the Court, to all known and reasonably ascertainable Class Members based
17 on Defendant’s records. The Settlement Administrator will perform an address search using the
18 National Change of Address Database to update the Class Data with more current addresses for the
19 Class Members, if any.

20 Within twenty-one (21) calendar days of the Court’s Preliminary Approval order, Defendant
21 will provide the Settlement Administrator with a list of the last known addresses, social security
22 numbers or taxpayer IDs, and dates of employment for each Class Member in a Covered Position
23 during the Settlement Period. *Id.* at § 4.2. Within seven (7) calendar days of receipt of the class data,
24 the Settlement Administrator will mail the Notice Packet to all Class Members via First-Class U.S.
25 Mail. *Id.* at § 7.4.1 Class Members will have sixty (60) calendar days from the date of mailing of
26 the Notice Packet (the “Notice Period”) to return Requests for Exclusion and written objections. *Id.*
27 at § 7.4.4. Class Members have until the end of the Notice Period to dispute the amounts contained
28 on their Notice Form and present documentation showing that Defendant’s records are incorrect. *Id.*

1 If any Notice Packet is returned to the Settlement Administrator as undeliverable, the
2 Settlement Administrator will promptly perform a single re-mailing of the Notice Packet to a
3 forwarding address, if available, or to any newly identified address obtained by way of skip-tracing.
4 *Id.* at § 7.4.3.

5 Defendant shall fund the total Gross Settlement Fund within 14 days of the date upon which
6 the Court grants final approval of the Settlement and the judgment becomes final. *Id.* at § 1.18, 4.3.
7 Within fourteen (14) calendar days of the funding of the Gross Settlement Fund, the Claims
8 Administrator will release the total amount of the payments due to Plaintiffs, Class Counsel, and
9 Participating Class Members. *Id.* at § 4.4.

10 Settlement class members shall have one hundred and eighty (180) days from the date their
11 Individual Settlement Payment checks are dated to cash their checks. Those funds represented by
12 uncashed checks which remain outstanding one hundred and eighty (180) calendar days after the
13 mailing of the settlement checks, and any interest accrued thereon, shall be transferred by the Claims
14 Administrator to the State Controller's Office – Unclaimed Property Fund, under the unclaimed
15 property laws in the name of the Settlement Class member. *Id.* at § 4.4.1-4.4.3.

16 **XI. APPOINTMENT OF CLASS REPRESENTATIVE AND APPROVAL OF THE**
17 **ENHANCEMENT AWARDS**

18 Plaintiffs respectfully request that the Court appoint them as the Class Representatives and
19 approve an enhancement awards in the amount of up to \$15,000 per Plaintiff as provided for by the
20 Settlement. It is within the Court's discretion to award payment to the Class Representative for his
21 efforts and work. *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299
22 (approving \$50,000 participation award to a single class representative). The factors that courts may
23 consider in determining whether to make an incentive award include: (1) the risk to the class
24 representatives in commencing suit, both financial and otherwise; (2) the notoriety and personal
25 difficulties encountered by the class representatives; (3) the amount of time and effort spent by the
26 class representatives; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof)
27 enjoyed by the class representatives as a result of the litigation. *Id.*

28 The enhancement awards provided for by the Settlement is fair and appropriate. Plaintiffs

1 have spent considerable time and effort to produce relevant documents and past employment records,
2 and to provide the facts and evidence necessary to prove the allegations. Plaintiffs were each
3 available whenever Class Counsel needed them and actively tried to obtain information that would
4 benefit the Class. Plaintiff Perez also actively participated in the full-day mediation of this matter.
5 Accordingly, it is appropriate and just for Plaintiffs to receive a reasonable enhancement award as an
6 incentive payment, in addition to their Settlement Awards, for their services on behalf of the Class.

7 **XII. CONCLUSION**

8 For the foregoing reasons, Plaintiffs respectfully request that the Court grant preliminary
9 approval of the proposed Settlement; certify the proposed Class for settlement purposes; appoint and
10 designate Bartz Law Group, APC and Barkhordarian Law Firm, PLC as Class Counsel; appoint and
11 designate Plaintiffs Jose Gonzalez, Ignain Perez, and Antonio Serrano as the Class Representatives;
12 appoint CPT Group as the Settlement Administrator; preliminarily approve the allocations for
13 attorneys' fees and reimbursement of litigation costs and expenses to Class Counsel, enhancement
14 awards to Plaintiffs, settlement administration fees; PAGA settlement; approve the proposed Notice
15 Packet; direct the Settlement Administrator to undertake the notice and settlement administration
16 process in conformity with the deadlines provided by the Settlement Agreement; and schedule a
17 Settlement Fairness Final Approval Hearing.

18
19 DATED: July 11, 2023

BARKHORDARIAN LAW FIRM, PLC

20
21
22 By: /s/ John F. Litwin

23 John F. Litwin

24 Attorneys for Plaintiff Ignain Perez, on behalf of
25 himself and all others similarly situated
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DATED: July 11, 2023

BARTZ LAW GROUP, PC

By: /s/ Aaron A. Bartz
Aaron A. Bartz
Attorneys for Plaintiffs JOSE GONZALEZ and
ANTONIO SERRANO, on behalf of themselves
and all others similarly situated



Make a Reservation

JOSE GONZALEZ, vs ROTO-ROOTER SERVICES COMPANY

Case Number: 22STCV34334 Case Type: Civil Unlimited Category: Other Employment Complaint Case
Date Filed: 2022-10-25 Location: Stanley Mosk Courthouse - Department 19

Reservation

Case Name:

JOSE GONZALEZ, vs ROTO-ROOTER SERVICES
COMPANY

Case Number:

22STCV34334

Type:

Motion for Order (To Preliminarily Approve Settlement)

Status:

RESERVED

Filing Party:

Jose Gonzalez (Plaintiff)

Location:

Stanley Mosk Courthouse - Department 19

Date/Time:

09/12/2023 8:30 AM

Number of Motions:

1

Reservation ID:

898032856207

Confirmation Code:

CR-YRKWK8FEGMFL3SPHS

Fees

Description	Fee	Qty	Amount
Motion for Order (name extension)	60.00	1	60.00
Credit Card Percentage Fee (2.75%)	1.65	1	1.65
TOTAL			\$61.65

Payment

Amount:

\$61.65

Type:

AmericanExpress

Account Number:

XXXX1002

Authorization:

271718

Payment Date:

1969-12-31

Print Receipt

Reserve Another Hearing

View My Reservations

