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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE – CIVIL COMPLEX CENTER

LEYDI MORALES, individually, and on behalf of other members of the general public similarly situated and on behalf of other aggrieved employees pursuant to the California Private Attorney Generals Act; Plaintiff, vs. MASTROIANNI FAMILY ENTERPRISES LTD., a California corporation; and DOES 1 through 100, inclusive, Defendants.	Case No.: 30-2022-01286355-CU-OE-CJC Honorable Melissa R. McCormick, Department CX104 **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT; CLASS REPRESENTATIVE ENHANCEMENT PAYMENT; AND CLASS COUNSEL AWARD; MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT THEREOF** [Filed Concurrently with Declarations of Tae Kim, Brian J. St. John, Leydi Morales, and Laura Singh; and Proposed Judgment and Order] Date: March 13, 2025 Time: 2:00 p.m. Dept: CX104 Complaint Filed: October 14, 2022

TO THE COURT AND ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on March 13, 2025, at 2:00 p.m., in Department CX104 of the Orange County Superior Court, located at 751 W. Santa Ana Blvd., Santa Ana CA 92701, Plaintiff Leydi Morales ("Plaintiff"), pursuant to California Code of Civil Procedure § 382 and California Rules of Court, Rule 3.769, *et seq*. will, and hereby does, move for an order as follows:

1. Granting final approval of the terms of the proposed class action settlement (the "Settlement") as fair, reasonable, and adequate to all Parties and all Class Members;
2. Certifying the Class for settlement purposes only;
3. Appointing Plaintiff as the Class Representative for settlement purposes;
4. Appointing Plaintiff's Class Counsel Collins Kim and Lawyers for Justice as Class Counsel for settlement purposes;
5. Approving a Class Representative Enhancement Award to Plaintiff in an amount up to $7,500.00;
6. Approving a Class Counsel Award of reasonable attorneys' fees to Collins Kim of $294,612.50 and to Lawyers for Justice for $158,637.50 and costs of $22,700.00;
7. Approving the PAGA Penalty Amount payment for civil penalties under the Private Attorneys General Act of 2004 ("PAGA") of $75,000;
8. Approving CPT's fees and costs of $12,750.00; and
9. Entering final judgment in this Action.

This Motion is based upon this Notice, the attached Memorandum of Points and Authorities, the accompanying Declarations of Proposed Class Counsel, Tae Kim and Brian J. St. John, Proposed Class Representative Leydi Morales, and the Settlement Claims Administrator Laura Singh, and all exhibits thereto, the complete files and records of this case, and any other evidence or oral argument which may be considered by the Court at the time of the hearing. Pursuant to Labor Code § 2699(1)(2), a copy of this Motion and supporting papers will be sent/uploaded electronically to the LWDA's website at the time of filing and service. A copy of the proof of submission to the LWDA is attached to the Declaration of Tae Kim.

DATED: February 19, 2025 COLLINSKIM LLP

Tae Kim
Attorneys for Plaintiff
LEYDI MORALES

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Leydi Morales ("Plaintiff") seeks final approval of the Parties' Settlement Stipulation of Class Action Settlement Agreement ("Stipulation," "Settlement," or "Settlement Agreement"). The proposed Settlement will create an all-inclusive, non-reversionary settlement fund in the amount of $1,295,000.00.

A presumption of fairness exists as the Settlement was reached through extensive, mediated arm's length negotiations; Plaintiff conducted sufficient investigation and discovery, which provided counsel with the opportunity to properly investigate and assess the claims; and Plaintiff's counsel are experienced in similar wage-and-hour class litigation.

Further, of the 652 class members, there were only two objections, or approximately .03% of the class and only three opt outs, representing a 99.54% participate rate. This tiny number reflects overwhelming class approval of the settlement. If the Court approves the proposed settlement, the 649 participating Class Members will receive, on average, $1,115.46, with the highest estimated payment to be approximately $3,895.78.

Plaintiff's request for attorneys' fees in the amount $453,250 reimbursement of costs and expenses in the amount of $22,700, and an enhancement award for Plaintiff in the amount of $7,500 are also reasonable and warranted and thus should be approved by the Court.

II. FACTUAL BACKGROUND

Defendant is a hospitality company that offers catering services, as well as event venues, and one brick and mortar restaurant in Orange County, California. It specializes in high-end weddings, large scale events, and other business events. Declaration of Tae Kim ("Kim Decl.") ¶ 2. Plaintiff worked for Defendant as an event organizer assistant from approximately May 1, 2017, through January 19, 2022. Declaration of Leydi Morales ("Morales Decl.") ¶ 2.

III. PROCEDURAL HISTORY

On August 10, 2022, Lawyers *for* Justice, PC provided written notice by online submission to the Labor and Workforce Development Agency and by certified mail to

Defendant on behalf of Plaintiff, of Plaintiff's intent to pursue civil penalties under the Private Attorneys General Act ("PAGA") against Defendant for alleged violations of the California Labor Code and Industrial Welfare Commission Wage Orders. Declaration of Brian J. St. John ("St. John Decl."), ¶ 9. On October 14, 2022, Plaintiff filed a class and representative action against Defendant, alleging that Defendant failed to provide required meal and rest periods, failed to pay minimum and overtime wages, failed to furnish accurate itemized wage statements, failed to maintain required business records, failed to pay wages on separation of employment, and failed to reimburse business expenses. Kim Decl. ¶ 3. Plaintiff further alleges that Defendant's practices violated California's Unfair Competition Law ("UCL") and that Defendant is liable for penalties under PAGA. *Id*. Defendant filed its answer to the complaint on December 2, 2022. *Id*.

A. <u>Discovery And Investigation</u>

Plaintiff served an initial set of discovery and deposition notices on Defendant on January 5, 2023. *Id.* at ¶ 4. Thereafter, the Parties agreed to an early mediation, a stay on formal discovery, and Defendant agreed to informally produced class data, policies, and class information so that Plaintiff could adequately prepare for mediation. Plaintiff and her counsel conducted an extensive investigation into the claims alleged, including lengthy and numerous conversations with Plaintiff, identifying additional witnesses, performed legal research, and engaged in formal and informal discovery with Defendant. Kim Decl. ¶ 5; St. John Decl., ¶¶ 11-14.

Defendant produced relevant wage and hour policy documents, a representative sampling of the time and payroll records for the Settlement Class Members, as well as other employment data such as dates of employment, and employee counts. *Id*. Plaintiff's expert consultant analyzed the time and payroll records, and prepared an exposure analysis, which assisted Plaintiff's counsel in preparing a damages model prior to the mediation. *Id.*

B. <u>Settlement Negotiations</u>

On June 8, 2023, the Parties participated in a full day private mediation session with mediator Kristin Rizzo, Esq. Kim Decl. ¶ 6. The Parties were unable to reach an agreement at mediation. However, before terminating the mediation, Ms. Rizzo made a mediator's proposal outlining the material terms of a proposed class action settlement. *Id*. The Parties accepted the mediator's proposal, subject to the Parties entering into a more comprehensive written settlement agreement. *Id.*

The Parties executed a long form Settlement Stipulation along with a subsequent amendment thereto, which outlined the terms and conditions of the settlement. *Id.* at ¶ 8, Exh. A. On October 12, 2023 and August 28, 2024, Plaintiff submitted a copy of the Stipulation to the Labor and Workforce Development Agency ("LWDA"). *Id*. at ¶ 9, Exh. B.

C. <u>Preliminary Approval of Settlement and Notices</u>

On October 24, 2024, the Court issued a tentative order granting preliminary approval of this Class and Representative Action settlement, with the order entered on December 12, 2024. Kim Decl., ¶ 10, Exh. C; St. John Decl., ¶ 2. Thereafter, CPT sent out notices of the Settlement in accordance with the Court's Preliminary Approval Order. Declaration of Laura Singh ("Singh Decl."), ¶¶ 4-10.

IV. <u>SUMMARY OF PRELIMINARILY APPROVED SETTLEMENT</u>

A. <u>The Settlement Class Members and Aggrieved Employees</u>

The Settlement Class Members consist of all hourly, non-exempt employees employed by Defendant in California during the period from October 14, 2018, through October 23, 2023 (the "Class Period"). Stipulation ¶ 7. The Aggrieved Employees are all persons employed by Defendant as non-exempt employees in California at any time from October 14, 2021, to October 23, 2023 (the "PAGA Period"). Stipulation ¶ 20. There are 649 Settlement Class Members who worked 48,863 workweeks during the Class Period, and 347 Aggrieved Employees who worked 12,335 pay periods during the PAGA Period. Singh Decl., ¶¶ 15, 18.

B. <u>Settlement Terms</u>

Under the proposed Settlement, the claims of all Settlement Class Members shall be settled for a Gross Settlement Amount ("GSA") of $1,295,000.00. From this GSA, the following will be deducted to yield a Net Settlement Amount: Individual Settlement Payments; Class Counsel Award; the Class Representative Enhancement Award, Settlement Administration Costs, and the PAGA Payment. Stipulation ¶¶ 15,46. The Employer Taxes shall be submitted by Defendant to the Settlement Administrator ("CPT") in addition to the GSA. *Id*. No portion of the GSA shall revert to Defendant or result an unpaid residue. *Id*.

C. Settlement Allocation

The GSA shall be allocated as follows:

Gross Settlement Amount	$1,295,000
Requested Attorneys' Fees	$453,250
Requested Costs	$22,700[1]
Requested Settlement Administration Costs	$12,750
Requested Class Representative Enhancement Award	$7,500
PAGA Payment	$75,000 ($56,250 to the LWDA; $18,750 to Aggrieved Employees)
Net Settlement Amount[2]	$723,800
Number of Participating Class Members	649
Number of Opt Outs	3
Number of Objections	2

Singh Decl., ¶ 16.

D. Released Claims

1. Released Class Claims

Upon full payment of the GSA by Defendant to CPT, all Participating Class Members shall be deemed to have released "any and all claims, causes of action, rights, liabilities,

[1] Proposed Class Counsel requested costs not to exceed $26,700 in their Motion for Preliminary Approval and have incurred costs of $26,334.99. Kim Decl., ¶ 24; St. John Decl., ¶ 17.

[2] Settlement Class Members will receive a pro rata share of the Net Settlement Amount based on the number of weeks worked. Stipulation, ¶ 48.f. Individual Settlement Payments are allocated as 15% wages subject to tax withholdings, 45% statutory penalties, and 40% interest from which no taxes will be withheld. Stipulation, ¶ 48.g.

penalties, demands, damages, debts, accounts, duties, Costs (other than those Costs required to be paid pursuant to this Settlement Agreement), against the Released Parties that are pled in the Operative Complaint and that arise from the facts alleged in Plaintiffs' Operative Complaint during the Class Period. Specifically, this includes Defendant's alleged violation of the California Labor Code for, *inter alia*, failure to pay overtime and minimum wages, provide meal and rest periods and associated premium payments, timely pay wages during employment and upon termination, provide compliant wage statements, maintain complete and accurate payroll records, and reimburse necessary business-related expenses, as well as all claims for failure to pay minimum wage, failure to pay overtime wages, failure to provide meal and rest periods, failure to issue accurate itemized wage statements, and Defendant's alleged unfair business practices in violation of California Business and Professions Code sections 17200, *et seq.* stemming from the foregoing alleged California Labor Code violations. Class Member's Released Claims will be effective upon Defendant's providing the Gross Settlement Amount to CPT. Stipulation ¶¶ 28, 29, 48(i).

2. PAGA Released Claims

In addition, upon full payment of the GSA by Defendant to CPT, all Aggrieved Employees shall be deemed to have released the Released Parties of any and all PAGA claims that Plaintiff alleged against the Released Parties, on behalf of Aggrieved Employees, based on the facts stated in the Complaint and in Plaintiff's LWDA notice letter, which include PAGA claims seeking civil penalties that are premised upon: (a) failure to pay minimum wages; (b) failure to pay overtime wages; (c) failure to provide compliant meal periods and pay required meal period penalties; (d) failure to provide compliant rest periods and pay required rest period penalties; (e) failure to reimburse business expenses; (f) failure to timely pay wages each period and upon separation of employment; (g) failure to provide accurate itemized wage statements; and (h) all other claims for civil penalties recoverable under the Private Attorneys General Act Labor Code § 2698 *et seq.*, based on the claims alleged in the Complaint and the LWDA notice letter. The PAGA Released Claims do not release any Aggrieved Employee's claims for wages or statutory penalties. Stipulation ¶ 22, 48.j.

3. Class Representative Release

Upon full payment of the GSA by Defendant to CPT, Plaintiff shall be bound by a general release, including a Civil Code § 1542 waiver, with the exclusion of her individual claims for pregnancy related claims. Stipulation ¶¶ 10, 28, 48(h).

The "Released Parties" means Defendant. Stipulation ¶ 30.

E. Class Notice Was Effectuated In Conformity with California Law, Due Process, and the Court's Preliminary Approval Order

To protect the right of absent class members, the trial court must provide the best notice practicable to class members. *See Phillips Petroleum Co. v. Shutts,* 472 U.S. 797, 811-12 (1985); *Eisen v. Carlisle & Jacquelin,* 417 U.S. 156, 174-175 (1974). There is no requirement that all class members receive actual notice; rather, "individual notice must be provided to those class members who are identifiable through reasonable effort." *Eisen*, *supra*, 417 U.S. at 175.

The notice plan has been implemented by CPT. On March 26, 2024, CPT received the complete Class List for 652 Class Members, including the Class Members' name, last known address, hire date, termination date, and social security number. Singh Decl. ¶ 5. On November 4, 2024, CPT updated the Class List using the National Change of Address Database. *Id.* at ¶ 7. On November 7, 2024, Notice of Class and Representative Action Settlement, Notice of Objection to Class Action Settlement, and Request for Exclusion from Clas Action Settlement (collectively, "Notice Packet") were mailed via First Class U.S. Mail to each of the 652 Class Members. *Id.* at ¶ 8. The listed deadline to submit disputes, requests for exclusion, or objections was January 6, 2025. *Id*. at ¶ 8. Thirty Notice Packets were returned by the post office, each were skip traced. Twenty-three notices were re-mailed and five remain undeliverable. *Id.* at ¶¶ 9, 10. Additionally, there were three exclusions, two objections, and no disputes. *Id.* at ¶¶ 11-13.

V. THE COURT SHOULD GRANT FINAL APPROVAL OF THE PROPOSED SETTLEMENT

The trial court has broad discretion in approving class action settlements and will consider "several well-recognized factors," which include but are not limited to the following: "the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation; the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel … and the reaction of the class members to the proposed settlement." *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008). "The most important factor is the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement." *Id*, at 130.

Further, the settlement is entitled to a presumption of fairness where: (1) the settlement is reached through arm's length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. *Dunk v. Ford Motor Company*, 48 Cal. App. 4th 1794, 1802 (1996). As the proposed Settlement was reached through arm's-length negotiations, sufficient investigation and discovery allowed Class Counsel to act intelligently, Class Counsel is experienced in wage-and-hour class actions, and there are only two objections, the proposed Settlement should be presumed to be fair.

A. <u>This Settlement is Presumed Fair</u>

1. The Proposed Settlement Was Reached Through Arm's Length Bargaining

Court's presume the absence of fraud or collusion in the negotiation of a settlement unless there is evidence to the contrary. *Newberg on Class Actions*, 4th Ed. 2002, § 11.51. The assistance of a private mediator in the settlement process evidences a presumption of fairness of the arms-length negotiations. *Kullar, supra*, 168 Cal. App. 4th at 129. Here, the Settlement was reached following extensive negotiations during a private mediation session with a well-respected mediator, Kristin Rizzo. Kim Decl. ¶¶ 6-7. The settlement negotiations were at arm's length and, although conducted in a professional manner, were adversarial. *Id*. at ¶ 7. The Parties went into mediation willing to explore the potential for a settlement of the dispute, but each side was also prepared to litigate its position through trial and appeal if a settlement had not been reached. *Id.* Indeed, the Parties were unable to settle at mediation and required a mediator's proposal to resolve the matter. *Id.*

2. Plaintiff Conducted Sufficient Investigation and Discovery

Prior to reaching this Settlement, Plaintiff's counsel conducted an extensive investigation into the claims alleged, performed legal research, and engaged in formal and informal discovery with Defendant. Kim Decl. ¶¶ 4, 5; St. John Decl., ¶¶ 4,5, 12. Defendant produced relevant wage and hour policy documents and a representative sampling of time and payroll records for Settlement Class Members. *Id.* Plaintiff's expert analyzed the time and payroll records, which assisted Plaintiff in preparing a damages model prior to the mediation. *Id.* Plaintiff's expert's damages model also provided insight into department and shift specific compliance issues, which was instrumental in Plaintiff's argument at mediation. Kim Decl. at ¶¶ 4-5, 24. Based on this investigation, Plaintiff was able to act intelligently and effectively in negotiating the proposed Settlement.

3. Class Counsel Has Extensive Experience in Wage and Hour Actions

Litigation of this action and the settlement negotiations were conducted by highly capable and experienced counsel. Plaintiff's counsel has a strong record of vigorous and effective advocacy for their clients and are experienced in handling complex wage and hour class action litigation. Kim Decl. ¶ 22; St. John Decl., ¶¶ 7-12. Although Plaintiff and her counsel were prepared to litigate the claims asserted in this action, they support the proposed Settlement as being in the best interests of the Settlement Class Members. Kim Decl. ¶¶ 12, 15; See also *Boyd v. Bechtel Corp.*, 485 F.Supp. 610, 622 (N.D. Cal. 1979) ("the recommendations of plaintiffs' counsel should be given a presumption of reasonableness.")

4. Only Two Objectors (.3% of the Class) Have Objected to the Settlement to Date

One of the factors to consider in approving a class settlement is the reaction of the class. *Clark v. American Residential Services, LLC*, 175 Cal. App. 4th 785, 799 (2009). Further, "a "class action settlement may be presumed fair even when a small percentage of the class submits valid objections to the settlement." *Dunk*, *supra*, 48 Cal. App. 4^{th} at 1802. Here, of the 652 Class Members, only 2 objected. Singh Decl. ¶ 15. This reflects .3% of the class. There were no stated grounds for the objections. Kim Decl., ¶ 14. An additional three class members opted out of the settlement, reflecting .4% of the class. This tiny fraction is a strong indication that the settlement is fair, reasonable, and welcomed by the class. See *Tormey v. The Vons Companies, Inc.*, 2011 WL 3562156, *25 (2011) (court presumed settlement fair and reasonable where 1.4% of the class objected).

B. <u>The Settlement Is Fair, Adequate, and Reasonable</u>

The trial court has "broad discretion to determine "whether a settlement [is] fair and reasonable." *In re Cellphone Fee Termination Cases,* 186 Cal.App.4th 1380, 1389 (2010). In considering whether a settlement is reasonable, the trial court should consider relevant factors, which may include the strength of plaintiff's case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement. *Kullar, supra,* 168 Cal.App.4th at 128. In order to approve a class action settlement, the court must satisfy itself that the class settlement is within the "ballpark" of reasonableness. *Id*. at 133.

The proposed Settlement is fair, adequate, and reasonable to the Settlement Class Members. Plaintiff has calculated the maximum potential damages to be approximately $15,310,825.00, in the event that (1) Plaintiff's claims are certified, and (2) Plaintiff is able to establish liability at trial. Kim Decl. ¶ 11. This amount includes approximately $4,539,012 in potential statutory damages for Defendant's alleged failure to provide meal and rest breaks and failure to pay minimum and overtime wages, waiting time penalties, and wage statement penalties and approximately $10,148,013 for PAGA penalties. *Id.*

The Settlement obviates the significant risk that this Court may deny certification of all or some of Plaintiff's claims. *Id.* at ¶ 12. Even if Plaintiff obtained certification of all or some of the claims, continued litigation would be expensive, involving a trial and possible appeals, and would substantially delay and reduce any recovery by the Settlement Class Members. *Id.* at ¶¶ 12-14.

While Plaintiff is confident in the merits of her claims, a legitimate controversy exists as to each cause of action. *Id.* Additionally, Plaintiff's claims for penalties are derivative of the other claims and, if relief were denied on the other claims, Plaintiff would recover no damages on these claims. *Id*. In order to prevail on Plaintiff's waiting time and wage statement claims, the finder of fact also would have to determine that Defendant's conduct was willful and knowing and intentional. This is very difficult to prove even if the class were to prevail on the merits of the underlying claims. *See*, *e.g.*, *Amaral v. Cintas Corp. No.2,* 163 Cal.App.4th 1157, 1203-04 (2008) (holding that the employer did not willfully fail to pay wages under Cal. Lab. Code § 203 even though the class prevailed on the merits on the underlying claim for failing to pay living wages); *Willner v. Manpower Inc.*. 35 F.Supp.3d 1116, 1131 (N.D. Cal. 2014).

Based on an estimated Net Settlement Amount of $723,800, which represents approximately $14.81 per workweek, it is estimated that Settlement Class Members, on average, will receive approximately $1115.25 as part of the Settlement. Singh Decl. at ¶¶ 15-17.

In sum, when the risks of litigation, the uncertainties involved in achieving class certification, the burdens of proof necessary to establish liability, and the probability of appeal of a favorable judgment are considered, it is clear that the Gross Settlement Amount of $1,275,000.00 is within the "ballpark" of reasonableness and is in the best interests of the Settlement Class Members. Thus, final settlement approval is appropriate.

1. Class Counsel's Requested Fees And Costs Are Reasonable

The Stipulation provides for attorneys' fees in an amount not to exceed $453,250.00, which equals 35% of the Gross Settlement Amount. Stipulation ¶ 48.b. Class Counsel is entitled to reasonable attorneys' fees pursuant to Labor Code § 1194, PAGA, and Cal. Code of Civil Procedure § 1021.5. The requested fees are reasonable, as they are well-within the range of fees generally sought and approved in common fund class action cases. The requested fees also are reasonable based on Class Counsel's lodestar.

a. An Award of Attorneys' Fees is Warranted

Labor Code § 1194 provides that any employee receiving less than the legal minimum or overtime wage is entitled to recover the unpaid balance of the minimum wage or overtime compensation, plus reasonable attorney's fees and costs of suit. Lab. Code § 1194. As the Settlement provides for a recovery of unpaid minimum and overtimes wages, Plaintiff is entitled to recover reasonable attorneys' fees and costs under the California Labor Code. Class Counsel also is entitled to a fee award under California's private attorney general statute, Code of Civil Procedure § 1021.5. "The award of attorney's fees is proper under section 1021.5 if '(1) plaintiffs' action 'has resulted in the enforcement of an important right affecting the public interest,' (2) 'a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons' and (3) 'the necessity and financial burden of private enforcement are such as to make the award appropriate.'" *Press v. Lucky Stores,* 34 Cal.3d 311, 317-318 (1983). The fundamental objective of the statute is "to encourage suits enforcing public policies by providing substantial attorneys' fees to successful litigants in such cases." *Graham v. DaimlerChrysler Corp.*, 34 Cal.4th 553, 565 (2004).

This action resulted in the enforcement of an important right affecting the public interest, as Plaintiff sought to enforce employees' right to recover statutory wages arising from Defendant's failure to pay all wages and failure to provide meal and rest breaks. *See Murphy v. Kenneth Cole Productions, Inc.,* 40 Cal.4th 1094, 1113 (2007) (noting that "health and safety concerns" motivated the Industrial Wage Commission to adopt mandatory meal and rest periods).

This action also conferred a significant benefit on a class of persons who worked for Defendant during the Class Period and were not properly compensated for all hours worked and were not provided meal and rest periods or compensation therefor. On average, the 649 Participating Class Members will receive $1,115.25, and the highest Individual Settlement

Payment will be approximately $ $3,895.78. Singh Decl. ¶ 16.

Finally, the necessity and financial burden of private enforcement render an award appropriate. Without the incentive of an attorneys' fee award, Plaintiff could not have afforded to hire counsel, as the cost of litigating this matter far outweighed Plaintiff's potential recovery. *See Ryan v. California Interscholastic Federation,* 94 Cal. App. 4th 1033, 1044 (2001).

Thus, an award of reasonable attorneys' fees is appropriate.

b. <u>Class Counsel's Requested Attorneys' Fees Are Reasonable under the Common Fund Method</u>

The request for attorneys' fees as a percentage of the Gross Settlement Amount is supported by the "common fund theory," where "one 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." *Serrano v. Priest,* 20 Cal.3d 25, 35 (1997). California law provides that attorneys' fees awards should be equivalent to fees freely negotiated in the legal marketplace and paid in comparable litigation based on the result achieved and risk incurred. *See Lealao v. Beneficial California, Inc.,* 82 Cal. App. 4th 19, 47, 50 (2000). Fee awards that are too small will "chill the private enforcement essential to the vindication of many legal rights and obstruct the representative actions that often relieve the courts of the need to separately adjudicate numerous claims." *Id.* Therefore, fees in representative actions should approximate the probable terms of a contingent fee contract negotiated by a sophisticated attorney and client in comparable litigation. *Id.* at 48. The percentage-of-the-benefit approach is preferred in such cases because "it better approximates the workings of the marketplace than the lodestar approach." *Id.* at 49.

The California Supreme Court in *Laffitte v. Robert Half Int'l Inc*., 1 Cal.5th 480 (2016) affirmed that, "when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created." The court recognized the advantages of the percentage method over the lodestar—including relative ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation—convince us the percentage method is a valuable tool that should not be denied our trial courts." *Id*. at 503 (internal citations omitted). The ultimate goal is the award of a "reasonable" fee to compensate counsel for their efforts, irrespective of the method of calculation. *Apple Computer, Inc. v. Superior Court,* 126 Cal. App. 4th 1253, 1270 (2005); *Consumer Privacy Cases,* 175 Cal. App. 4th 545, 557-8 (2009).

Thus, the common fund doctrine has been applied "consistently in California when an action brought by one party creates a fund in which other persons are entitled to share." *City and County of San Francisco v. Sweet,* 12 Cal.4th 105, 110 (1995); *see Quinn v. State of California,* 15 Cal.3d 162, 167 (1975) ("[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.")

Plaintiff's request for 35% of the common fund is reasonable. Historically, courts have awarded percentage fees in the range of 20% to 50%. *Newberg*, *supra*, § 14: 6; *In re Activision Sec. Litig.*, 723 F.Supp. 1373, 1378-79 (N.D. Cal. 1989). *Newberg* notes that achievement of a substantial recovery with modest hours expended should not be penalized, but should be rewarded for considerations of time saved by superior services performed. *Id.*

Further, Class Counsel has borne, and continues to bear, the entire risk and cost of litigation associated with this class action on a pure contingency basis. The factual and legal issues posed in this case are highly disputed, and there also were risks whether a class would be certified, leaving a large number of putative class members unlikely to receive any recovery. Class Counsel's efforts have resulted in substantial benefits to the Class Members, in the form of a significant, non-reversionary settlement fund established to compensate Class Members for the alleged wage and hour violations. Without the efforts of Class Counsel, the claims alleged in the complaint would likely have gone without remedy. In addition, the requested fee percentage is less than that charged by Class Counsel for other employment cases. Kim Decl. ¶¶ 12-15, 17-23;

St. John Decl., ¶ 13. Therefore, the Court should approve Plaintiff's request for attorneys' fees in an amount equaling thirty-five percent of the common fund.

c. Class Counsel's Requested Attorneys' Fees Are Reasonable under the Lodestar Method

While the common fund approach is endorsed as the better approximation of the workings of the marketplace than the lodestar approach, courts have discretion to also use the lodestar method to "cross-check" the results of the requested fees are appropriate. *Laffitte*, *supra*, 1 Cal. 5th at 506. That said, courts have cautioned that the primary basis of the fee award in common fund cases remains the percentage of the fund method and have cautioned that plaintiff's counsel should not necessarily receive a lesser fee achieving a speedy and timely result for individuals in need of immediate relief. *See, e.g., Vizcaino v. Microsoft Corp.*, 290 F.3d. 1043, 1050 fn.1 (9th Cir. 2002). Indeed, courts have noted that "it is widely recognized that the lodestar method creates incentives for counsel to expend more hours than may be necessary on litigating a case so as to recover a reasonable fee, since the lodestar method does not reward early settlement." *Id.* (quoting *Camden I Condominium Ass'n*, 946 F.2d at 773–74.)

Nonetheless, Plaintiff's fee application also is reasonable based on Class Counsel's lodestar. In calculating an initial lodestar figure, a court considers: (1) the reasonable hours spent; and (2) the prevailing hourly rates for "private attorneys in the community conducting *noncontingent* litigation of the same type." *Ketchum v. Moses*, 24 Cal. 4th 1122, 1134 (2001)(emphasis in original).[3] The hours spent and the reasonable hourly compensation are computed to arrive at a "lodestar" figure which may then be augmented or diminished by the court taking into account various "multiplier" factors. *See Ramos v. Countrywide Home Loans, Inc.*, 82 Cal. App. 4th 618, 622 (2000) (citing *Serrano*, *supra*, 20 Cal.3d at 48-49).

Class Counsel has collectively expended 401.70 hours on this matter, with 194.90 hours expended by Lawyers for Justice counsel and 206.80 hours expended by Collins Kim Counsel.

[3] These facts may be established through a declaration by counsel. *Wershba v. Apple Computer, Inc.,* 91 Cal. App. 4th 224, 254-55 (2001) (relying on Plaintiffs' counsel's declarations as sufficient evidence to demonstrate the appropriate hourly rate). "California case law permits fee awards in the absence of detailed time sheets." *Wershba, supra,* 91 Cal. App. 4th at 254-55; *Dunk*, *supra*, 48 Cal.App.4th at 1810; *Nightengale v. Hyundai Motors America,* 31 Cal. App. 4th 99, 103 (1994).

Kim Decl., ¶ 19, St. John Decl., ¶ 14. The hourly rates for Lawyers for Justice attorneys are as follows: Edwin Aiwazian $1,495; Arby Aiwazian $1,295; Joanna Ghosh $1,295; Melissa LeBlanc-Mansell $850; Elizabeth Parker-Fawley $850; Brian St. John $850; Tara Zabehi $850; Arman Marukyan $725; Margaux Gundzik $725; and for Collins Kim attorneys are as follows: Tae Kim $725 and Dawn Collins $750. The resulting lodestar for Class Counsel totals $354,259.50 (Lawyers for Justice - $204,042 and Collins Kim - $150,217.50). Kim Decl., ¶ 19, St. John Decl., ¶ 14.

Further, multipliers of 1 to 4 are commonly found to be appropriate in complex class action cases. See *Cates v. Chiang*, 213 Cal. App. 4th 791, 792, 822, 823 (2013), *Destefano v. Zynga, Inc.*, 2016 WL 537946, at *21 (N.D. Cal. Feb. 11, 2016) (quoting *Hopkins v. Stryker Sales Corp.*, 2013 WL 496358, at *4 (N.D. Cal. Feb. 6, 2013)); see *Vizcaino, supra,* 290 F.3d at 1051 n.6 (citing survey finding most multipliers range from 1.0 to 4.0).

Here, a multiplier of 1.28 is well within the range of acceptable. This case has been pending for nearly three years and given the work performed, the issues raised, the risks achieved, and the risk undertaken by Class Counsel, the multiplier of 1.28 which is near the lowest range of acceptable multipliers is warranted. Based on the forgoing, Plaintiff's requested fee award is likewise supported by the lodestar cross-check is fair and reasonable and is justified under California law. The requested attorneys' fees and costs will not be opposed by Defendant and are well within established guidelines.

i. <u>Class Counsel's Hours Are Reasonable</u>

In determining whether the number of hours expended on the litigation was reasonable, the court must determine that "the time spent was reasonably necessary and that [] counsel made 'a good faith effort to exclude from the fee request hours that are excessive, redundant, or otherwise unnecessary." *Jordan v. Multnomah County,* 815 F.2d 1258, 1263 n.8 (9th Cir. 187). The court "should defer to the winning lawyer's professional judgment as to how much time he was required to spend on the case." *Moreno v. City of Sacramento,* 534 F.3d 1106, 1112 (9th Cir. 2008) ("Lawyers are not likely to spend unnecessary time on contingency fee cases in the hope of inflating their fees. The payoff is too uncertain, as to both the result and the amount of the fee.”).

Here, Class Counsel expended a significant amount of time litigating the case, including: interviewing Plaintiff and reviewing documents provided by Plaintiff; drafting the complaint; drafting discovery; reviewing time and payroll records and other employment records produced by Defendant; retaining a consultant to analyze the time and payroll data; performing legal research regarding Plaintiff’s claims and Defendant’s defenses thereto; drafting a mediation brief and preparing a damages analysis; attending mediation; preparing for and attending court hearings; negotiating, drafting, and revising the Stipulation and attached exhibits thereto; drafting the Motion for Preliminary Approval and accompanying documents; communicating with Defendant’s counsel and CPT to effectuate the terms of the Stipulation and to monitor the settlement process; and drafting the Motion for Final Approval and accompanying documents. Kim Decl. ¶¶ 18, 19, 21; Exh. D; St. John Decl., ¶ 13, 14, 16, Exh. A. Thus, the 401.7 hours spent litigating this case and anticipated were necessary and reasonable to achieve the excellent result on behalf of the class.

ii. <u>Class Counsel’s Hourly Rates Are Reasonable</u>

The reasonable hourly rate is that prevailing in the community for similar work. *PLCM Group, Inc. v. Drexler,* 22 Cal.4th 1084, 1095 (2000). In assessing a reasonably hourly rate, courts “consider the attorneys’ skill as reflected in the quality of work, as well as the attorneys’ reputation and status.” *MBNA American Bank, N.A. v. Gorman,* 147 Cal. App. 4th 1, 3 (2006). The court may “find hourly rates reasonable based on evidence of other courts approving similar rates.” *Parkinson v. Hyundai Motor America,* 796 F.Supp.2d 1160, 1172 (C.D. Cal. 2010).

The best indicator of a “reasonable market rate” is the actual rate charged by an attorney to his or her private clients. *Ohio-Sealy Mattress Mfg. Co. v. Sealy Inc.,* 776 F.2d 646, 660 (7th Cir. 1985). As explained by one Court of Appeal: “When an attorney's customary billing rate is the rate at which the attorney requests the lodestar be computed and that rate is within the range of prevailing market rates, the court should consider this rate when fixing the hourly rate to be allowed. When the rate is not contested, it is prima facie reasonable." *Islamic Center of Mississippi v. City of Starkville*, 876 F.2d 465, 469 (5th Cir. 1989).

The hourly rates for counsel at Collins Kim are as follows: Tae Kim (partner) $725; Dawn Collins (partner) $750. These are the rates that individuals and corporate clients pay Collins Kim to represent them on an hourly basis. Accordingly, they are *prima facie* reasonable. (Kim Decl. ¶ 22).

The hourly rates for Lawyers for Justice attorneys are as follows: Edwin Aiwazian (shareholder) $1,495; Arby Aiwazian (shareholder) $1,295; Joanna Ghosh (managing attorney) $1,295; Melissa LeBlanc-Mansell (Senior Attorney) $850; Elizabeth Parker-Fawley (Senior Attorney) $850; Brian St. John (Senior Attorney) $850; Tara Zabehi $850 (Senior Attorney); Arman Marukyan (Attorney) $725; Margaux Gundzik (Attorney) $725. This results in a blended rate of $850 for work performed by Lawyers for Justice counsel, and are the rates that have been approved by Courts throughout California in prior fee applications. Accordingly, they are *prima facie* reasonable. St. John Decl., ¶¶ 13, 16.

Class Counsel are experienced litigators who specialize in employment law, with a substantial wage and hour class action practice. Kim Decl. ¶ 22; St. John Decl., ¶ 6-11. Given the skill and experience of Class Counsel in this case, Class Counsel's hourly rates are reasonable.

The requested fee is a fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a contingent fee basis, especially in light of the substantial benefits achieved by Plaintiffs' counsel for the Class Members. Accordingly, Class Counsel respectfully requests the Court approve fees in the amount of $453,250.00.

2. Class Counsel's Costs Are Reasonable

The Stipulation provides for reimbursement of costs not to exceed $26,700.00. Stipulation, ¶ 49(c). Plaintiffs are entitled to recover litigation costs and expenses reasonably incurred in the prosecution of their wage-and-hour claims. See Cal. Lab. Code §§ 1194, 226(e), 2802(c) and 2699(g)(1); Cal. Civ. Proc. Code § 1021.5; 29 U.S.C. § 216(b).

To date, Class Counsel has incurred actual costs in the amount of $26,334.99. Kim Decl. ¶ 24, Exh. E; St. John Decl., ¶ 17, Exh. B. Class Counsel seek reimbursement for taxable and commonly reimbursed costs, including: Filing fees ($2,090.95); Mediation fees ($3,825.00); Attorney service fees ($322.57); Courier service fees ($48.97); Orange County Superior Court document download fees ($75.00); and Expert consultant fees ($19,957.50). *Id*. The expert consultant's analysis provided visibility into compliance issues across departments and shifts, which assisted Class Counsel in negotiations during mediation. Kim Decl., ¶ 24. The costs were necessarily incurred in the prosecution of this action.

3. Fee-Splitting

Other than the division of fees set forth in the Stipulation, there are no fee-splitting arrangements with any other counsel. Kim Decl., ¶ 28; St. John Decl. ¶ 13.

C. <u>The Requested Class Representative Enhancement Award Is Reasonable</u>

Plaintiffs in class action lawsuits are eligible for reasonable incentive payments as compensation "for the expense or risk they have incurred in conferring a benefit on other members of the class." *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal. App. 4th 399, 412 (2010). Class representative payments are especially appropriate where the plaintiff is a present or past employee whose present position or employment credentials or recommendation may be at risk by reason of having prosecuted the suit, and therefore lends his or her name and efforts to the prosecution of litigation at some personal peril. *See*, *e.g.*, *Roberts v. Texaco,* 979 F. Supp. 185 (S.D.N.Y. 1997).

When considering whether to make an incentive award, courts consider the following factors: (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation; and (5) the personal benefit, or lack thereof, received by the class representative as a result of the litigation. *Van Vranken v. Atl. Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995) (quotations and citation omitted). The typical enhancement award ranges from approximately $5,000.00 to

$40,000.00, although some awards are higher, and commonly more than one class representative receives awards in the above range. *Mirkarimi v. Nev. Property 1, LLC*, No. 12cv2160 BTM (DHB), 2016 WL 795878, at *6 (S.D. Cal. Feb. 29, 2016) (finding a $30,000.00 enhancement award is proper); *Chu v. Wells Fargo Inv., LLC*, Nos. C 05-4526 MHP, C 06-7924 MHP, 2011 WL 672645, at *5 (N.D. Cal. Feb. 16, 2011) (awarding $10,000.00 to two named plaintiffs, and $4,000.00 to three named plaintiffs, and indicating that enhancement awards have ranged from $5,000.00 to $50,000.00); see also *Williams v. Centerplate, Inc.*, No 11-CV-2159 H-KSC, 12-cv-0008-H-KSC, 2013 WL 4525428, at * (S.D. Cal. Aug. 26, 2013) (finding $5,000.00 incentive awards to three named plaintiffs, representing 2.3% of the common fund, reasonable).

The Stipulation provides that Plaintiff shall be paid a Class Representative Enhancement Award up to $7,500.00 in recognition of Plaintiff's effort and risk in prosecuting this matter. Stipulation ¶ 49(b). The requested payment is intended to recognize: (1) the time and effort Plaintiff expended on behalf of the class; (2) the risks Plaintiff faced as a result of bringing this action; (3) the fact that Plaintiff put the interest of the class ahead of her own; and (4) the substantial benefit conferred upon the class as a result of Plaintiff's actions. During the course of this litigation, Plaintiff has spent approximately 25 hours on the case, consisting of searching for documents and text messages regarding the claims at issue, numerous meetings with counsel to prepare for the filing of the complaint, investigation, and preparation of the mediation brief. Plaintiff also participated in the mediation, responding to mediator's questions as they arose over the course of the mediation. Morales Decl. ¶ 3. Plaintiff also actively participated in case-related decisions, including the decision to settle this action. *Id.* at 3, 5; Kim Decl., ¶¶ 25-27; St. John Decl., ¶ 18. Plaintiff also faced the risk that future employers may not hire her because she lent her name as the class representative in this case, and Plaintiff could have been liable for Defendant's litigation costs if the case went to trial and she lost. *Id*. at ¶ 4. In addition, Plaintiff put the interests of the Settlement Class Members ahead of her own interests. *Id*. at ¶¶ 3-7; Kim Decl., ¶¶ 25-27; St. John Decl., ¶ 18. The requested service award also is reasonable because Class Members are receiving as much as $3,895.78, with an average settlement payment of

$1,15.25. Singh Decl. ¶ 17; Kim Decl., ¶¶ 25-27; St. John Decl., ¶¶ 18, 19.

Accordingly, the Court should approve the requested enhancement award.

VI. FINAL ACCOUNTING HEARING

Plaintiff proposes a Final Accounting Hearing be set on or after October 31, 2025.

VII. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant final settlement approval and enter judgment in accordance with the accompanying Order and Judgment of Final Approval of Class Action Settlement.

Date: February 19, 2025

COLLINS KIM LLP

By: ______________________
TAE KIM
Attorneys for Plaintiff Leydi Morales