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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

ANN ESPINOZA and DIANA FONTANA, individually, and on behalf of all others similarly situated, *Plaintiffs*, v. CICON ENGINEERING, INC., a corporation, and DOES 1 through 10, inclusive, *Defendants*.	Case No.: 21STCV39385 **CLASS ACTION** *[Assigned for all purposes to Judge Maren Nelson, Dept. 17]* **PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES** [*Filed concurrently with*: Declarations of Justin F. Marquez, Ann Espinoza, Diana Fontana, and William Argueta (Settlement Administrator) in Support of Plaintiffs' Motion for Final Approval of Class Action Settlement; and [Proposed] Order Granting Motion] FINAL APPROVAL HEARING Date: October 7, 2023 Time: 9:00 a.m. Dept: 17 Complaint filed: October 26, 2021 SAC filed: November 1, 2022

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

PLEASE TAKE NOTICE that on October 7, 2023, at 9:00 a.m., in Department 17 of Los Angeles Superior Court, located at 312 N. Spring Street, Los Angeles, CA 90012, pursuant to Code of Civil Procedure § 382 and California Rules of Court 3.769, *et seq*., Plaintiffs Ann Espinoza and Diana Fontana ("Plaintiffs") will move the Court for an Order granting Final Approval of the proposed class action settlement between Plaintiffs and Defendant Cicon Engineering, Inc. Plaintiffs further moves the Court for an Order:

1. Certifying a Class for settlement purposes only;
2. Approving the settlement of $750,000.00 as fair and reasonable and finding that class members were given notice of the settlement, and advised of their right to participate in the settlement, object to the settlement, or exclude themselves from the settlement, in a reasonable manner;
3. Appointing Plaintiffs Ann Espinoza and Diana Fontana as Class Representatives for settlement purposes, and approving payment of $10,000.00 to each Plaintiff for their services as the Class Representatives;
4. Appointing Plaintiffs' Counsel, Justin F. Marquez, Christina M. Le, and Arsiné Grigoryan of Wilshire Law Firm, PLC, as Class Counsel for settlement purposes only;
5. Approving payment of settlement administrative expenses to CPT Group, Inc. in the amount of $10,250.00;
6. Approving payment of $250,000.00 in attorney's fees, which is 33 1/3% of the Settlement Amount, and costs of $18,707.64 for litigating this action to Class Counsel;
7. Approving the PAGA Settlement in the amount of $30,000.00;
8. Directing that the clerk of the Court enter the Court's order as a final judgment; and
9. Without affecting the finality of the final judgment, reserving continuing jurisdiction over the parties for the purposes of implementing, enforcing and/or administering the Settlement or enforcing the terms of the judgment.

The Motion will be based upon this Notice, the attached Memorandum of Points and Authorities, the Declarations of Justin F. Marquez, Ann Espinoza, Diana Fontana, William Argueta (Settlement Administrator), filed concurrently herewith, the records and files in this action, and any other further evidence or argument that the Court may properly receive at or before the hearing.

Respectfully submitted,

Dated: September 7, 2023

WILSHIRE LAW FIRM

By: Christina M. Le

Justin F. Marquez
Christina M. Le
Arsiné Grigoryan

Attorneys for Plaintiffs

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I. INTRODUCTION

Plaintiffs Ann Espinoza and Diana Fontana ("Plaintiffs") seeks Final Approval of a proposed $750,000.00 non-reversionary, wage and hour class action settlement with Defendant Cicon Engineering, Inc. ("Defendant," and together with Plaintiffs, the "Parties").

The proposed settlement satisfies all the criteria for settlement approval under California law. A presumption of fairness exists as the Settlement was reached through extensive, mediated arm's-length negotiations, sufficient investigation and discovery allowed Class Counsel to act intelligently, and Class Counsel is experienced in similar wage-and-hour litigation. The settlement will provide substantial monetary payments to approximately 545 class members. Upon the Court's approval of the settlement, participating class members will receive an **estimated average <u>gross</u> payment of** $774.45. (Declaration of William Argueta ["Argueta Decl."], ¶ 13.) Among the participating class members, the **<u>estimated highest net payment will be $1,469.33.</u>** (*Id.*) As of September 7, 2023, there are no objections to the settlement or requests for exclusion. (*Id.* at ¶¶ 10.) There were also no disputes as to the calculated workweeks for the Class Members. (*Id.*) Thus, the proposed Settlement is fair, reasonable, and adequate and is in the best interests of the Settlement Class Members.

Plaintiffs request attorney's fees in the amount of $250,000, reimbursement of costs and expenses in the amount of $18,707.64, an enhancement in the amount of $10,000.00 to each Plaintiff for a total of $20,000.00, Administrative Costs of $10,250.00, and a PAGA Settlement of $30,000.00, with a 75% allocation to the California Labor Workforce Development Agency "LWDA") in the amount of $22,500.00 and a 25% allocation to Aggrieved Employees in the amount of $7,500.00, are also reasonable and thus should be approved by the Court.

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

II. SUMMARY OF THE LITIGATION AND SETTLEMENT

A. Plaintiffs' Claims

This is a wage and hour class and Private Attorneys General Act ("PAGA") (Cal. Lab. Code §§ 2699, *et seq.*) representative action. Plaintiffs and the putative class members worked in California as hourly-paid, non-exempt employees for Defendant during the class period.

Defendant is a contract manufacturer, specializing in wire harness and cable harness assemblies, primarily for the military and space industries. (Declaration of Justin F. Marquez in Support of Plaintiffs' Motion for Final Approval of Class Action Settlement ["Marquez Decl."], ¶ 2.)

Plaintiffs allege that Defendant's payroll, timekeeping, and wage and hour practices resulted in Labor Code violations. Plaintiffs allege that Defendant failed to pay for all hours worked off the clock by the putative class member. Plaintiffs also allege that there was systematic rounding resulting in an underpayment of wages. Plaintiffs further allege that Defendant failed to provide employees with legally compliant meal and rest periods, failed to pay for all meal and rest period premiums, and failed to reimburse employees for all necessary business expenses. Based on these allegations, Plaintiffs assert claims against Defendant for failure to pay minimum and straight time wages, failure to pay overtime wages, failure to provide meal periods, failure to authorize and permit rest periods, failure to timely pay all final wages at termination, failure to provide accurate itemized wage statements, and unfair business practices, and civil penalties under PAGA. (*Id.* at ¶ 3.)

On October 26, 2021, Plaintiff Ann Espinoza filed a putative wage-and-hour class action complaint against Defendant for: (1) failure to pay minimum and straight time wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to authorize and permit rest periods; (5) failure to timely pay final wages at termination; (6) failure to provide accurate itemized wage statements; and (7) violation of California's Unfair Competition Law, California Business and Professions Code §§ 17200, et seq. (*Id.* at ¶ 4.)

On November 3, 2021, Plaintiff Ann Espinoza filed a First Amended Complaint to add Plaintiff Diana Fontana as an additional named Plaintiff. Defendant subsequently answered the First Amended Complaint. (*Id.* at ¶ 5.)

On October 19, 2022, Plaintiffs also sent notice to Defendant and the California Labor & Workforce Development Agency ("LWDA") alleging similar wage and hour violations pursuant to the Labor Code Private Attorneys General Act ("PAGA") (Cal. Lab. Code §§ 2699, et seq.). (*Id.* at ¶ 6.)

On October 28, 2022, the Court issued an Order granting the Parties' Joint Stipulation for Leave for Plaintiff to file a Second Amended Complaint to add Plaintiffs' PAGA claim. (*Id.* at ¶ 7.)

On November 1, 2022, the Court issued an Order granting the Parties' Joint Stipulation for Leave for Plaintiffs to file a Second Amended Complaint to add Plaintiffs' PAGA claim for PAGA penalties. On the same date, Plaintiffs filed their Second Amended Complaint. On December 12, 2022, Defendant filed an answer to the Second Amended Complaint. (*Id.* at ¶ 8.)

B. <u>Discovery and Investigation</u>

Following the filing of the Complaint, the Parties exchanged documents and information before mediating this action. Defendant produced a sampling consisting of the timekeeping and payroll records for all class members from approximately 4 months (randomly selected) of each year in the class period. Defendant also provided documents of their wage and hour policies and practices during the class period and information regarding the total number of current and former employees in its informal discovery responses. (*Id.* at ¶ 9.)

After reviewing the documents regarding Defendant's wage and hour policies and practices and analyzing Defendant's timekeeping and payroll records, Class Counsel was able to evaluate the probability of class certification, success on the merits, and Defendant's maximum monetary exposure for all claims. (*Id*. at ¶ 10.) Class Counsel also investigated the applicable law regarding the claims and defenses asserted in the Litigation. (*Id*.) Class Counsel reviewed these records and utilized an expert to prepare a damages analysis prior to mediation. (*Id*.)

C. <u>Settlement Negotiations</u>

On September 8, 2022, the Parties participated in private mediation with experienced class action mediator, Steve Cerveris. (*Id.* at ¶ 11.) The mediation was conducted via Zoom. The settlement negotiations were at arm's length and, although conducted in a professional manner, were adversarial. The Parties went into the mediation willing to explore the potential for a settlement of the dispute, but each side was also prepared to litigate their position through trial and appeal if a settlement had not been reached. (*Id*.)

After extensive negotiations and discussions regarding the strengths and weaknesses of

Plaintiffs' claims and Defendant's defenses, the Parties were able to reach a resolution, the material terms of which are encompassed within the Settlement Agreement. (*Id.* at ¶ 12; Ex. 1 [Class Action and PAGA Settlement Agreement and Class Notice ("Settlement Agreement")].

Class Counsel has conducted a thorough investigation into the facts of this case. Based on the foregoing discovery and their own independent investigation and evaluation, Class Counsel is of the opinion that the Settlement is fair, reasonable, and adequate and is in the best interests of the Settlement Class Members in light of all known facts and circumstances, the risk of significant delay, the defenses that could be asserted by Defendant both to certification and on the merits, trial risk, and appellate risk. (Marquez Decl., ¶ 23.)

Indeed, the $750,000.00 Settlement represents **54**% of **the realistic maximum recovery** of $1,378,252.40 (*Id.* at ¶ 32.) Although Class Counsel estimated that Defendant's maximum potential liability for all claims was approximately $11.6 million, when the risk of prevailing at certification and trial are factored into the equation, Class Counsel believes that Defendant's realistic exposure was $1,378,252.40, meaning the Settlement achieves a significant recovery. (*Id.* at ¶¶ 23-36.) Considering the risk and uncertainty of prevailing at class certification and at trial, this is an excellent result for the Class. Indeed, because of the proposed Settlement, class members will receive timely, guaranteed relief and will avoid the risk of an unfavorable judgment.

D. <u>Key Terms of the Proposed Settlement</u>

Under the Settlement, Defendant will pay $750,000.00 to resolve this Litigation. This amount is all-inclusive. The Settlement's key terms include:

1. <u>Settlement Class</u>: For settlement purposes only, the Parties agree to the certification of a class pursuant to California Code of Civil Procedure § 382 defined as: "a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee)." (Settlement, § 1.9.)

2. <u>Settlement Period</u>: The Settlement Period means the period from May 1, 2017 to November 7, 2022. (Settlement, § 1.12.)

3. Participating Class Members: Class Member who does not submit a valid and timely Request for Exclusion from the Settlement. (Settlement, § 1.35.)

4. Aggrieved Employees: Means a person employed by Defendant in California and classified as a nonexempt employee who worked for Defendant during the PAGA Period of May 1, 2020 to November 7, 2022. (Settlement, §§ 1.4, 1.31, 1.32).)

5. Gross Settlement Amount: This amount is $750,000.00, for all claims, including wages, interest, the Class Counsel Award, Litigation costs, Settlement Administration Costs, payment to the Labor and Workforce Development Agency ("LWDA") for the alleged PAGA penalties, all other penalties, and the Class Representative Service Award. (Settlement, § 1.22.)

6. Uncashed Checks & *Cy Pres*: If a settlement check is returned to the Settlement Administrator as undeliverable, the Settlement Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace search and, if another address is identified, shall mail the check to the newly identified address. Any settlement checks remaining uncashed after one hundred and eighty (180) days shall be deemed unpaid residue pursuant Code of Civil Procedure Section 384(a). Unpaid residue (uncashed or returned checks) will be paid to Legal Aid at Work. (Settlement, § 4.4.3.)

7. Release as to All Settlement Class Members: The class release is limited to "Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint, the LWDA Letter, and ascertained in the course of the Action including, but not limited to claims for (a) failure to pay minimum, straight time, overtime, or double time wages, and failure to pay other wages of any kind during employment; (b) failure to authorize and permit rest periods or pay rest period premiums; (c) failure to provide meal periods or pay meal period premiums; (d) failure to provide accurate and itemized wage statements; (f) failure to maintain accurate employment records; (e) failure to pay timely wages; (f) failure to pay final wages due at separation; (g) failure to reimburse or indemnify all necessary business expenses, (g) civil penalties under PAGA based on the alleged Labor Code

violations and applicable Wage Orders; (i) claims brought under Business & Professions Code section 17200, *et seq*., based on the aforementioned, including, but not limited to all claims for unfair, unlawful and harmful conduct to class members, the general public, and Defendant's competitors and claims of unlawfully gaining an unfair advantage over other businesses, and all damages, interest, penalties, attorneys' fees, costs, and other amounts recoverable based on the aforementioned, to the extent permissible, including, but not limited to, the California Labor Code and the applicable Wage Orders. Except as set forth in Section 6.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period." (Settlement, § 6.2.) This Release will be deemed effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments. (Settlement, § 6).)

8. <u>PAGA Allocation</u>: The settlement includes $30,000.00 allocated to Plaintiffs' claims under PAGA, with 75% of which ($22,500.00) being paid to the LWDA and 25% ($7.500.00) being paid to the Participating PAGA Members. (Settlement, § 1.34.) Class Counsel submitted the proposed settlement to the LWDA before filing this Motion for Final Approval. (Marquez Decl., ¶ 13.)

9. <u>Net Settlement Fund</u>: The "Net Settlement Fund" or "Net Settlement Amount" is the amount that remains and that shall be paid to Settlement Class Members after the following amounts are subtracted: (1) attorneys' fees and Litigation costs, (2) Administrative Costs, (3) enhancement to the Named Plaintiffs, and (4) the penalties recoverable pursuant to the PAGA. (Settlement, § 1.28.)

10. <u>Distribution Formula</u>: Members of the Settlement Class not opting out will receive a lump sum payment as good and valuable consideration for the waiver and release of claims, in an amount determined by the Settlement Administrator in accordance with the provisions as outlined in Section 3.2.4 of the Settlement Agreement.

11. <u>Tax Allocation</u>: Any settlement money paid to Settlement Class Members will be

allocated as 20% wages, 80% to penalties and interest. (Settlement, § 3.2.4.1.) The tax allocation breakdown comports with Plaintiffs' *Kullar* analysis, as detailed in Justin F. Marquez's Declaration. (Marquez Decl., ¶¶ 19-31*; Kullar v. Foot Locker Retail, Inc.*, (2008) 168 Cal.App.4th 116, 128.)

12. Class Representative Service Award: Subject to Court approval, Plaintiffs shall be paid an enhancement award not to exceed $10,000.00 each, for a total of $20,000.00. (Settlement, § 3.2.1.) This amount is for Plaintiffs' time and effort in bringing and presenting the action, and in exchange for a general release of all claims, known or unknown, pursuant to Civil Code Section 1542. (Settlement, § 6.1.) If the Court approves a lesser enhancement, then the unapproved portion or portions shall revert into the Net Settlement Amount to be distributed between the participating Settlement Class Members on a pro-rata basis. (Settlement, § 3.2.1.)

13. Attorneys' Fees and Costs: The Settlement provides that Defendant will not oppose a fee application of up to 33 1/3% ($250,000.00) of the Gross Settlement Amount, plus out-of-pocket costs not to exceed $20,000.00. (Settlement, § 3.2.2.) At this time, Class Counsel's costs are approximately $18,707.64. (Marquez Decl., ¶ 42, 50.)

14. Notice of Proposed Class Action Settlement: The Notice sets forth in plain terms, a statement of the case, the terms of the Settlement Agreement, the approximate amount of attorneys' fees, costs, and service award being sought, and an explanation of how the settlement allocations are calculated. (Settlement, Class Notice.) The Notice also includes an opt-out form that class members can complete in the event they decide not to participate in the settlement. (*Id.*) Class Members will be notified by first-class mail of the settlement. (Settlement, § 8.4.) CPT Group, Inc., the proposed Settlement Administrator, will undertake its best efforts to ensure that the notice is provided to the current addresses of class members, including conducting a national change of address search and re-mailing the notice to updated addresses. (*Id.*) (Marquez Decl., ¶ 16; Ex. 3 [Settlement Administrator Bid].)

E. Preliminary Settlement Approval, Class Notice, and Settlement Administration.

This Court issued an Order Granting Plaintiffs' Motion for Preliminary Approval of Class

Action Settlement on May 26, 2023. (Marquez Decl., ¶ 17.)

Altogether, notices explaining class member rights were mailed out to all five hundred and forty-two (542) class members. (Argueta Decl., ¶ 7.) To date, zero (0) notice packets remain undeliverable. (*Id.* at ¶ 9.) ***There are no objections to the settlement and no requests for exclusion.*** (*Id.* at ¶¶ 10.) If the Court approves the settlement, participating class members will receive an **estimated average <u>net</u> payment of $774.45.** with the **estimated highest <u>net</u> payment of $1,469.33.** (*Id.* at ¶ 13.)

III. <u>THE SETTLEMENT MERITS FINAL APPROVAL</u>

The law favors the settlement of lawsuits, particularly in class actions and other complex cases. (*See e.g., Neary v. Regents of Univ. of California* (1992) 3 Cal.4th 272, 277-81.) Factors to be considered in evaluating a class action settlement include "the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through proceedings, the experience and views of counsel, the presence of a government participant, and the reaction of the class members to the proposed settlement." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128.) A presumption that a settlement is fair and reasonable exists where, as here, the following four factors are present: "(l) 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." (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245.)

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

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A. <u>The Settlement Reflects a Reasonable Compromise.</u>

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

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

To be sure, Defendant ultimately has to pay less under the settlement than it would have had to pay if Plaintiffs had achieved a judgment on claims at trial. But an ideal settlement requiring a defendant to pay the full amount of its potential damages is rarely achieved. As the Ninth Circuit has observed, "the very essence of a settlement is compromise, 'a yielding of absolutes and an abandoning of highest hopes.'" (*Officers for Justice v. Civil Service Commission of City and County of San Francisco* (9th Cir. 1982) 688 F.2d 615, 624.) Thus, a proposed settlement "is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators." (*Id*. at p. 625.) A court's "intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." (*Id*.)

B. <u>The Settlement was Reached After Arms-Length Negotiations Following Informal Discovery.</u>

The Settlement was reached following extensive negotiations following a full day of mediation with experienced employment mediator, Steve Cerveris. (Decl., ¶¶ 11-12.) The settlement negotiations were at arm's length and, although conducted in a professional manner, were adversarial. (*Id*.) The Parties went into the mediation willing to explore the potential for a settlement of the dispute, but each side was also prepared to litigate their or its position through trial and appeal if a settlement had not been reached. (*Id.*)

Prior to reaching this settlement, Class Counsel conducted informal discovery concerning the claims set forth in the Litigation, such as class member timekeeping and payroll records, Defendant's policies and procedures concerning the payment of wages, the provision of meal and rest breaks, issuance of wage statements, and providing all wages at separation, as well as information regarding the number of putative class members and the mix of current versus former employees, the wage rates in effect, and the amount of meal and rest period premium wages paid to class members. (*Id.* at ¶¶ 9-10.) In conjunction with their extensive factual investigation, Class Counsel investigated the applicable law regarding the claims and defenses asserted in the Litigation. (*Id.*) Thus, Plaintiffs and their counsel were able to act intelligently and effectively in negotiating the proposed Settlement. (*Id.*)

C. <u>Class Counsel Has Extensive Experience in Class Action Litigation</u>

Class Counsel has considerable experience and has demonstrated competence with litigating wage and hour class actions. (*Id.* at ¶¶ 51 - 61.) Class Counsel has substantial experience in all facets of litigation in state and federal court, including discovery, law and motion, trial, appeals, arbitration and mediation. Class Counsel has litigated numerous class actions on behalf of plaintiffs and have been lead counsel or otherwise exercised significant case handling responsibilities in numerous cases resulting in millions of dollars in class action settlements. (*Id.*)

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

D. There Are No Objections to The Settlement.

No class member has objected to the Settlement and no class members have requested exclusion from the Settlement. (Argueta Decl., ¶¶ 10.) The overwhelmingly positive response of the class strongly supports final approval of the Settlement. (*See, e.g., In re Lifelock, Inc. Marketing and Sales Practices Litigation* (D. Ariz. 2010) 2010 WL 3715138, *6 [relatively few objections and requests for exclusion support approval].)

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

E. The PAGA Allocation is Fair, Just, and Reasonable.

Plaintiffs seek preliminary approval of a proposed $750,000.00 non-reversionary, wage, and hour class and PAGA action settlement with Defendant. The Settlement will provide substantial monetary payments to approximately 545 class members and 413 aggrieved employees. The proposed Settlement satisfies all the criteria for settlement approval under California law for the class, as previously discussed in the Motion, and the PAGA claims, as discussed in the Motion and herein in additional detail.

The Settlement was reached after extensive investigation, discovery, and negotiations. The negotiations were at arms-length and were facilitated by an experienced class action mediator, Steve

Cerveris, over the course of a full day of mediation that was conducted via Zoom.

This settlement includes a PAGA Release for the PAGA Period of May 1, 2020 to November 7, 2022 for approximately 443 employees. (Marquez Decl., ¶ 24.) The settlement includes $30,000.00 allocated to Plaintiffs' claims under PAGA, with 75% of which ($22,500.00) will be paid to the LWDA and 25% ($7.500.00) being paid to the Participating PAGA Members. (Settlement, § 1.34.) Class Counsel submitted the proposed settlement to the LWDA before filing this Motion for Preliminary Approval. (Marquez Decl., ¶ 21.) Plaintiffs submitted their PAGA notice to Defendant and the LWDA on October 19, 2022 and filed a Second Amended Complaint adding PAGA claim on November 1, 2022. (Marquez Decl., ¶¶ 6,7.) Defendant filed an answer to the Complaint on December 12, 2022. (Marquez Decl., ¶8.) To date, the LWDA has given no indication that they (1) intend to investigate the alleged claims or (2) that they object to the settlement. (Marquez Decl., ¶ 6.)

Because this matter also settles PAGA claims, the Court also must consider the criteria that apply under that statute. Recently, the Court of Appeal's decision in *Moniz*, 72 Cal.App.5th at 56, provided guidance on this issue of the evaluation of a PAGA settlement or allocation. In *Moniz*, the court found that the "fair, reasonable, and adequate" standard applicable to class actions applies to PAGA settlements. *Id.*, at 64. The Court also held that the trial court must assess "the fairness of the settlement's allocation of civil penalties between the affected aggrieved employees[.]" Id., at 64-65.

California law provides some general guidance concerning judicial approval of any settlement. First, public policy generally favors settlement. *Neary v. Regents of University of California* (1992) 3 Cal.4th 273. Nonetheless, the court should not approve an agreement contrary to law or public policy. *Bechtel Corp. v. Superior Court* (1973) 33 Cal.App.3d 405, 412; *Timney v. Lin* (2003) 106 Cal.App.4th 1121, 1127. Moreover, "[t]he court cannot surrender its duty to see that the judgment to be entered is a just one, nor is the court to act as a mere puppet in the matter." *California State Auto. Assn. Inter-Ins. Bureau v. Superior Court* (1990) 50 Cal.3d 658, 664. As a result, courts have specifically noted that Neary does not always apply, because "[w]here the rights of the public are implicated, the additional safeguard of judicial review, though more cumbersome to the settlement process, serves a salutatory purpose." *Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America (*2006) 141 Cal.App.4th 46, 63.

The $30,000.00 allocated to the PAGA claims is fair, just, and reasonable, and was evaluated by counsel based on adequate information and arms-length negotiation.

Of course, reduction must be made for the strength of the case, and the time and expense of obtaining recovery. Even assuming success on the merits of each claim, PAGA gives the court discretion to reduce penalties for a variety of reasons, including where "based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust arbitrary and oppressive, or confiscatory." (Labor Code, § 2699(e)(2).) These factors make the result hard to predict. The statute does not expressly address how the 25% plaintiff's share of the penalties is to be allocated among all of the aggrieved employees. *Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 382. One court has held, however, that the entire 25% share of penalties could not be awarded to the plaintiff. *Moorer v. Noble L.A. Events, Inc.* (2019) 32 Cal.App.5th 736, 742-743. In *Moorer*, the plaintiff had claim worth about $9,500, yet was collecting penalties of $148,000, and keeping the entire employee share, causing the court to be concerned that the plaintiff had lost sight of the fact that the purpose of the action is to benefit the public, not private parties.

The settlement includes $30,000.00 allocated to Plaintiffs' claims under PAGA, with 75% of which ($22,500.00) will be paid to the LWDA and 25% ($7.500.00) being paid to the Participating PAGA Members, as stated below from ¶3.2.5 of the Settlement Agreement and Amended Settlement Agreement, which also specifically explains how the PAGA settlement will be allocated and paid:

> 3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of $30,000.00 to be paid from the Gross Settlement Amount, with 75% ($22,500.00) allocated to the LWDA PAGA Payment and 25% ($7,500.00) allocated to the Individual PAGA Payments.

3.2.5.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties ($7,500.00) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.5.2. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

This allocation is fair, just and reasonable and provides the relief anticipated by the PAGA statute.

IV. <u>THE COURT SHOULD AWARD PLAINTIFF THE REQUESTED AMOUNTS OF ATTORNEYS' FEES, COSTS AND AN ENHANCEMENT PAYMENT.</u>

Under the Settlement, subject to the Court's approval, Defendant has agreed not to oppose Class Counsel's request for reasonable attorneys' fees in the amount of $250,000.00, which is 33 1/3% of the Settlement Amount, and Litigation costs in an amount not to exceed $20,000.00 for litigating this Action, which shall be paid from the Settlement Amount. In addition, Defendant will not oppose an application for the payment of Administrative Costs in the amount of $10,250.00 and a Class Representative Enhancement payment in the amount of $10,000 for each Plaintiff (total of $20,000), to be paid from the Settlement Amount. The proposed attorneys' fees and expenses were disclosed to the Class Members in the Notice of Proposed Class Action Settlement.

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

A. <u>**Class Counsel Request an Award of Fees Based on the "Common Fund" Method**</u>

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

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

The California Supreme Court affirmed in *Laffitte v. Robert Half Int'l Inc*. (2016) 1 Cal.5th 480 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." (*Id*. at p. 503.) The court explained: "The recognized advantages of the percentage method—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* [internal citations omitted].)

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

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

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

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

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

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

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

(Lab. Code § 1194.)

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

Class Counsel is also entitled to a fee award under California's private attorney general statute, Code of Civil Procedure § 1021.5. "The award of attorneys fees is proper under Section 1021.5 if '(1) plaintiffs' action 'has resulted in the enforcement of an important right affecting the public interest,' (2) 'a significant benefit, whether pecuniary or nonpecuniary, has been conferred 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* (1983) 34 Cal.3d 311, 317-318.) 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*. (2004) 34 Cal.4th 553, 565.)

This action resulted in the enforcement of an important right affecting the public interest, as Plaintiff sought to enforce Settlement Class Members' rights 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.* (2007) 40 Cal.4th 1094, 1113 [noting that "health and safety concerns" are what motivated the Industrial Welfare Commission to adopt mandatory meal and rest periods].)

This action also conferred a significant benefit on a large class of persons. Notice was sent to 542 individuals, and no Class Member objected to the Settlement and no individuals requested exclusion. The Settlement provides a significant monetary benefit, in that it permits all persons who worked for Defendant during the applicable class period to obtain significant compensation for unpaid wages and missed meal and rest periods.

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 to pursue this case, as the cost of litigating this matter far outweighed Plaintiff's potential recovery. (*See Ryan v. California Interscholastic Federation* (2001) 94 Cal.App.4th 1033, 1044 ["As to the necessity and financial burden of private enforcement, an award is appropriate where the cost of the legal victory transcends the claimants' personal interest; in other words, where the burden of pursuing the litigation is out of proportion to the plaintiff's individual stake in the matter."].)

3. The Experience, Reputation and Ability of Class Counsel Support the Requested Fee Award

As demonstrated by their past experience in pursuing class actions on behalf of consumers and employees, Class Counsel possesses considerable expertise in litigating class action matters. Class Counsel has been involved as lead counsel or co-counsel in dozens of class actions resulting in a multitude of beneficial results to class members in California. (Marquez Decl., ¶¶ 49 - 61; *see also Moreno v. Pretium Packaging, Inc.* (C.D. Cal. Aug. 6, 2021) No. 8:19-cv-02500-SB-DFM, 2021 WL 3673845 [approving Plaintiff's counsel's request for attorney's fees after finding it was "reasonable, given the qualifications of the attorneys who worked on this matter."]; *Mark Brulee, et al. v. DAL Global Services, LLC* (C.D. Cal. Dec. 13, 2018) No. CV 17-6433 JVS(JCGx), 2018 WL 6616659 ["Class Counsel's declarations show that the attorneys are experienced and successful litigators."].) Because it is reasonable to compensate class counsel commensurate with their skill, reputation and experience, a fee award of 33 1/3% of the Maximum Settlement Amount, a percentage considered within the norm in class action practice, is certainly justified here.

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

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

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

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

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

Wilshire Law Firm's current lodestar is $171,615.00 based on at least 248.9 hours of reported work performed by Class Counsel. (Marquez Decl., ¶¶ 42-50.) Accordingly, the requested fee of $250,000.00 is reasonable and fair as it is based on a multiplier of about 1.46. Additionally, there are additional hours devoted by Class Counsel to this litigation that are not reflected in Class Counsel's request for attorney's fees, such as future time that will need to be devoted to ensuring the settlement checks are administered. (Marquez Decl., ¶ 45.)

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

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

2. The Lawsuit Provided a Public Benefit.

Class Counsel's choice to litigate this matter provided a public benefit to 712 California employees. Indeed, California Labor Code section 90.5(a) states:

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

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

C. <u>Costs Are Reasonable.</u>

Class Counsel requests reimbursement of $18,707.64 expenses. (Marquez Decl., ¶ 42, 50.) Defendant has agreed that it will not oppose any cost award request up to $20,000. (Settlement, § 3.2.2.) The categories of costs are set forth in the accompanying Declaration of Justin Marquez, and these costs are easily seen to be both reasonable and necessary.

D. <u>The Enhancement Payment to Plaintiffs is Reasonable</u>

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

Service awards are particularly important to Plaintiffs in wage and hour cases because they promote the important public policies underlying the wage and hour laws. This strong policy is codified in California Labor Code section 90.5, which provides, "it is the policy of this state to vigorously enforce minimum labor standards in order to ensure employees are not required or permitted to work under substandard unlawful conditions…."). Nonetheless, the California Supreme Court has noted that "retaliation against employees for asserting statutory rights under the Labor Code is widespread," despite anti-retaliation statutes designed to protect employees. (*Gentry v. Super. Ct.* (2007) 42 Cal.4th 443, 460-61.) In this context, class representatives should be rewarded for assuming the risk of retaliation for the sake of class members. (*See Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 F.R.D. 174, 187.)

Under the Settlement Agreement, subject to the Court's approval, Defendant agreed to pay a Service Award in the amount of $10,000.00 to each Plaintiff, for a total of $20,000.00. This amount is also in exchange for Plaintiffs' general release of all claims against Defendant. Class Counsel represent that Plaintiffs devoted a great deal of time and work assisting counsel in the case, communicated with counsel very frequently for litigation and to prepare for mediation, and were frequently in contact with Class Counsel during the mediation. (Marquez Decl., ¶¶ 37-41; Declaration of Ann Espinoza ["Espinoza Decl."], ¶¶ 4-15; and Declaration of Diana Fontana ["Fontana Decl."], ¶¶ 4-15.) This amount is reasonable particularly in light of the substantial benefits Plaintiffs generated for all class members. (*Id.*) Indeed, in *Karl Adams, III, et al. v. MarketStar Corporation, et al.*, No. 2:14-cv-02509-TLN-DB, Class Counsel Justin F. Marquez helped negotiate a $2.5 million class action settlement for 339 class members, and the court approved a $10,000.00 class representative incentive award for each named Plaintiff. (Marquez Decl., ¶ 41)

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

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

Here, Plaintiffs have lent their names to this case and thus subjected themselves to public attention. They have also risked their reputation in the community and with regard to future employment opportunities as a result of stepping forward publicly in a class action. When a class representative shoulders some degree of personal risk in joining the litigation, such as workplace retaliation or financial liability, an incentive award is especially important. (*See Staton v. Boeing Co.* (9th Cir. 2003) 327 F.3d 938, 977; *Weeks v. Kellogg Co.* (C.D. Cal. 2013) 2013 WL 6531177, *36.) Plaintiff has been subject to the rigors of litigation and has had to devote his own time and expenses in participating in the case. (*See, generally,* Hernandez Decl.; *see also* Marquez Decl., ¶ 34 - 38.)

E. <u>Administrative Costs Should be Approved.</u>

CPT Group, Inc., the Settlement Administrator, estimates that it will incur a total of $10,250.00 in costs associated with the administration of this Settlement. (Argueta Decl., ¶ 15.) These expenses are reasonable, based upon the size of the class and the additional tasks associated with claim and exclusion tracking and Class Member payment processing.

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V. CONCLUSION

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

Respectfully submitted,

Dated: September 7, 2023

WILSHIRE LAW FIRM

By: Christina M. Le

Justin F. Marquez
Christina M. Le
Arsiné Grigoryan

Attorneys for Plaintiffs

PROOF OF SERVICE

Espinoza, et al. v. Cicon Engineering, Inc., et al.
21STCV39385

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

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

On **September 7, 2023**, I served the foregoing **PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES,** on the interested parties by placing a true copy thereof, enclosed in a sealed envelope by following one of the methods of service as follows:

Eric C. Schwettmann, Esq. (SBN 188784)
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Matthew B. Golper, Esq. (SBN 275979)
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Attorneys for Defendant, Cicon Engineering, Inc.

(X) **BY ELECTRONIC SERVICE:** Based on a court order or an agreement of the parties to accept electronic service, I caused the documents to be sent to the persons at the electronic service addresses listed above via third-party cloud service **CASEANYWHERE.**

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

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

Executed on September 7, 2023, at Los Angeles, California.

Sandy S. Sespene