

1 **MAKAREM & ASSOCIATES, APLC**
2 Ronald W. Makarem, Esq. (SBN 180442)
makarem@law-rm.com
3 Marcus Jackson, Esq. (SBN 205792)
jackson@law-rm.com
4 Daniel J. Bass, Esq. (SBN 287466)
bass@law-rm.com
5 11601 Wilshire Boulevard, Suite 2440
6 Los Angeles, California 90025-1760
Phone: (310) 312-0299; Fax: (310) 312-0296

7 Attorneys for Plaintiff JORGE
8 HERNANDEZ ZULUAGA individually and
on behalf of all others similarly situated

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF LOS ANGELES**

12 JORGE HERNANDEZ ZULUAGA, an
13 individual,

14 Plaintiff,

15 vs.

16 SOLARIS TRADING CORPORATION, and
17 DOES 1-20, inclusive,

18 Defendants.

Case No.: 20STCV48213

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT**

*[Filed concurrently with supporting
declarations and [Proposed] Order and
Judgment]*

Date: August 16, 2023

Time: 10:30 a.m.

Dept: SSC12

Judge: Carolyn B. Kuhl

Complaint Filed: December 17, 2020

1 PLEASE TAKE NOTICE that on August 16, 2023 at 10:30 a.m., or as soon thereafter as
2 the matter may be heard in Department 12 of the above-entitled court, located at 312 N. Spring St,
3 Los Angeles, CA 90012, Plaintiff Jorge Hernandez Zuluaga (“Plaintiff”) will and hereby does move
4 this Court for: (1) an order determining the good faith of and granting final approval of the proposed
5 class action settlement; (2) entry of the proposed Order of Final Approval and Judgment; (3) an
6 order awarding costs to the claims administrator; and (4) an order awarding attorneys’ fees and costs
7 and a class representative enhancement award to Class Counsel and the Plaintiff, respectively.

8 This Motion is brought pursuant to California *Rules of Court*, Rule 3.769, on the grounds
9 that the settlement reached with Defendant SOLARIS TRADING CORPORATION, is fair,
10 reasonable, and adequate, achieved as the result of informed, arms-length negotiations, and
11 deserving of approval for the benefit of the Settlement Class members to whom it pertains.

12 This Motion is based on this Notice and Motion, the declarations of Daniel J. Bass, Jorge
13 Hernandez Zuluaga, Kaylie O’Connor on Behalf of CPT Group, Inc., the other papers on file in this
14 action, and such other and further oral and documentary evidence as may be submitted at or before
15 the hearing on the Motion.

16 Dated: July 25, 2023

MAKAREM & ASSOCIATES, APLC

17
18 By: Daniel Bass
19 Daniel J. Bass
20 Attorneys for JORGE HERNANDEZ
21 ZULUAGA, individually and on behalf
22 of all others similarly situated
23
24
25
26
27
28

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

Table of Contents

I. INTRODUCTION 7

II. STATUS OF THE LITIGATION 8

 A. Defendants and Plaintiff..... 8

 B. Commencement of the Action and Pleadings 8

 C. Investigation..... 9

 D. Mediation and Settlement 10

III. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS 10

 A. Settlement Class 10

 B. Settlement Consideration 10

 C. Claims and Settlement Fund Distribution Procedure..... 11

IV. FAIRNESS ANALYSIS 12

 A. Standard for Final Approval..... 12

 B. The Strength of Plaintiff’s Case and Complexities of Further Litigation..... 13

 C. The Experience and Views of Counsel 19

 D. No Class Members Have Opted Out of or Objected to the Settlement..... 20

V. CLASS COUNSELS’ FEES AND COSTS..... 21

 A. Attorneys’ Fees and Costs Provided in the Settlement are Fair and Reasonable . 21

 B. The Trial Court has Wide Discretion Over the Amount of the Fee Award 22

 1. The “Common Fund” Doctrine..... 22

 2. The Lodestar Approach Demonstrates the Fee Request is Justified. 24

 3. Application of a Positive Multiplier Is Appropriate. 25

 C. Class Counsel’s Costs Are Reasonable and Were Incurred for the Class 27

 D. The Proposed Service Award to the Plaintiff is Reasonable..... 27

VI. CONCLUSION 29

Table of Authorities

CASES

7-Eleven Owners for Fair Franchising v. The Southland Corp. (2000) 85 Cal.App.4th 1135, 1151.....	13, 15
Abzug v. Kerkorian (CA000981, Los Angeles County Super. Ct., November 1990).....	23
Activision Sec. Litig. (N.D. Cal. 1989) 723 F. Supp. 1373, 1375.....	23
Air Line Stewards, Loc. 550 v. American Airlines, Inc., (7th Cir.1972) 455 F.2d 101, 109.....	19
Ampicillin Antitrust Litig. (D.D.C. 1981) 526 F. Supp. 494, 500-503.....	23
Anderson v. Nextel Retail Stores, LLC, 2010 U.S. Dist. LEXIS 43377 at *49 (C.D. Cal. 2010).....	7
Balderas v. Massage Envy Franchising, LLC, (N.D. Cal. July 21, 2014, No. 12-CV-06327 NC) 2014 WL 3610945.....	16
Barile v. Boston Market Corporation (C.D. Cal. Case No.: 05 CV 1360 BTM (JMA)).....	23
Beasley v. Wells Fargo Bank (1991) 235 Cal.App.3d 1407.....	25
Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp. (S.D.N.Y. 1979) 480 F. Supp. 1195, 1197-1199.....	23
Behrens v. Wometco Enters., Inc. (S.D. Fla. 1988) 118 F.R.D. 534, 542, <i>aff'd</i> , (11th Cir. 1990).....	16
Blum v. Stenson, 465 U.S. 886, 900 fn. 16 (1984).....	22
Boeing Co. v. Van Gemert (1980) 444 U.S. 472, 478.....	22
Bushnell v. Cremar, Inc. (Orange County Super. Ct., Case No. 657778).....	23
Cellphone Fee Termination Cases (2009) 180 Cal.App.4th 1110, 1117-18.....	14
Chavez v. Netflix, Inc. (2008) 162 Cal.App.4th 43, 66.....	25
City of Detroit v. Grinnell Corp. (S.D.N.Y. 1972) 356 F.Supp. 1380, 1386.....	16
Class Plaintiffs v. City of Seattle, 955 F.2d 1268 (9th Cir. 1992).....	13
Craft v. County of San Bernardino (C.D. Cal. 2008) 624 F.Supp.2d 1113, 1125.....	25
Crandall v. U-Haul (Los Angeles County Super. Ct., Case No. BC178775).....	23
Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th 1794, 1802.....	12, 13
Dunn & Bradstreet Credit Services Consumer Litigation, 130 F.R.D. 366, 373-374 (S.D. Ohio 1990).....	29
Elliott v. Clothestime (Orange County Super. Ct., Case No. 01-CC00333).....	23
Enterprise Energy Corp. v. Columbia Gas Transmission Corp., 137 F.R.D. 240, 250-251 (S.D. Ohio 1991).....	29
Excess Value Ins. Coverage Litig., No. M-21-84 (RMB) 2004 WL 1724980, at *10 (S.D.N.Y. July 30, 2004).....	19

1	<i>Glass v. UBS Fin. Servs., Inc.</i> (N.D. Cal. Jan. 26, 2007, No. C-06-4068 MMC) 2007 WL 221862 , at *9, <i>aff'd</i> , 331	
2	Fed. Appx. 452 (9th Cir. 2009).....	16
3	<i>Glendora Community Redevelopment Agency v. Demeter</i> (1984) 155 Cal.App.3d 465.....	22, 25
4	<i>GNC Shareholder Litig.</i> , 668 F.Supp. 450, 452 (W.D. Pa. 1987).....	28
5	<i>Greene v. Dillingham Construction N.A., Inc.</i> (2002) 101 Cal.App.4th 418, 426.....	26
6	<i>Haitz v. Meyer, et al.</i> (Alameda County Super. Court, 8-20-1990 No. 572968-3).....	23
7	<i>Hanlon v. Chrysler Corp.</i> , 150 F.3d 1011, 1026 (9th Cir. 1998).....	13, 15
8	<i>Hernandez v. Chipotle Mexican Grill, Inc.</i> (2012) 146 Cal.Rptr.3d 424, 2012 WL 3579567, *10.....	18
9	<i>Ingram v. The Coca-Cola Co.</i> , 200 F.R.D. 685, 694 (N.D. Ga. 2001).....	29
10	<i>Inter-Op Hip Prosthesis Liab. Litig.</i> , 204 F.R.D. 330, 351 (N.D. Ohio 2001).....	20
11	<i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122, 1132.....	25, 26
12	<i>Kullar v. Footlocker Retail, Inc.</i> (2008) 168 Cal.App.4th 116, 120.....	12, 15
13	<i>Lamps Plus Overtime Cases</i> (2012) 209 Cal.App.4th 35.....	18
14	<i>Lealao v. Beneficial California</i> (2000) 82 Cal.App.4th 19, 32.....	21, 25
15	<i>Lo Re v. Chase Manhattan Corp.</i> , 1979 U.S. Dist. LEXIS 12210, *16-17 (S.D.N.Y. 1979).....	29
16	<i>Ma v. Covidien Holding, Inc.</i> , (C.D. Cal. Jan. 31, 2014, No. SACV 12-02161-DOC) 2014 WL 360196.....	16
17	<i>Martel v. Valderamma</i> (C.D. Cal. 2015) 2015 U.S. Dist. LEXIS 49830 * 17.....	16
18	<i>Munoz v. BCI Coca Cola Bottling Co. of Los Angeles</i> (2010) 186 Cal.App.4th 399, 409.....	13
19	<i>Officers for Justice v. Civil Service Comm. of the City and County of San Francisco</i> , 688 F.2d 615, 625 (9th Cir. 1982).....	13
20	<i>Pacific Enters. Sec. Litig.</i> (9th Cir. 1995) 47 F.3d 373, 379.....	23
21	<i>Pacific Enterprises Security Litigation</i> , 47 F.3d 373, 378 (9th Cir. 1995).....	19
22	<i>Parker v. City of Los Angeles</i> (1974) 44 Cal.App.3d 556, 557-68.....	23
23	<i>Petrovic v. Amoco Oil Co.</i> , 200 F.3d 1140 (8th Cir. 1999).....	28
24	<i>Rebney v. Wells Fargo Bank</i> (1990) 220 Cal.App.3d 1117, 1138.....	12
25	<i>Rippee v. Boston Market Corporation</i> (C.D. Cal. Case No.: 05 CV 1359 BTM (JMA)).....	23
26	<i>Salton Bay Marina, Inc. v. Imperial Irrigation Dist.</i> (1985) 172 Cal.App.3d 914, 954.....	24
27	<i>San Bernardino Valley Audubon Soc. v. County of San Bernardino</i> (1985) 155 Cal.App.3d 738, 755.....	25
28	<i>Sheppard v. Consolidated Edison Co. of New York, Inc.</i> , 2002 WL 2003206, * 5 (E.D.N.Y. 2002).....	28

1	<i>Sofia Lopez v. Citris Valley Health Partners, Inc., Los Angeles Superior Court case number BC544139</i>	25
2	<i>Southern Ohio Correctional Facility</i> , 175 F.R.D. 270, 272 (S.D. Ohio 1997).....	28, 29
3	<i>Tech-Bilt, Inc. v. Woodward-Clyde & Assoc.</i> (1985) 38 Cal.3d 488, 499-500.....	15
4	<i>Toys R US FACTA Litig.</i> (C.D. Cal. 2014) 295 F.R.D. 438, 453.....	16
5	<i>United Energy Corp. Sec. Litig.</i> , 1989 U.S. Dist. LEXIS 19146 at *16 (C.D. Cal. 1989).....	28
6	<i>Van Gemert v. Boeing Co.</i> (S.D.N.Y. 1981) 516 F. Supp. 412, 420.....	23
7	<i>Van Vranken v. Atlantic Richfield Co.</i> , 901 F.Supp. 294, 299-300 (N.D. Cal. 1995).....	25, 29
8	<i>Vincent v. Hughes Air West, Inc.</i> , 557 F.2d 759, 769 (9th Cir.1977).....	22
9	<i>Vizcaino v. Microsoft Corp.</i> (9th Cir. 2002) 290 F.3d 1043, 1051.....	25
10	<i>Washington v. Joe's Crab Shack</i> (N.D. Cal. 2010) 271 F.R.D. 629.....	18
11	<i>Wershba v. Apple Computer, Inc.</i> (2001) 91 Cal.App.4th 224, 244-245.....	13, 25
12	<i>Williams v. Costco Wholesale Corp.</i> , 2010 U.S. Dist. LEXIS 67731 at *13 (S.D. Cal. 2010).....	7
13	<i>Williams v. Vukovich</i> , 720 F.2d 909, 922-923 (6th Cir, 1983).....	19

STATUTES

14	<i>2 Herbert Newberg & Alba Conte, Newberg on Class Actions</i> § 11.41 at 90 (4 th Ed. 2001).....	20
15	<i>Newberg on Class Actions</i> (5th ed. 2016) § 13:15.....	16
16	Cal. Lab. Code § 203.....	18
17	Cal. Lab. Code § 226.....	18

1 **I. INTRODUCTION**

2 Pursuant to California Rules of Court, Rule 3.769(g), Plaintiff JORGE HERNANDEZ
3 ZULUAGA (“Class Representative” or “Plaintiff”) as Class Representative—of the class of all
4 individuals employed by Solaris Trading Corporation (“Solaris”) as non-exempt or hourly
5 employees of Solaris who worked in California from December 17, 2016 through January 18, 2023,
6 the date on which the number of total workweeks reached 7,500 and who did not submit a valid
7 and timely request for exclusion—seeks an Order from this Court granting final approval of the
8 settlement reached in this matter.

9 The Settlement will resolve all of Plaintiff’s class claims against Defendant. As set forth in
10 Plaintiff’s Motion for Preliminary Approval, which was granted by this Court on March 16, 2023,
11 2023 (see Declaration of Daniel J. Bass [“Bass Decl.”], Exh. B) this Court should approve as fair
12 and reasonable the class-wide, non-reversionary Class Action and PAGA Settlement Agreement
13 (“Settlement Agreement”) (Bass Decl., Ex. A.) Three Hundred Fifty Thousand U.S. Dollars
14 (\$350,000.00), inclusive of all fees and costs (the “Gross Settlement Amount”) shall be paid for
15 settlement of the claims of “all individuals employed by Solaris as non-exempt or hourly employees
16 who worked in California between December 17, 2016 and January 18, 2023. (Bass Decl., Ex. A
17 at 1.12.)

18 No Settlement Class members have opted out and the administrator reports a total of 67
19 Settlement Class Members are part of this Settlement, which represents a 100% participation rate.
20 (Declaration of Kaylie O’Connor with Respect to Settlement Administration and Class Notice
21 [“O’Connor Decl.”], ¶¶10-13). Moreover, no one has objected to the Settlement, which reflects
22 that the Settlement was well-received by all class members. See O’Connor Decl., ¶ 10; see also,
23 *Anderson v. Nextel Retail Stores, LLC*, 2010 U.S. Dist. LEXIS 43377 at *49 (C.D. Cal. 2010)
24 (holding that a relatively high participation rate and extremely low objection rate weighed in
25 favor of approving the settlement). Nor are there any requests for exclusion from the Settlement.
26 O’Connor Decl., ¶ 10. Therefore, all 67 Settlement Class Members will be issued settlement
27 payment. *Id.* ¶ 13. A unanimous participation rate “supports the fairness, reasonableness, and
28

adequacy of the settlement.” *Williams v. Costco Wholesale Corp.*, 2010 U.S. Dist. LEXIS 67731 at *13 (S.D. Cal. 2010).

Moreover, the Court should grant Plaintiff’s request for a Class Representative Service Payment of \$5,000, Plaintiff’s request for attorneys’ fees in the amount of \$122,500.00, Class Counsel costs of \$6,907.42 (of \$18,000 maximum), and settlement administration costs of \$9,000.00, because each payment is reasonable and based on diligent work performed or costs incurred for the benefit of all Class Members.

Accordingly, the Settlement, and all of its terms, satisfies California Rules of Court, Rule 3.769, and other applicable laws, such that this Court should grant final approval.

II. STATUS OF THE LITIGATION

A. Defendants and Plaintiff

Defendant employed Plaintiff Jorge Hernandez Zuluaga (“Plaintiff”) as mechanic and repaired cars for Defendant at one of its locations in Canoga Park, California. Plaintiff and settlement class members were predominantly mechanics in similar positions. (*Declaration of Daniel J. Bass “Bass Decl.”*, ¶ 2).

During the time that Plaintiff was employed, he was subject to the same policies and procedures as all other non-exempt hourly paid employees, which among other things, Plaintiff contends caused employees to work long hours, sometimes off the clock, and without breaks. As such, Plaintiff and his fellow class members were denied full payment of their wages, including overtime and double time, and legally compliant breaks. (*Id. at* ¶ 3).

B. Commencement of the Action and Pleadings

Plaintiff’s Allegations - Plaintiff initially filed his complaint on December 17, 2020. Plaintiff maintain causes of action on behalf of himself and a putative class for: (1) Failure to Pay Overtime Wages, (2) Failure to Provide Meal Periods, (3) Failure to Provide Rest Periods, (4) Failure to Pay Minimum Wage, (5) Failure to Furnish Accurate Wage Statements, (6) Failure to Pay all Wages Earned; (7) Failure to Pay Earned Wages Upon Termination, and (8) Unfair Competition in Violation of Business and Professions Code Section 17200. *Bass Decl.* ¶ 4

1 As part of the Parties' Settlement, Parties stipulated to Plaintiff's submission of a
2 proposed First Amended Complaint alleging the same causes of action against Solaris as well as
3 an additional cause of action for penalties pursuant to the Private Attorneys' General Act of 2004
4 ("PAGA"). Parties have stipulated to Plaintiff requesting that that the proposed First Amended
5 Complaint become the operative complaint in the Action (the "Operative Complaint.") Bass Decl.
6 5. The LWDA was provided notice of the claims, proposed settlement and the Court's
7 Preliminary Approval Order under LWDA Case Number LWDA-CM-917227-22. (*Id.*)

8 Defendant contends that it at all times complied with California law. Defendant asserts that
9 it properly paid employees for all time worked. Defendant further contends that it provided Plaintiff
10 and other putative class members with compliant meal and rest periods, and that to the extent any
11 employee did not take a compliant meal or rest period, the reason for the non-compliant meal or rest
12 period would be an individualized issue that would preclude class certification. (*Id. at* ¶ 6).

13 C. Investigation

14 Before filing the lawsuit, Class Counsel investigated and researched the facts and
15 circumstances underlying the pertinent issues and the laws applicable thereto. This required
16 thorough discussions between Class Counsel and the Plaintiff, as well as preliminary research into
17 the various legal issues and employment practices involved in the case. After conducting their
18 initial investigation, Class Counsel determined that Plaintiff claims were well-suited for class action
19 adjudication owing to what appeared to be a common set of policies and procedures that impacted
20 Plaintiff and other putative class members in a similar fashion. (*Id. at* ¶ 7).

21 After filing the lawsuit, Class Counsel conducted an extensive investigation of the facts and
22 claims giving rise to the action, including:

- 23 (1) reviewing and analyzing time and payroll records and Defendant's written
policies and procedures;
- 24 (2) researching the applicable law and evaluating potential defenses;
- 25 (3) evaluating the damages based on countervailing interpretations of law;
- 26 (4) reviewing other documentation provided by Defendant. (*Id. at* ¶ 8).

27 Defendant, for its part, vigorously contested liability, the amount of claimed damages, and
28 the propriety of class certification. After Class Counsel analyzed the relevant documentary and
testimonial evidence, Class Counsel determined that this case was appropriate for resolution via

1 settlement. (*Id.* at ¶ 9).

2 **D. Mediation and Settlement**

3 On May 13, 2022, the Parties participated in a mediation with experienced mediator
4 Michael D. Young, Esq., which led to a settlement agreement. Over the next months the parties
5 negotiated the details of the long form settlement agreement which was fully executed by January
6 12, 2023 and for which was granted preliminary approval on March 16, 2023. (*Id.* at ¶ 11). After
7 Preliminary Approval was granted, the Settlement Administrator confirmed for the Parties that the
8 records provided by Defendant showed that there were 67 potential Class Members. (O'Connor
9 Decl. ¶ 5)

10 **III. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS**

11 **A. Settlement Class**

12 The “Class” or “Settlement Class” means all current and former non-exempt or hourly
13 employees of Defendant that worked in California at any time during the Class Period, meaning
14 December 17, 2016 through January 18, 2023, the date on which the number of total workweeks
15 reached 7,500. (Bass Decl., ¶ 12) As of the date of this filing, no Settlement Class members have
16 opted out and it is anticipated that all 67 Settlement Class members will participate in the settlement.
17 (O'Connor Decl. ¶¶ 7-10)

18 **B. Settlement Consideration**

19 Under the terms of the proposed agreement, the parties have agreed that all claims brought
20 on behalf of the Class shall be fully and finally resolved for a “Gross Settlement Amount” of Three
21 Hundred Fifty Thousand Dollars (\$350,00.00). (Bass Decl. ¶13). The Gross Settlement Amount is
22 non-reversionary and no portion of the Settlement Amount will be returned to Defendant. (*Id.*) The
23 following amounts will be deducted from the Gross Settlement Amount, with the amount remaining
24 after these deductions constituting the Net Settlement Amount (*see* O'Connor Decl. ¶14; Bass Decl.
25 ¶¶ 15-10:

- 26 • **Attorneys' Fees and Costs:** Up to 35% or One Hundred Twenty-Two Thousand Five
27 Hundred Dollars (\$122,500.00), in attorneys' fees and up to \$18,000 in litigation costs
28 (including any expert costs), though such litigation costs have been limited to \$6,907.42;
• **Class Representative Payment:** Up to \$5,000 to the named Plaintiff for his services as
the class representative;

- **Settlement Administration Costs:** The Settlement Administrator will be paid for the reasonable costs of administration of the Settlement and calculation and distribution of payments, up to a maximum of \$9,000.00;
- **LWDA PAGA Penalty Amount:** 75% share of the \$10,000.00 (or \$7,500.00) allocated from the Gross Settlement Amount for PAGA penalties that will be paid to the LWDA.
- **PAGA Group Payment:** 25% share of the \$10,000.00 (or \$2,500.00) allocated from the Maximum Settlement Amount for PAGA penalties that will be paid to PAGA Members

Thus, the net Settlement amount will exceed the estimate of \$185,500.00, plus the \$2,500.00 separately distributed for the PAGA Group Payment to PAGA Members. Each Settlement Class Member shall be eligible to receive an Individual Class Settlement Payment, which is the number of the Class Member's individual Covered Class Workweeks divided by the total Covered Class Workweeks for all Class Members. This fraction shall be multiplied by the Net Settlement Amount. (Bass Decl. ¶ 19). The number of class members in the class, according to the Administrator's report, is 67. As a result, the estimated average settlement payment to each Class Member is \$2,768.88 with the highest estimated settlement payment being \$7,844.28 and the lowest estimated settlement payment of \$49.34 (O'Connor Decl. ¶ 15), before redistribution of the \$11,092.58 in unused litigation expenses (Bass Decl. ¶ 20).

C. Claims and Settlement Fund Distribution Procedure

According to the Agreement, Solaris shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Solaris' share of payroll taxes by transmitting the funds to the Administrator no later than September 1, 2023, with the potential exception of the Administrator's fees which may be paid sooner if required by the Administrator. Bass Decl., ¶ 21, **Exh. A** at 4.2. Within 14 days after Solaris funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments. *Id.*, **Exh. A** at 4.3.

The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid.

1 The face of each check shall prominently state the date (not less than 180 days after the date of
2 mailing) when the check will be voided. The Administrator will cancel all checks not cashed by
3 the void date. The Administrator will send checks for Individual Settlement Payments to all
4 Participating Class Members (including those for whom Class Notice was returned undelivered).
5 The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees
6 including Non-Participating Class Members who qualify as Aggrieved Employees (including
7 those for whom Class Notice was returned undelivered). The Administrator may send
8 Participating Class Members a single check combining the Individual Class Payment and the
9 Individual PAGA Payment. Before mailing any checks, the Settlement Administrator must update
10 the recipients' mailing addresses using the National Change of Address Database. *Id.*, ¶ 22, **Exh.**
11 **A** at 4.3.1.

12 **IV. FAIRNESS ANALYSIS**

13 **A. Standard for Final Approval**

14 The trial court has broad discretion to determine whether a proposed class action
15 settlement is fair. See *Rebney v. Wells Fargo Bank* (1990) 220 Cal.App.3d 1117, 1138. There is a
16 presumption of fairness of a class action settlement when: (1) the settlement is reached as the
17 result of arm's length negotiations; (2) there has been sufficient investigation and discovery; (3)
18 counsel is experienced in similar litigation; and (4) the percentage of objections is low. See *Dunk*
19 *v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802. Before approving a class action settlement,
20 a trial court must have an understanding "of the amount that is in controversy and the realistic
21 range of outcomes of the litigation." *Kullar v. Footlocker Retail, Inc.* (2008) 168 Cal.App.4th
22 116, 120. However, the parties need not provide an explicit statement of the maximum amount
23 plaintiffs could have potentially recovered. See *Munoz v. BCI Coca Cola Bottling Co. of Los*
24 *Angeles* (2010) 186 Cal.App.4th 399, 409.

25 Further, "voluntary conciliation and settlement are the preferred means of dispute
26 resolution. This is especially true in complex class action litigation...." *7-Eleven Owners for Fair*
27 *Franchising v. The Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151 (quoting *Officers for*
28 *Justice v. Civil Service Comm. of the City and County of San Francisco*, 688 F.2d 615, 625 (9th

1 Cir. 1982)). A class action may not be dismissed, compromised, or settled without the approval of
2 the Court. See Cal. Rules of Court, Rules 3.769 and 3.770. The decision to approve or reject a
3 class action settlement may only be reversed upon a strong showing of “clear abuse of
4 discretion.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998); *Class Plaintiffs v.*
5 *City of Seattle*, 955 F.2d 1268 (9th Cir. 1992) (in the context of a class action settlement, an
6 appellate court cannot “substitute [its] notion of fairness for those of the [trial] judge and the
7 parties to the agreement,” and will reverse only upon a strong showing of abuse of discretion.)

8 To make this fairness determination, the court must consider several relevant factors,
9 including “the strength of plaintiff’s case, the risk, expense, complexity and likely duration of
10 further litigation, the risk of maintaining class action status throughout trial, the amount offered in
11 settlement, the extent of discovery completed and the state of the proceedings, [and] the experience
12 and views of counsel...” *Dunk v. Ford Motor Co.*, *supra*, 48 Cal.App.4th at 1801; *Wershba v. Apple*
13 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 244-245; *7-Eleven Owners for Fair Franchising v. The*
14 *Southland Corp.*, *supra*, 85 Cal.App.4th at 1146. “The list of factors is not exclusive and the court
15 is free to engage in a balancing and weighing of factors depending on the circumstances of each
16 case.” *Wershba*, 91 Cal.App.4th at 245. Furthermore, courts must give:

17 [p]roper deference to the private consensual decision of the parties, [since] the court’s
18 intrusion upon what is otherwise a private consensual agreement negotiated between the
19 parties ... must be limited to the extent necessary to reach a reasoned judgment that the
20 agreement is not the product of fraud or overreaching by, or collusion between, the
negotiating parties, and the settlement, taken as a whole, is fair, reasonable and adequate ...
(*Hanlon*, 150 F.3d at 1027.)

21 **B. The Strength of Plaintiff’s Case and Complexities of Further Litigation**

22 Plaintiff believes that the Settlement Class claims in this action are legally meritorious and
23 present a reasonable probability of a favorable determination on behalf of the class. At the same
24 time, there is undeniably significant litigation risk avoided by the proposed Settlement, both at class
25 certification proceedings, at trial, and potentially in the appellate courts. (Bass Decl., ¶ 28)

26 Liability remains highly contested by Defendant, who denies that it engaged in any
27 violations of the law, and they further deny any liability or engagement in wrongdoing of any kind
28 associated with the claims alleged in the Action by the Plaintiff or any Class Member. Defendant

1 contends that at all times it complied with all wage-and-hour laws in connection with the
2 employment and/or retention of services of Plaintiff and the Class Members. (*Id.*, ¶ 29)

3 Plaintiff's counsel understood and appreciated the defenses and position of Defendant but
4 believed that Plaintiff would ultimately succeed in the action. In light of the strongly divergent
5 views, the parties, were able to negotiate a fair settlement, considering the costs and risks of
6 continued litigation. The negotiations were at all times conducted professionally and at arm's
7 length and have produced a result that the Parties believe to be in their respective best interests.
8 (*Id.*, ¶ 30)

9 The Parties have also considered the uncertainty and risk of the outcome of further
10 litigation, and the difficulties and delays inherent in such litigation. Plaintiff is also aware of the
11 burdens of proof necessary to establish liability for the claims asserted in the action, the defenses
12 thereto, and the difficulties in establishing damages. (*Id.*, ¶ 31)

13 In evaluating the settlement, the Court will seek a reasonable estimate of the nature and
14 amount of recovery that each class member could have obtained if the Plaintiff had prevailed in the
15 litigation. Numerous decisions summarize a trial court's task when considering whether to approve
16 the settlement of a putative class action. As Division Five of this Court stated:

17 The trial court has broad discretion to determine whether the settlement is fair. [Citation.]
18 It should consider relevant factors, such as the strength of Plaintiff's case, the risk, expense,
19 complexity and likely duration of further litigation, the risk of maintaining class action
20 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.

21 *Cellphone Fee Termination Cases* (2009) 180 Cal.App.4th 1110, 1117-18 (citations omitted) The
22 court's consideration of relevant factors, however, does not transform the settlement approval
23 "into a trial or rehearsal for trial on the merits." *7-Eleven Owners for Fair Franchising*, 85
24 Cal.App.4th at 1145 (internal citation omitted). The record need only provide the trial court with
25 an understanding of the amount that is in controversy and the realistic range of outcomes of the
26 litigation. Because settlements are inherently a compromise, once the parties have provided it
27 with the requisite "basic information," the trial court must only "satisfy itself that the class
28

1 settlement is within the ‘ballpark’ of reasonableness.” *Tech-Bilt, Inc. v. Woodward-Clyde &*
2 *Assoc.* (1985) 38 Cal.3d 488, 499-500.

3 Here, in preparation for mediation, Plaintiff calculated Defendants’ liability to Class
4 Members to be in excess of the settlement amount. Plaintiff’s valuation assumed that Plaintiff: (1)
5 prevailed in certifying the case; (2) prevailed in establishing liability on the merits; and (3) was
6 awarded the full amount of all discretionary penalties. The realistic range of outcomes for this
7 litigation took into account the present state of the law regarding meal and rest break claims and
8 the other claims brought in the Action, Defendant’s defenses for each claim, and the likelihood of
9 prevailing on a class certification motion as well as trial and any appeals. Where both sides face
10 significant uncertainty, the attendant risks favor settlement. *Hanlon v. Chrysler Corp.* (9th Cir.
11 1998) 150 F.3d 1011,1026.

12 ***Kullar v. Footlocker Analysis.***

13 To allow this Court to make an informed assessment pursuant to *Kullar v. Foot Locker*
14 *Retail, Inc.* (2008) 18 Cal.App.4th 116, Plaintiff’s Counsel provides the following assessment of
15 the case and settlement. Plaintiff’s Counsel believes that the settlement is a good one for the class
16 members in light of the number of employees and claims at issue. In Plaintiff’s First Amended
17 Complaint Plaintiff seeks, PAGA penalties, unpaid wages, and statutory penalties as well as the
18 equitable remedies. Plaintiff estimated Defendant’s total non-penalty exposure at \$1,272,630.00.
19 (Bass Decl., ¶ 35) As such, the settlement represents over approximately 27.5% of Defendant’s
20 non-penalty exposure based on Plaintiff’s analysis. This is a reasonable recovery, particularly
21 given the number of class members at issue and the size of Defendant’s operations. (*Id.*).

22 Courts have determined that settlements are, of course, reasonable even where Plaintiffs
23 recover only a portion of their actual losses. *See Behrens v. Wometco Enters., Inc.* (S.D. Fla. 1988)
24 118 F.R.D. 534, 542, *aff’d*, (11th Cir. 1990) 899 F.2d 21 (“[T]he fact that a proposed settlement
25 amounts to only a fraction of the potential recovery does not mean the settlement is unfair or
26 inadequate.”). Indeed, “[a] settlement can be satisfying even if it amounts to a hundredth or even -
27 a thousandth of a single percent of the potential recovery.” *Id.*; *see also City of Detroit v. Grinnell*
28 *Corp.* (S.D.N.Y. 1972) 356 F.Supp. 1380, 1386 [a recovery of 3.2% to 3.7% of the amount sought

1 is “well within the ball park”], *aff’d in part, rev’d on other grounds*, (2d Cir. 1974) 495 F.2d 448;
2 *Martel v. Valderamma* (C.D. Cal. 2015) 2015 U.S. Dist. LEXIS 49830 * 17 (approving a settlement
3 of \$75,000 when potential damages were \$1.2 million); *In re Toys R US FACTA Litig.* (C.D. Cal.
4 2014) 295 F.R.D. 438, 453 (approving settlement with vouchers (not cash) potentially worth a
5 maximum of three percent (3%) if all possible claims were actually made, or \$391.5 million
6 aggregate voucher potential where the class could have recovered \$13.05 billion); 4 William B.
7 Rubenstein et al., *Newberg on Class Actions* (5th ed. 2016) § 13:15 (the range of reasonableness
8 percentage could be as low as 1/100th or 1/1000th of 1%); *Ma v. Covidien Holding, Inc.*, (C.D. Cal.
9 Jan. 31, 2014, No. SACV 12-02161-DOC) 2014 WL 360196, at *5 (finding a settlement worth
10 9.1% of the total value of the action “within the range of reasonableness”); *Balderas v. Massage*
11 *Envy Franchising, LLC*, (N.D. Cal. July 21, 2014, No. 12-CV-06327 NC) 2014 WL 3610945, at
12 *5 (granting preliminary approval of a net settlement amount representing 5% of the projected
13 maximum recovery at trial); *Glass v. UBS Fin. Servs., Inc.* (N.D. Cal. Jan. 26, 2007, No. C-06-4068
14 MMC) 2007 WL 221862, at *9, *aff’d*, 331 Fed. Appx. 452 (9th Cir. 2009) (approving a settlement
15 of an action claiming unpaid overtime wages where the settlement amount constituted
16 approximately 25% to 35% of the estimated actual loss to the class).

17 Below, Plaintiff details the issues that necessitated deductions from the maximum potential
18 value of this case to arrive at the reasonable Gross Settlement Amount derived in this action. Here
19 there are approximately 64 Class Members who collectively worked a total of 7,080 Workweeks
20 during the Class period as of September 13, 2022, and 40 Aggrieved Employees who worked a
21 total 2,995 of PAGA Pay Periods when Parties reached their settlement. (Bass Decl. ¶ 36). This
22 number changed only slightly to 67 members of the Settlement Class that worked 7,520 workweeks
23 during the Class Period. (O’Connor Decl. ¶ 15).

24 **Rest Periods:** Plaintiff calculated Defendant’s maximum liability to be 5 violations per
25 employee per week at the average hourly rate of \$14.38 per violation or \$71.90 per week. As
26 such, with 7,080 workweeks through September 13, 2022, Plaintiff estimated that Defendant’s
27 exposure could be as high as \$ 509,052.00. Plaintiff did not discount this number or the
28 calculations that follow in order to arrive at the settlement; rather, Plaintiff discounted the number

1 in order to reach a settlement that understood the risks of continued litigation and difficulties in
2 showing a 100% violation rate for rest breaks during employee shifts.

3 **Meal Periods:** Plaintiff again calculated Defendant's maximum liability to be 5 violations
4 per employee per week at the average hourly rate of \$14.38 per violation or \$71.90 per week. As
5 such, with 7,080 workweeks through September 13, 2022, Plaintiff estimated that Defendant's
6 exposure could be as high as \$ 509,052.00. Plaintiff did not discount this number or the
7 calculations that follow in order to arrive at the settlement; rather, Plaintiff discounted the number
8 in order to reach a settlement that understood the risks of continued litigation and difficulties in
9 showing a 100% violation rate for meal breaks during employee shifts.

10 **Unpaid Off-the-Clock:** Based on Plaintiff's experiences and personal observations at
11 work, Plaintiff estimated that approximately 0.5 hours (30 minutes) of work was performed off-
12 the-clock by employees on a daily basis, resulting in an approximately \$7.19 underpayment per
13 shift. Thus, Plaintiff calculated Defendant's potential exposure as $\$7.19 \times 5 \text{ shifts per workweek} \times$
14 7,080 Workweeks = \$254,526.00 in underpayments for off-the-clock work.

15 **Penalties:** Although the Class arguably could have seen a payout of approximately
16 \$474,080.93 for waiting time penalties (for 48 terminated employees during a three-year statutory
17 period) and wage statement penalties (for 26 employees for a one-year period), Plaintiff's Counsel
18 had to weigh the likelihood of recovery against probable defenses and the wide discretion Courts
19 have exercised in awarding Labor code penalties. Along these lines, Plaintiff considered that
20 Defendant would argue that Plaintiff could not prove the "willful" prong needed to obtain waiting
21 time penalties under Cal. Lab. Code § 203 and would further argue that Plaintiff could not show
22 that Class Members suffered an "injury" as a result of wage statement violations, as required by
23 Cal. Lab. Code § 226. Further, Plaintiff arguably could not recover any waiting time penalties for
24 meal and rest claims. Moreover, Plaintiff would not recover any derivative penalties if he failed to
25 prove the underlying claims. (Bass Decl. ¶ 40).

26 **Certification in General:** The great discretion afforded trial courts in electing to grant or
27 deny class certification, and the resultant possibility that this Court would deny certification of any
28 of the claims, resulting in no recovery whatsoever for those unnamed class members further

1 weighed in favor of settlement. Indeed, going into settlement discussions and during the course of
2 constructing the settlement, Class Counsel bore in mind similar meal and rest break cases wherein
3 class certification was denied. See e.g. *In re Lamps Plus Overtime Cases* (2012) 209 Cal.App.4th
4 35; *Washington v. Joe's Crab Shack* (N.D. Cal. 2010) 271 F.R.D. 629 (“individualized inquiry will
5 be required to determine whether any single employee failed to take a meal break because he/she
6 was too busy, and also to determine whether a particular employee signed a waiver based on a
7 decision not to take meal breaks”). *Hernandez v. Chipotle Mexican Grill, Inc.* (2012) 146
8 Cal.Rptr.3d 424, 2012 WL 3579567, *10.

9 **Trial and Manageability Issues:** While Plaintiff was confident in the strength of his
10 claims, as is always the case with a trial, Plaintiff needed to accept that there was a possibility that
11 he would not prevail at trial. Compromise is inherent and necessary in the settlement process. Thus,
12 even if “the relief afforded by the proposed settlement is substantially narrower than it would be if
13 the suits were to be successfully litigated,” this is no bar to a class settlement because “the public
14 interest may indeed be served by a voluntary settlement in which each side gives ground in the
15 interest of avoiding litigation.” *Id.* at 250 (quoting *Air Line Stewards, Loc. 550 v. American*
16 *Airlines, Inc.*, (7th Cir.1972) 455 F.2d 101, 109. The Ninth Circuit observed “the very essence of
17 a settlement is compromise, ‘a yielding of absolutes and an abandoning of highest hopes.’” *Officers*
18 *for Justice v. Civil Serv. Commission* (9th Cir.1982) 688 F.2d 615, 624 (citation omitted). Thus,
19 when analyzing the amount offered in settlement, the Court should examine “the complete package
20 taken as a whole,” and the amount is “not to be judged against a hypothetical or speculative measure
21 of what might have been achieved by the negotiators.” *Id.* at pp. 625, 628.

22 Given the difficulties Plaintiff and the Settlement Class faced, both in terms of certification
23 and in adjudicating their claims on the merits, the litigation discounts afforded by Plaintiff are
24 appropriate and the settlement is fair, reasonable, and adequate. In the present case, it is clear that
25 the settlement before this Court is the best course of action as it ensures a fair and adequate recovery
26 for the members of the class. Thus, it was clearly reasonable for Plaintiff to negotiate a smaller
27 certain award rather than seek the full recovery but risk recovering nothing.

28 Plaintiff, in agreeing to the settlement had to take into account the difficulties in certifying

1 a class and maintaining any such certification. What’s more, Plaintiff had to take into account the
2 uncertainties, including business uncertainties facing Defendant and similar employers during the
3 ongoing COVID 19 pandemic. Each of these concerns weighed into Plaintiff’s analysis to
4 eventually agree to a settlement that is less than Defendant’s total projected liability even if Plaintiff
5 eventually won every aspect of this case including potential appeal. A settlement now guarantees
6 that class members will 1) obtain a recovery and 2) that they will get the recovery in a time period
7 that is shorter than one if the case went through a full trial and appeal process. (Bass Decl. ¶ 41).

8 The settlement amount was a negotiated compromise, factoring in the risks related to
9 certification, liability, and damages. Taking into account all of the circumstances of the action and
10 the significant factual and legal defenses raised by Defendant against certification, liability, and
11 damages, Class Counsel believe that the settlement is fair and reasonable. Each Class Member’s
12 individual share of the settlement amount is tailored to the number of shifts worked by each Class
13 Member during the class period so the distribution is weighted in favor of those Class Members
14 who were potentially most affected by the alleged violations. Moreover, because the class consists
15 of several employees, it was unlikely that the potential monetary claims of individual Class
16 Members would have proved viable without the class-action mechanism. (Bass Decl. ¶ 42).

17 **C. The Experience and Views of Counsel**

18 This “Parties represented by competent counsel are better positioned than courts to
19 produce a settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pacific*
20 *Enterprises Security Litigation*, 47 F.3d 373, 378 (9th Cir. 1995). Here, Plaintiff is represented by
21 competent and experienced counsel who possess extensive experience litigating wage and hour
22 class actions and have been appointed as class counsel in numerous cases alleging similar claims.
23 Bass Decl., ¶¶ 43-51.

24 There is an initial presumption that a proposed settlement is fair and reasonable if it is the
25 result of arms-length negotiations. See *Williams v. Vukovich*, 720 F.2d 909, 922-923 (6th Cir,
26 1983) (“The court should defer to the judgment of experienced counsel who have competently
27 evaluated the strengths of his proofs.”); *In re Excess Value Ins. Coverage Litig.*, No. M-21-84
28 (RMB) 2004 WL 1724980, at *10 (S.D.N.Y. July 30, 2004) (“Where ‘the court finds the

1 settlement is the product of arm's length negotiations conducted by experienced counsel
2 knowledgeable in complex class litigation, the settlement will enjoy a presumption of fairness.”);
3 *In re Inter-Op Hip Prosthesis Liab. Litig.*, 204 F.R.D. 330, 351 (N.D. Ohio 2001) (granting
4 preliminary approval of settlement “where the settlement is the result of extensive negotiations by
5 experienced counsel...”); *see also* 2 Hebert Newberg & Alba Conte, *Newberg on Class Actions*,
6 §11.41 at 90 (4th Ed. 2001).

7 Counsel for Plaintiff have extensive experience in employment law, particularly wage and
8 hour class action litigation. Bass Decl., ¶¶ 43-50. Counsel for Plaintiff and Defendant each
9 zealously negotiated on behalf of their respective clients' best interests, and the Settlement was
10 reach after lengthy negotiations. As a result, the Settlement is presumed to be fair and reasonable,
11 and was not the product of collusion.

12 **D. No Class Members Have Opted Out of or Objected to the Settlement**

13 As part of CPT's preparation for mailing, all 67 names and addresses contained in the
14 Class List were processed against the National Change of Address (“NCOA”) database,
15 maintained by the United States Postal Service (“USPS”), for purposes of updating and
16 confirming the mailing addresses of the Settlement Class Members before mailing of the Notice
17 Packet. (See O'Connor Decl., ¶¶ 5-9). April 7, 2023, the Notices were mailed by U.S. first class
18 mail to 67 Settlement Class Members. The deadline to submit requests for exclusion or objection
19 was May 30, 2023. (*Id.*, ¶ 7) 53 Notice Packets returned as undeliverable, 1 of which had a
20 forwarding address. (*Id.*, ¶ 8) For the Notice Packets returned from the post office without a
21 forwarding address, CPT attempted to locate a current mailing address using Accurint. (*Id.*) As a
22 result of this skip trace, 20 updated addresses were obtained and the Notice Packet was promptly
23 re-mailed. (*Id.*, ¶ 9) Ultimately, 33 Notice Packets were considered undeliverable with no
24 forwarding address and where no new address could be found through skip trace. (*Id.*)

25 The Administrator has received no requests for exclusion from the Settlement, disputes or
26 objections. (*Id.*, ¶ 10). As of the date of this filing, a 100% participation rate is anticipated. (*Id.*)
27 Accordingly, all factors typically used by California courts to determine the appropriateness of
28 final approval of a class action settlement weigh in favor of finding that this Settlement is a fair

1 and reasonable result after well-represented parties who engaged in arms-length negotiations over
2 hotly contested and unclear issues of California's wage and hour laws, culminating in a settlement
3 that provides a substantial benefit to all class members. In other words, the Settlement as
4 proposed by the parties should be finally approved.

5 **V. CLASS COUNSELS' FEES AND COSTS**

6 **A. Attorneys' Fees and Costs Provided in the Settlement are Fair and Reasonable**

7 In the Settlement, Defendants agreed, subject to Court approval, to pay Class Counsel an
8 award of reasonable attorneys' fees in the amount of \$122,500.00 and \$18,000.00 in costs, for
9 work performed for the benefit of the Class. To date, Class Counsel has incurred only \$6,907.42
10 in litigation costs. (Bass Decl., ¶ 59, Exh. D). In terms of their actual time spent on the matter,
11 Class Counsel will have collectively spent more than 170.9 hours, and multiplying the hours by
12 their hourly rates, Class Counsel's incurred fees exceed \$129,665.00. (Bass Decl., ¶¶ 52-56, Exh.
13 C). Class Counsel anticipate spending an additional time attending the final approval hearing and
14 working with the Settlement Administrator through the disbursement and accounting process, that
15 will likely exceed 30 hours. (*Id.*, ¶ 56).

16 Though there are two methods for determining the appropriateness of a fee award, the
17 starting point for determining a fees' appropriateness is to assess the amount of time spent by the
18 attorneys working for the class. In *Lealao v. Beneficial California* , the court held that:

19
20 The starting point of every fee award, once it is recognized that the court's role in equity is
21 to provide just compensation for the attorney, must be a calculation of the attorney's
22 services in terms of the time he has expended on the case. Anchoring the analysis to this
23 concept is the only way of approaching the problem that can claim objectivity, a claim
24 which is obviously vital to the prestige of the bar and the courts. [citation omitted]

25
26 *Lealao*, 82 Cal.App.4th 19, 26-27. As stated above, Class Counsel's actual fees incurred litigating
27 this case already exceed \$129,665.00. (Bass Decl., ¶¶ 52-57, Exh. C). Beyond a simple review of
28

1 Class Counsel's hours worked, the fee award presently requested comports with attorneys' fee
2 awards issued by other courts under both the "common fund" and "lodestar" methodologies.

3 Because the requested award is well within those typically provided a multiplier when
4 approved by California courts, and because it is fully supported by the factors that California
5 courts consider in determining the reasonableness of attorney fee awards in class action cases,
6 Class Counsel respectfully submit that their request for \$122,500.00 in a fees is appropriate.

7 **B. The Trial Court has Wide Discretion Over the Amount of the Fee Award**

8 California appellate courts have long recognized that trial courts are ideally situated to
9 assess the quality and effectiveness of Class Counsel's efforts, and have, thus, conferred
10 considerable equitable discretion upon trial courts to determine an appropriate fee award. *See*
11 *Serrano*, 20 Cal.3d at 49; *accord, Glendora Community Redev. Agency v. Demeter* (1984) 155
12 Cal.App.3d 465, 474 (holding that "[t]he rule with respect to attorney[s'] fees is that the amount
13 to be awarded as attorney[s'] fees is left to the sound discretion of the trial court. The trial judge is
14 in the best position to evaluate the services rendered by an attorney in his courtroom; his
15 judgment will not be disturbed unless it is clearly wrong.").

16 California courts recognize two standard methods for calculating attorneys' fee awards in
17 common fund class actions. The more prevalent "percentage of the fund" (also known as the
18 "common fund" or "common benefit") method calculates attorneys' fees based on a percentage of
19 the common benefit bestowed upon the class. The "lodestar-plus-multiplier" method uses Class
20 Counsel's "lodestar" as a basis - determined by multiplying the hours counsel expended by their
21 hourly rates - which the Court may then enhance by a multiplier. The "lodestar-plus-multiplier"
22 method is often a cross-check of the propriety of the "common fund" award.

23 **1. The "Common Fund" Doctrine**

24 The California Supreme Court has held it is advisable for trial courts to employ the
25 "common fund" doctrine to award attorneys' fees and costs to Class Counsel in class actions,
26 where litigants proceeding in a representative capacity have secured a monetary settlement or
27 judgment on behalf of the class. *Serrano*, 20 Cal.3d at 35-40. The United States Supreme Court
28 has specifically endorsed the use of the percentage of the fund method in paradigmatic common

1 fund cases such as this one. *Blum v. Stenson*, 465 U.S. 886, 900 fn. 16 (1984) [“... under the
2 ‘common fund doctrine,’ ... a reasonable fee is based on a percentage of the fund bestowed on the
3 class...”]; see also, *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Vincent v. Hughes Air*
4 *West, Inc.*, 557 F.2d 759, 769 (9th Cir.1977).

5 Class Counsel commenced this action with the goal of, inter alia, recovering unpaid
6 wages, premium wages for meal and rest break violations, penalties for inaccurate wage
7 statements, and waiting time penalties. This Settlement constitutes the achievement of that goal.
8 As such, Class Counsel should be paid their attorneys' fees based on the common benefit they
9 have achieved for the class. *Lealao*, 82 Cal.App.4th at 28-36, 50-51 (noting that percentage of the
10 fund awards are appropriate in cases where the common benefit to the class can be quantified);
11 *Serrano*, 20 Cal.3d at 35-40.

12 Various federal courts have made similar attorneys' fee awards of a similar or greater
13 percentage to that requested in this case. (See, e.g., *In re Pacific Enters. Sec. Litig.* (9th Cir. 1995)
14 47 F.3d 373, 379 (affirming an award equal to 33% of the common fund); *In re Activision Sec.*
15 *Litig.* (N.D. Cal. 1989) 723 F. Supp. 1373, 1375 (awarding plaintiffs' counsel 32.8% of the
16 common fund created to settle the litigation); *In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526
17 F. Supp. 494, 500-503 (awarding 45% of \$7.3 million settlement fund); *Beech Cinema, Inc. v.*
18 *Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F. Supp. 1195, 1197-1199
19 (approximately 53% of the settlement fund awarded); *Van Gemert v. Boeing Co.* (S.D.N.Y. 1981)
20 516 F. Supp. 412, 420 (awarding 36% of settlement fund); *Parker v. City of Los Angeles* (1974)
21 44 Cal.App.3d 556, 557-68 (affirming fee award to counsel of one-third of recovery achieved).)

22 In fact, fees amounting to 35% or more of the settlement fund are often awarded. In
23 *Crandall v. U-Haul* (Los Angeles County Super. Ct., Case No. BC178775), the Honorable Steven
24 Czuleger awarded a 40% attorney fee request in an overtime-exemption class action; in *Bushnell*
25 *v. Cremar, Inc.* (Orange County Super. Ct., Case No. 657778), the Honorable Donald E.
26 Smallwood awarded attorneys' fees in the amount of 38%; in *Abzug v. Kerkorian* (CA000981,
27 Los Angeles County Super. Ct., November 1990), the Honorable R. William Schoettler awarded
28 a 45% fee; in *Haitz v. Meyer, et al.* (Alameda County Super. Court, 8-20-1990 No. 572968-3), the

1 court awarded a 40% fee; in *Elliott v. Clothestime* (Orange County Super. Ct., Case No. 01-
2 CC00333), the Honorable Jonathan Cannon awarded a 40% fee in a wage-and-hour class action
3 which had not yet proceeded to the class certification stage; and in both *Rippee v. Boston Market*
4 *Corporation* (C.D. Cal. Case No.: 05 CV 1359 BTM (JMA)) and *Barile v. Boston Market*
5 *Corporation* (C.D. Cal. Case No.: 05 CV 1360 BTM (JMA)), the Honorable Judge Barry T.
6 Moskowitz awarded a 40% fee to plaintiffs' counsel in wage and-hour class actions that had not
7 proceeded to the class-certification stage.

8 In this case, 35% of the Settlement in attorney's fees is fair and reasonable in light of the
9 time spent by Class Counsel litigating this case and the substantial benefit received by class
10 members. Moreover, the award is approved by the class representative and Defendant, and to date
11 no class members have objected to the requested attorney's fees. Accordingly, the fee request
12 here is warranted and should be granted.

13 2. The Lodestar Approach Demonstrates the Fee Request is Justified.

14 Some California courts also use a lodestar approach, with a multiplier, in awarding
15 attorneys' fees and costs. The lodestar method is often used to cross-check the propriety of the
16 common fund award. *Lealao, supra*, 82 Cal.App.4th at 49; *Salton Bay Marina, Inc. v. Imperial*
17 *Irrigation Dist.* (1985) 172 Cal.App.3d 914, 954. The issue here is not why the court should
18 award a fee commensurate with 35% of the fund, but why the court should not award such a fee.

19 The lodestar method requires that a trial court first determine a "lodestar" figure based on
20 a "careful compilation of the time spent in reasonable hourly compensation for each attorney
21 involved in the presentation of the case." *Serrano*, 20 Cal.3d at 48. Presently, the "lodestar"
22 figure is over \$129,665.00 (Bass Decl., ¶¶ 54-57). The lodestar figure may then be increased by
23 the application of a "multiplier." *Id.* This settlement comes after protracted litigation, and Class
24 Counsel has provided this Court with both a summary of their hourly rates and hours billed in this
25 matter that attest to their diligent efforts. To summarize the lodestar, Class Counsel's time
26 summaries show that they worked over 170.9 hours on this case, not even including all the hours
27 spent on this motion, for the final approval hearing, and through the distribution and accounting
28

1 process thereafter. Bass Decl., ¶¶ 54-56. Based on their hourly rates, the lodestar calculation
2 produces over \$129,665.00 in fees, not even requiring a multiplier. Bass Decl., ¶¶ 53-57.

3 **3. Application of a Positive Multiplier Is Appropriate, but Unnecessary.**

4 The lodestar amount may be increased by applying a multiplier. *See Serrano*, 20 Cal.3d at
5 49; *Beasley v. Wells Fargo Bank* (1991) 235 Cal.App.3d 1407. In California, “[m]ultipliers can
6 range from two to four or even higher” and are routinely applied in the range requested by Class
7 Counsel. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 254; *see also Chavez v.*
8 *Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 (upholding 2.5 multiplier); *Glendora Community*
9 *Redevelopment Agency v. Demeter* (1984) 155 Cal.App.3d 465 (affirming a fee award that
10 included a 12.0 multiplier); *Craft v. County of San Bernardino* (C.D. Cal. 2008) 624 F.Supp.2d
11 1113, 1125 (awarding a common fund fee which amounted to a 5.2 multiplier); *Vizcaino v.*
12 *Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051 (approving a 3.65 multiplier); *Van Vranken*
13 *v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 298-299 (approving multiplier of
14 3.6). Some of the factors a trial court considers when determining whether to apply a multiplier
15 are: “(1) the novelty and difficulty of the questions involved, (2) the skill displayed in presenting
16 them, (3) the extent to which the nature of the litigation precluded other employment by the
17 attorneys, (4) the contingent nature of the fee award.” *See Ketchum v. Moses* (2001) 24 Cal.4th
18 1122, 1132 (citations omitted). The ultimate goal is “to entice competent counsel to undertake
19 difficult public interest cases.” *San Bernardino Valley Audubon Soc. v. County of San*
20 *Bernardino* (1985) 155 Cal.App.3d 738, 755. Fee awards that are too small “chill the private
21 enforcement essential to the vindication of many rights....” *Lealao v. Beneficial California, Inc.*
22 (2000) 82 Cal.App.4th 19, 53. Recently, the Honorable Amy D. Hogue approved a multiplier of
23 3.25 based on similar factors in *Sofia Lopez v. Citris Valley Health Partners, Inc.*, Los Angeles
24 Superior Court case number BC544139 (Final approval granted November 19, 2015).

25 In *Ketchum*, the California Supreme Court held that fee enhancement in contingency cases
26 is necessary to (1) fully compensate counsel for the “loan” of legal services in light of the
27 inherent high risk of “default” posed by losing the case, and (2) encourage competent counsel to
28 take on fee award cases. *Ketchum*, 24 Cal.4th at 1132-1133. As the court noted, “A lawyer who

1 both bears the risk of not being paid and provides legal services is not receiving the fair market
2 value of his work if he is paid only for the second of these functions. If he is paid no more,
3 competent counsel will be reluctant to accept fee award cases.” *Id.* at 1133 (citations omitted).
4 Similarly, in *Greene v. Dillingham Construction N.A., Inc.* (2002) 101 Cal.App.4th 418, 426, the
5 Court of Appeal held that the trial court erred by refusing to consider contingent risk as a factor in
6 the decision to apply a multiplier. The court recognized that “[t]he adjustment to the lodestar
7 figure, e.g., to provide a fee enhancement reflecting the risk that the attorney will not receive
8 payment if the suit does not succeed, constitutes earned compensation; unlike a windfall, it is
9 neither unexpected nor fortuitous. Rather, it is intended to approximate market-level
10 compensation for such services, which typically includes a premium for the risk of nonpayment
11 or delay in payment of attorney fees.” *Id.* (citations omitted).

12 Application of a multiplier would be appropriate, but is unnecessary. Having filed the case
13 on December 17, 2020, Class Counsel will have been litigating this case for nearly 3 years before
14 receiving any reimbursement, expending significant time and resources which could have been
15 directed towards other cases. Class Counsel agreed to litigate this case on a contingent fee basis,
16 and in the process assumed considerable risk given the uncertain proposition these types of cases
17 entail. Bass Decl. ¶¶ 52-60. As the results in other cases demonstrate, the risk presented in this
18 case was significant. Courts frequently dismiss class and representative allegations and compel
19 arbitration in similar cases. Class Counsel takes multiple risks while trying to vindicate the rights
20 of workers and serve to illustrate the recognition by the California Supreme Court in *Ketchum*
21 that, if multipliers are not awarded to class counsel in the cases that are successfully settled,
22 counsel’s fees are essentially being cut because the lodestar in and of itself would not account for
23 contingent risk. Thus, application of a multiplier would be appropriate given the contingent risk
24 incurred by Class Counsel, the difficulty of the questions involved, the substantial benefit
25 conferred on the Class and State as a result of the Settlement, and the skill displayed by Class
26 Counsel. Plaintiff respectfully requests that the Court award Class Counsel the requested fees of
27 \$ 122,500.00, under the common fund theory with a lodestar cross-check without a multiplier.
28

1 **C. Class Counsel’s Costs Are Reasonable and Were Incurred for the Class**

2 In the course of this litigation, Class Counsel have incurred costs totaling \$6,907.42 and
3 will incur additional expenses in filing this motion and through the completion of the
4 disbursement and accounting process (including, but not limited to, filing this Motion and
5 appearance at the hearing, and other appearances and communications regarding final
6 accounting). Such litigation-related costs are reimbursable in class action cases. *In re United*
7 *Energy Corp. Sec. Litig.*, 1989 U.S.Dist. LEXIS 19146 at *16 (C.D. Cal. 1989) [quoting
8 Newberg, Attorney Fee Awards § 2:19 (1987)].

9 As one commentator has noted, “the prevailing view is that expenses are awarded in
10 addition to the fee percentage.” Conte, Attorney Fee Awards, § 2:08 at 50-51 (2d ed. 1977); *In re*
11 *GNC Shareholder Litig.*, 668 F.Supp. 450, 452 (W.D. Pa. 1987). As such, the costs incurred by
12 Plaintiff’s Counsel in this litigation are reasonable and appropriate as they served the class.

13 **D. The Proposed Service Award to the Plaintiff is Reasonable**

14 The parties have agreed to a service award of no more than \$5,000.00 to Plaintiff. The
15 service award is proper for several reasons. First, service awards “are not uncommon and can
16 serve an important function in promoting class action settlements.” *Sheppard v. Consolidated*
17 *Edison Co. of New York, Inc.*, 2002 WL 2003206, * 5 (E.D.N.Y. 2002); see also *Petrovic v.*
18 *Amoco Oil Co.*, 200 F.3d 1140 (8th Cir. 1999) (noting that class representatives frequently
19 receive substantial incentive payments); *In re Southern Ohio Correctional Facility*, 175 F.R.D.
20 270, 272 (S.D. Ohio 1997) (“[c]ourts routinely approve incentive awards to compensate named
21 plaintiffs for the services they provided and the risks they incurred during the course of the class
22 action litigation”).

23 Second, the incentive is proper considering that Plaintiff spent a substantial amount of his
24 own time to ensure that the class claims could proceed and to ensure that class members received
25 a benefit in this case. Bass Decl., ¶¶ 61-62. Plaintiff worked with counsel to assist in this case.
26 Declaration of Jorge Hernandez Zuluaga (“Zuluaga Decl.”) ¶ 6. Specifically, Plaintiff met with
27 his attorneys before the lawsuit was filed and discussed his experience working for Defendant.
28 Plaintiff also searched for all documents related to his employment with Defendant. *Id.*

1 Throughout the litigation Plaintiff remained in close contact with counsel and engaged in
2 numerous telephone conversations regarding the claims in the case and Defendants’ defenses to
3 those claims. *Id.* Plaintiff assisted in preparation for mediation and appeared at mediation for this
4 matter. *Id.* Plaintiff had numerous conversations with counsel regarding the potential of the
5 lawsuit, as well as the terms of the ultimate Settlement Agreement which Plaintiff reviewed the
6 drafts and versions thereof. *Id.* It is estimated that over the course of the lawsuit, Plaintiff spent
7 between 50-60 hours working on the case for the benefit of both himself and the other members
8 of the class. *Id.* at ¶ 7.

9 Third, the parties - who conducted arms-length settlement negotiations – have agreed that
10 the incentive is fair and reasonable in light of: (i) Class Representative’s efforts as plaintiff in the
11 Litigation and (ii) his execution of a full, general release.

12 Fourth, notice was provided to the class that the incentive would be paid, and no class
13 member has objected. The other class members, who undertook none of the risks which Plaintiff
14 did, stand to substantially benefit from the Plaintiff’s willingness to come forward.

15 Lastly, courts have frequently approved substantial incentive payments to class members
16 for their participation in class action lawsuits. See *In re Southern Ohio Correctional Facility*,
17 *supra*, 175 F.R.D. at 272 (recognizing that “[c]ourts routinely approve incentive awards to
18 compensate named plaintiffs for the services they provided and the risks they incurred during the
19 course of the class action litigation.”); *Ingram v. The Coca-Cola Co.*, 200 F.R.D. 685, 694 (N.D.
20 Ga. 2001) (\$300,000 incentive award to each named plaintiff); *Enterprise Energy Corp. v.*
21 *Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 250-251 (S.D. Ohio 1991) (incentive
22 payments of \$50,000 to each class representative); *In re Dunn & Bradstreet Credit Services*
23 *Consumer Litigation*, 130 F.R.D. 366, 373-374 (S.D. Ohio 1990) (incentive payments amounting
24 to \$35,000 to \$55,000 for each class representative); see also, *Van Vranken v. Atlantic Richfield*
25 *Co.*, 901 F.Supp. 294, 299-300 (N.D. Cal. 1995) (approving \$50,000 participation award); *Lo Re*
26 *v. Chase Manhattan Corp.*, 1979 U.S. Dist. LEXIS 12210, *16-17 (S.D.N.Y. 1979) (payment of
27 \$229,000 out of \$1,579,000 settlement fund to settle named plaintiffs claims did not cause the
28 settlement to be unreasonable).

1 In sum, the named Plaintiff took risks, bore hardships, and made sacrifices that absent
2 class members did not. Rewarding his efforts is a proper incentive for individuals who come
3 forward to challenge employment practices on a class-wide level, thus fulfilling the policies and
4 purposes underlying the Labor Code.

5 **E. Submission to the LWDA and Review by Defendant**

6 Concurrently with this submission to the Court, Plaintiff's Counsel uploaded this motion,
7 supportive declarations, Proposed Order and Proposed Judgment to the LWDA's website. Bass
8 Decl., ¶ 64, **Exh. E**. Similarly, a draft of Plaintiff's Motion and the Proposed Order and Judgment
9 were provided to Counsel for Defendant in advance of filing. Bass Decl., ¶ 65. Defendant's
10 Counsel agreed to waive personal service of the motion and accept service by email so that
11 additional days could be provided for their review. *Id.* Defendant's counsel stated they did not
12 have any issues or suggested changes to the content of the Motion or Proposed Order and
13 Judgment. *Id.* As such it is not anticipated that Defendant's will oppose Plaintiff's Motion. *Id.*

14 **VI. CONCLUSION**

15 For the foregoing reasons, Plaintiff respectfully requests that the Court grant final
16 approval the proposed settlement, certifying the Settlement Class, and entering the Proposed
17 Order and Proposed Judgment submitted concurrently herewith.

18
19 Dated: July 25, 2023

MAKAREM & ASSOCIATES, APLC

20
21 By: *Daniel Bass*
22 Daniel J. Bass
23 Attorneys for JORGE HERNANDEZ
24 ZULUAGA
25
26
27
28