

1 ANTHONY J. ORSHANSKY (SBN 199364)
anthony@counselonegroup.com
2 JUSTIN KACHADOORIAN (SBN 260356)
justin@counselonegroup.com
3 P. BARTHOLOMEW QUINTANS (SBN 308085)
bart@counselonegroup.com
4 COUNSELONE, PC
5 9465 Wilshire Boulevard, Suite 300
Beverly Hills, California 90212
6 Telephone: (310) 277-9945
7 Facsimile: (424) 277-3727

8 Attorneys for Plaintiff Agustin Flores, on behalf of
himself and others similarly situated
9

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF MERCED**

12 AGUSTIN FLORES, on behalf of himself and
13 others similarly situated,

14 **Plaintiff,**

15 **v.**

16 AMERICAN INTERNATIONAL
17 INDUSTRIES; and DOES 1 through 100,
18 inclusive,

19 **Defendants.**
20
21
22
23
24
25
26
27
28

Case No.: 23CV-04631

Assigned for all purposes to:
Hon. Stephanie L. Jamieson
Courtroom 8

CLASS ACTION

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR FINAL APPROVAL
OF CLASS AND REPRESENTATIVE
ACTION SETTLEMENT, ATTORNEYS'
FEES AND COSTS, AND CLASS
REPRESENTATIVE'S SERVICE
AWARD; MEMORANDUM OF POINTS
AND AUTHORITIES**

[Declaration of Anthony J. Orshansky in
Support, Declaration of Agustin Flores in
Support, Declaration of Abel E. Morales in
Support, [Proposed] Final Order and Judgment
submitted concurrently herewith]

Final Approval Hearing

Date: June 4, 2025
Time: 8:15 a.m.
Courtroom: 8

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:**

2 **PLEASE TAKE NOTICE** that on June 4, 2025, at 8:15 a.m. before the Honorable
3 Stephanie L. Jamieson in Department 8 of the Merced County Superior Court, located at 627 W.
4 21st Street, Merced, California 95340, plaintiff Agustin Flores (“Plaintiff” or “Class
5 Representative”), individually and on behalf of all others similarly situated, will and hereby does
6 move this Court for entry of an order pursuant to California Code of Civil Procedure § 382 and
7 California Rules of Court 3.769:

- 8 1. Confirming certification of the conditionally certified Class for settlement purposes
9 under California Code of Civil Procedure § 382;
- 10 2. Confirming the appointment of Plaintiff Agustin Flores as the Class Representative
11 for settlement purposes;
- 12 3. Confirming the appointment of CounselOne, P.C. as Class Counsel for settlement
13 purposes;
- 14 4. Granting final approval of the parties’ Stipulation of Class and Representative Action
15 Settlement (“Settlement Agreement”);
- 16 5. Approving an award of \$99,750 in attorneys’ fees to Class Counsel;
- 17 6. Approving an award of \$3,761.54 in litigation costs reimbursement to Class Counsel;
- 18 7. Approving an award of \$10,000 in costs to CPT Group, Inc. for its settlement
19 administration services;
- 20 8. Approving a Service Award in the amount of \$5,000 to Plaintiff; and
- 21 9. Entering final judgment in the form of the [Proposed] Judgment and entering the
22 Order Granting Plaintiff’s Motion for Final Approval of Class and Representative
23 Action Settlement, Attorneys’ Fees and Costs, and Class Representative’s Service
24 Award, submitted concurrently with this Motion.

25 This motion is made on the following grounds: (1) the conditionally certified Class continues
26 to meet the requirements for class certification for settlement purposes only under Code of Civil
27 Procedure § 382; (2) Plaintiff and Class Counsel continue to be adequate representatives of the
28 Class; (3) the settlement is a fair, adequate, and reasonable compromise of disputed wage and hour

1 claims; (4) the requested awards of attorneys' fees and costs, Service Award payment, and
2 settlement administration costs are all fair, adequate, and reasonable; and (5) in light of the
3 foregoing, the [Proposed] Judgment and [Proposed] Order Granting Plaintiff's Motion for Final
4 Approval of Class and Representative Action Settlement, Attorneys' Fees and Costs, and Class
5 Representative's Service Award submitted concurrently herewith should be entered to give finality
6 to, and allow for disbursements from, the settlement.

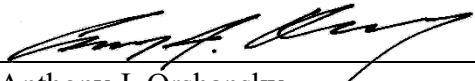
7 This motion is based on this Notice of Motion; the attached Memorandum of Points and
8 Authorities; the supporting declarations of Anthony J. Orshansky, Abel E. Morales and Agustin
9 Flores, and the exhibits attached thereto; all other pleadings and papers on file in this action; and on
10 any further oral or documentary evidence or argument presented at the time of hearing. Finally,
11 given the multiplicity of issues addressed in this motion, Plaintiff believes that there is good cause
12 to exceed the 20-page limit set forth in California Rules of Court, Rule 3.764(c)(2), and respectfully
13 request that the Court consider Plaintiff's Memorandum of Points and Authorities, which is 31 pages
14 in length.

15
16 Dated: May 11, 2025

Respectfully submitted,

COUNSELONE, PC

17
18
19 By:



Anthony J. Orshansky
P. Bartholomew Quintans
Attorneys for Plaintiff

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	FACTUAL AND PROCEDURAL BACKGROUND.....	2
A.	Nature of the Claims.	2
B.	The Prior <i>Torre</i> Settlement.	3
C.	Investigation, Exchange of Information and Settlement Negotiations.....	3
III.	SUMMARY OF THE SETTLEMENT AND NOTICE PROCESS.....	4
A.	The Class Definition.....	4
B.	Monetary Terms.	4
C.	Summary of Notice Process.	6
D.	Timing of Payments & <i>Cy Pres</i> Recipient.	7
E.	Posting of Final Order and Judgment upon Final Approval.	7
IV.	ARGUMENT	7
A.	This Court Should Confirm Its Conditional Certification of the Settlement Class for Settlement Purposes Because It Meets All of the Requirements for Class Certification under Code of Civil Procedure § 382.	7
B.	This Court Should Finally Approve the Settlement Because It Is a Fair, Adequate, and Reasonable Compromise of Disputed Wage and Hour Claims.....	8
1.	The Settlement Was Reached at Arm’s Length, through Experienced Counsel, and Was Based on Sufficient Information to Intelligently Negotiate a Fair Settlement in Light of the Claims Asserted and Risks of Continued Litigation.	9
2.	The Settlement Fairly, Reasonably, and Adequately Compensates Settlement Class Members and PAGA Group Members Because Each Member Will Be Paid Based on the Extent of His or Her Injury.....	20
3.	The 100% Participation Rate and Absence of Any Objections Confirms That the Settlement Is Fair, Adequate, and Reasonable.	20
C.	The Requested Award of Attorneys’ Fees Is Reasonable as a Percentage of the Common Fund.	20

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

D.	The Requested Award of Attorneys’ Fees Is Reasonable as Evidenced by the Lodestar Cross-Check Method.	24
E.	The Requested Costs Reimbursement is Fair, Adequate, and Reasonable.	27
F.	The Court Should Approve the Requested Settlement Administrator Expenses.....	28
G.	The Court Should Approve Plaintiff’s Requested Class Representative’s Service Award Because the Amount Is Fair, Adequate, and Reasonable in Light of Plaintiff’s Efforts and Risks Assumed on Behalf of the Class.....	29
V.	CONCLUSION	30

TABLE OF AUTHORITIES

Cases

<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> , 85 Cal.App.4th 1135 (2000).....	20
<i>Air Lines Stewards, etc., Local 550 v. American Airlines, Inc.</i> , 455 F.2d 101 (7th Cir. 1972).....	9
<i>Amaral v. Cintas Corp.</i> , 163 Cal.4th 1157 (2008).....	18
<i>In re Ampicillin Antitrust Litig.</i> , 526 F.Supp. 494 (D.D.C. 1981)	22
<i>Ashker v. Sayre</i> , No. 05-03759-CW, 2011 WL 825713 (N.D. Cal. 2011).....	28
<i>Augustus v. ABM Security Service, Inc.</i> , 2 Cal.5th 257 (2016).....	15
<i>Beech Cinema, Inc. v. Twentieth- Century Fox Film Corp.</i> , 480 F. Supp. 1195 (S.D.N.Y. 1979).....	22
<i>Bihun v. AT&T Information Systems, Inc.</i> , 13 Cal.App.4th 976 (1993).....	25
<i>Brinker Restaurant Corp. v. Superior Court</i> , 53 Cal.4th 1004 (2012).....	14
<i>Buccellato v. AT & T Operations, Inc.</i> , No. C10-00463-LHK, 2011 WL 3348055 (N.D. Cal. Jun. 30, 2011).....	27
<i>Chavez v. Netflix, Inc.</i> , 162 Cal.App.4th 43 (2008).....	22, 24
<i>Cicero v. DirectTV, Inc.</i> , No. EDCV 07-1182, 2010 WL 2991486 (C.D. Cal. July 27, 2010)	24
<i>Clark v. American Residential Services, LLC</i> , 175 Cal.App.4th 785 (2009).....	29
<i>Cochran v. Schwan's Home Services, Inc.</i> , 228 Cal.App.4th 1137 (2014).....	16
<i>Donohue v. AMN Services, LLC</i> , 11 Cal.5th 58 (2021).....	13, 14

1	<i>Dunk v. Ford Motor Co.</i> ,	
2	48 Cal.App.4th 1794 (1996).....	9, 20
3	<i>Duran v. U.S. Bank National Association</i> ,	
4	59 Cal.4th 1 (2014).....	15
5	<i>Epic Sys. Corp. v. Lewis</i> ,	
6	138 S.Ct. 1612 (2018)	10
7	<i>Gattuso v. Harte-Hanks Shoppers, Inc.</i> ,	
8	42 Cal. 4th 554 (2007).....	16
9	<i>Glendora Comm. Redev. Agency v. Demeter</i> ,	
10	155 Cal.App.3d 456 (1984).....	27
11	<i>Gutierrez v. Wells Fargo Bank, N.A.</i> ,	
12	No. C 07-05923 WHA, 2015 WL 2438274 (N.D. Cal. May 21, 2015)	27
13	<i>Harris v. Marhoefer</i> ,	
14	24 F.3d 16 (9th Cir. 1994).....	28
15	<i>In re Immune Response Securities Litigation</i> ,	
16	497 F.Supp.2d 1166 (S.D. Cal. 2007)	28
17	<i>J.P. Morgan & Co., Inc. v. Sup. Ct. (Heliotrope General, Inc.)</i> ,	
18	113 Cal.App.4th 195 (2003).....	29
19	<i>Johnson v. Fujitsu Tech. & Bus. of Am., Inc.</i> ,	
20	No. 16-CV-03698-NC, 2018 WL 2183253 (N.D. Cal. May 11, 2018)	27
21	<i>Laffitte v. Robert Half Intern. Inc.</i> ,	
22	1 Cal.5th 480 (2016).....	20, 21, 24
23	<i>Malibu Outrigger Bd. of Governors v. Superior Court</i> ,	
24	103 Cal.App.3d 573 (1980).....	8
25	<i>Mallick v. Superior Court</i> ,	
26	89 Cal.App.3d 434 (1979).....	9
27	<i>Maria P. v. Riles</i> ,	
28	43 Cal.3d 1281 (1987).....	21
	<i>McGhee v. Crocker-Citizens Nat. Bank</i> ,	
	60 Cal.App.3d 442 (1976).....	29
	<i>Naranjo v. Spectrum Security Services, Inc.</i> ,	
	15 Cal.5th 1056 (2024).....	17
	<i>Naranjo v. Spectrum Security Services, Inc.</i>	
	15 Cal.5th 93 (2022).....	17

1	<i>Naranjo v. Spectrum Security Services, Inc.</i> ,	
2	88 Cal.App.5th 937 (2023).....	17
3	<i>Rawlings v. Prudential-Bache Properties, Inc.</i> ,	
4	9 F.3d 513 (6th Cir. 1993).....	21
5	<i>Richmond v. Dart Industries, Inc.</i> ,	
6	29 Cal.3d 462 (1981).....	8
7	<i>In re Rite Aid Corp. Securities Litigation</i> ,	
8	396 F.3d 294 (3d Cir. 2005).....	21
9	<i>Schiller v. David's Bridal, Inc.</i> ,	
10	2012 WL 2117001 (E.D. Cal. 2012)	23
11	<i>Serrano v. Priest</i> ,	
12	20 Cal.3d 25 (1977).....	21, 25
13	<i>Serrano v. Unruh</i> ,	
14	32 Cal.3d 621 (1982).....	21
15	<i>Stambaugh v. Superior Court</i> ,	
16	62 Cal.App.3d 231 (1976).....	8
17	<i>Troester v. Starbucks Corp.</i> ,	
18	5 Cal.5th 829 (2018).....	12
19	<i>Trustees of Const. Industry & Laborers Health and Welfare Trust v. Redland Ins.</i>	
20	<i>Co.</i> ,	
21	460 F.3d 1253 (9th Cir. 2006).....	28
22	<i>Van Vranken v. Atlantic Richfield Co.</i> ,	
23	901 F.Supp. 294 (N.D. Cal. 1995)	22, 27
24	<i>Vizcaino v. Microsoft Corp.</i> ,	
25	290 F.3d 1043 (9th Cir. 2002).....	23, 27
26	<i>Wershba v. Apple Computer, Inc.</i> ,	
27	91 Cal.App.4th 224 (2001).....	9, 21, 27
28	<i>Westside Community for Independent Living, Inc. v. Obledo</i> ,	
	33 Cal.3d 348 (1983).....	21
	<i>Williams v. Centerplate, Inc.</i> ,	
	2013 WL 4525428 (S.D. Cal. 2013)	23
	<i>Williams v. Costco Wholesale Corp.</i> ,	
	No. 02-cv-2003 IEG (AJB), 2010 WL 2721452 (S.D. Cal. July 7, 2010)	25

1	Statutes	
2	Bus. & Prof. Code, § 17200 et seq.	2
3	Civ. Code, § 1542.....	30
4	Code Civ. Proc., § 340	17
5	Code Civ. Proc., § 382	2, 7
6	Code Civ. Proc., § 384	7
7	Lab. Code, § 201	2, 18
8	Lab. Code, § 202	2, 18
9	Lab. Code, § 203	2, 18
10	Lab. Code, § 204	2
11	Lab. Code, § 226, subd. (a)	2
12	Lab. Code, § 226, subd. (e)	17
13	Lab. Code, § 226.7	2, 14, 15
14	Lab. Code, § 510	2
15	Lab. Code, § 512	14
16	Lab. Code, § 512, subd. (a)	2
17	Lab. Code, § 1174, subd. (d).....	2
18	Lab. Code, § 1194	2
19	Lab. Code, § 1194.2	2, 11
20	Lab. Code, § 1197	2, 11
21	Lab. Code, § 1197.1	2
22	Lab. Code, § 1198	2
23	Lab. Code, § 1199	2
24	Lab. Code, § 2699, subd. (e)(2).....	19
25	Lab. Code, § 2800	2
26	Lab. Code, § 2802	2, 16

1	Lab. Code, § 2802, sub. (a)	16
2	Labor Code § 226(a)	17
3	Labor Code § 226(e)	17
4	Private Attorneys General Act, Lab. Code, § 2698 et seq.	2
5		
6	Other Authorities	
7	California Rules of Court, Rule 3.771(b).....	7
8	IWC Wage Order 4, § 7(A)(3)	13
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Agustin Flores (“Plaintiff” or “Class Representative”) hereby submits this
4 Memorandum of Points and Authorities in support of his Motion for Final Approval of this class
5 and representative action settlement on behalf of himself and a putative state class of current and
6 former hourly-paid or non-exempt employees of Defendant American International Industries
7 (“Defendant”).¹

8 The Stipulation of Class and Representative Action Settlement (“Settlement Agreement”)
9 between Plaintiff and Defendant (together, the “Parties”), if approved, will resolve specific claims
10 of Plaintiff, Settlement Class Members, and PAGA Group Members² in exchange for Defendant’s
11 agreement to pay the amount of ***Two Hundred and Eighty Five Thousand Dollars (\$285,000)*** into
12 a non-reversionary common settlement fund. In this non-reversionary settlement, all Settlement
13 Class Members will ***automatically receive*** payments without the need to submit a claim form,
14 resulting in an anticipated average individual settlement award payment of approximately \$373.21.
15 See Declaration of Abel E. Morales Regarding Notification and Settlement Administration
16 (“Morales Decl.”), filed concurrently herewith, ¶ 13. This is a very favorable resolution of the
17 disputed wage and hour claims in this case. As of the date of filing of this motion, ***not a single Class***
18 ***Member has filed an objection*** to the settlement after receiving notice of the proposed settlement
19 and the projected individual settlement payments, and ***not a single Class Member requested***

20 _____
21 ¹ “Class A” or “Class A Member(s)” means all current and former hourly-paid or nonexempt
22 employees who worked for Defendant American International Industries, and/or its predecessor or
23 merged entities, within the State of California at any time during the Class Period, beginning on
24 February 1, 2017 and ending on October 15, 2021, and who were inadvertently excluded from the
25 *De La Torre* settlement. “Class B” or “Class B Member(s)” means all current and former hourly-
26 paid or nonexempt employees who worked for Defendant American International Industries, and/or
27 its predecessor or merged entities, within the State of California at any time during the Class B
28 Period beginning on October 16, 2021 and ending on July 18, 2022. See Settlement Agreement,
¶¶ 3-8.

² The Settlement comprises two PAGA Groups: PAGA Group A means the period beginning on
July 24, 2019 and ending on October 15, 2021, and who were inadvertently excluded from the De
La Torre settlement, and means the period beginning on October 16, 2021 and ending on July 18,
2022. See *id.*, ¶¶ 30-34.

1 *exclusion* from the settlement, resulting in a *100% settlement participation rate*. Morales Decl.,
2 ¶¶ 9-12.

3 As explained below, the Court should grant Plaintiff's motion because: (1) the conditionally
4 certified Class continues to meet the requirements for class certification for settlement purposes
5 under Code of Civil Procedure § 382; (2) the settlement is a fair, adequate, and reasonable
6 compromise of the disputed claims in this case; and (3) the amounts requested for Class Counsel's
7 attorneys' fees and costs, Plaintiff's service award payment, and settlement administration costs are
8 all fair, adequate, and reasonable. In light of the foregoing, this Court should enter the [Proposed]
9 Judgment and the [Proposed] Order Granting Plaintiff's Motion for Final Approval of Class and
10 Representative Action Settlement, Attorneys' Fees and Costs, and Class Representatives' Service
11 Awards, submitted concurrently herewith.

12 **II. FACTUAL AND PROCEDURAL BACKGROUND**

13 **A. Nature of the Claims.**

14 Plaintiff and the Class were employed by Defendant in California as non-exempt employees.
15 Orshansky Decl., ¶ 43. Through this this lawsuit, Plaintiff alleged the following claims: (1) Violation
16 of California Labor Code §§ 1194, 1194.2, 1197, 1197.1, and 1199 (Failure to Pay Minimum
17 Wages); (2) Violation of California Labor Code §§ 510, 1198, and 1199 (Failure to Pay All
18 Overtime Wages); (3) Violation of California Labor Code §§ 226.7 and 512(a) (Meal Period
19 Liability); (4) Violation of California Labor Code § 226.7 (Rest Break Liability); (5) Violation of
20 California Labor Code § 226(a) (Failure to Provide Accurate Itemized Wage Statements); (6)
21 Violation of California Labor Code §§ 201-204 (Failure to Pay All Wages Owed Timely and Upon
22 Separation of Employment); (7) Violation of California Labor Code §§ 2800 and 2802 (Failure to
23 Reimburse Business Expenses); (8) Violation of California Labor Code § 1174(d) (Failure to
24 Maintain Accurate Itemized Wage Statements); (9) Violation of California Business and Professions
25 Code §§ 17200, et seq. (Unfair Business Practices); and (10) Penalties Pursuant to Labor Code
26 §§ 2698, et seq. (Private Attorneys General Act or "PAGA"). See generally Complaint; see also
27 Orshansky Decl., ¶ 24.

28 ///

1 **B. The Prior *Torre* Settlement.**

2 On September 8, 2022, the Los Angeles County Superior Court granted final approval of a
3 settlement in the matter of *Berenice de la Torre v. American International Industries*, Case No.
4 20STCV29551. The *Torre* matter resolved claims under the same causes of action as in this case for
5 a class of approximately 592 class members employed by the same Defendant, for a class period of
6 approximately 4.5 years, from February 1, 2017 to October 15, 2021. *See* Orshansky Decl., ¶ 30.

7 **C. Investigation, Exchange of Information and Settlement Negotiations.**

8 Following the finalization and distribution of funds in the *Torre* settlement, counsel
9 discovered that approximately 41 individuals had been inadvertently omitted from the *Torre*
10 settlement. Orshansky Decl., ¶ 31. The omission of these individuals would not have triggered the
11 escalator clause from the *Torre* settlement agreement. *Id.* Against the prospect of further litigation,
12 the parties negotiated at arm’s length a settlement that paid the omitted 41 individuals the same per-
13 workweek value as in *Torre*, as well as extended the release period for all current and former
14 employees (including the originally omitted 41 employees) who had worked from the time period
15 from October 16, 2021 (the end of the *Torre* class period) to July 18, 2022. *Id.* The settlement here
16 includes a “Class A” period defined as February 1, 2017 to October 15, 2021 (corresponding to the
17 41 individuals inadvertently omitted from the *Torre* settlement), and a “Class B” period defined as
18 October 16, 2021 to July 18, 2022 (which includes all 328 current and former employees for an
19 additional release period beyond the *Torre* settlement release period, which ended October 15,
20 2021). *See* Settlement Agreement, ¶¶ 3-8; Orshansky Decl., ¶¶ 79-80. The per-workweek value of
21 the Net Settlement Amount (net of fees, costs and the PAGA Payment) paid as consideration for
22 “Class A” members is the same as it was for class members in *Torre*. Orshansky Decl., ¶¶ 79-80.
23 The per-workweek value of the Net Settlement Amount for “Class B” members is approximately
24 half of the Class A / *Torre* amount in light of the fact that, following *Torre*, Defendant was securing
25 a release for a time period post-*Torre* in which it had significantly tightened compliance with
26 relevant wage-and-hour practices. *Id.*

27 ///

28 ///

1 **III. SUMMARY OF THE SETTLEMENT AND NOTICE PROCESS**

2 **A. The Class Definition.**

3 For settlement purposes only, the Class to be confirmed for certification is as follows:

4 “Class A” or “Class A Member(s)” means all current and former hourly-paid or
5 nonexempt employees who worked for Defendant American International Industries,
6 and/or its predecessor or merged entities, within the State of California at any time
7 during the Class Period, beginning on February 1, 2017 and ending on October 15,
8 2021, and who were inadvertently excluded from the *De La Torre* settlement.

9 “Class B” or “Class B Member(s)” means all current and former hourly-paid or
10 nonexempt employees who worked for Defendant American International Industries,
11 and/or its predecessor or merged entities, within the State of California at any time
12 during the Class B Period beginning on October 16, 2021 and ending on July 18,
13 2022.³

14 **B. Monetary Terms.**

15 Under the terms of the Settlement Agreement, Defendant has agreed to pay the amount of
16 ***Two Hundred and Eighty Five Thousand Dollars (\$285,000)*** into a non-reversionary common
17 fund to settle specific wage and hour claims of the Settlement Class Members and PAGA Group
18 Members; this amount is called the “Gross Settlement Amount.” Settlement Agreement, ¶ 21. This
19 Gross Settlement Amount shall be inclusive of all settlement payments to Settlement Class
20 Members, the Service Award to the Class Representative, the Administration Costs to the Settlement
21 Administrator, the Attorneys’ Fees and Costs to Class Counsel, and the Private Attorneys General
22 Act (“PAGA”) Payment, including payment to PAGA Group Members and to the California Labor
23 and Workforce Development Agency (“LWDA”) for civil penalties pursuant to statute. *Id.* The only
24 monies excluded from the Gross Settlement Amount is that amount to be paid by Defendant as the
25 employer’s share of payroll taxes with respect to the wage portion of the settlement payments to
26 Settlement Class Members, which shall be paid separately. *Id.*

27 ³ See Settlement Agreement, ¶¶ 3-8. Similarly, the Settlement comprises two PAGA Groups: PAGA
28 Group A means the period beginning on July 24, 2019 and ending on October 15, 2021, and who
were inadvertently excluded from the De La Torre settlement, and means the period beginning on
October 16, 2021 and ending on July 18, 2022. See *id.*, ¶¶ 30-34.

The amount available for distribution to Settlement Class Members is determined by deducting the following from the Gross Settlement Amount:

- Up to \$99,750 – which is 35% of the Gross Settlement Amount – in attorneys’ fees and up to \$10,000 in litigation costs to Class Counsel (the “Attorneys’ Fees and Costs”) (Class Counsel’s litigation costs in actuality amount to \$3,761.54);
- Up to \$5,000 to the Class Representative – as a service award and in exchange for a general release of claims;
- Up to \$40,000 allocated as a PAGA Payment – of which 75% of the PAGA Payment is allocated for payment to the LWDA for civil penalties pursuant to statute and 25% of the PAGA Payment is to be distributed to PAGA Group Members; and
- Up to \$10,000 to the Settlement Administrator for Administration Costs to notify Class Members and administer the settlement.

The amount remaining after the foregoing deductions, approximately \$126,488.46, is called the “Net Settlement Amount.” Settlement Agreement, ¶¶ 27, 58. The entire Net Settlement Amount will be paid out to Settlement Class Members. Settlement Class Members shall automatically receive payments without the need to submit a claim form, and the PAGA Group Members shall receive PAGA payments irrespective of whether or not they opt-out. Settlement Agreement, ¶ 56.

If approved, it is expected that 349 Settlement Class Members (*i.e.*, 100% of the Class Members) will participate in the settlement and receive, on average, an individual settlement payment estimated to be \$373.21. Orshansky Decl., ¶ 13; Morales Decl., ¶ 13. In actuality, each Class Member will receive a proportional share of the Net Settlement Amount based on his or her eligible workweeks during the applicable Class Period. The Settlement Administrator will determine each Class Member’s individual settlement payment as follows: First, the sum of all Class Members’ individual Workweeks will be the “Total Workweeks.” Second, the Net Settlement Amount will be divided by the Total Workweeks to yield the “Workweek Value.” Third, each Class Member’s individual settlement payments will be determined by multiplying his or her individual Workweeks by the Workweek Value. *See* Settlement Agreement, ¶ 58(e)(i)-(ii). Finally, in addition, all Class Members will receive a proportional share of the 25% of the PAGA Payment based on his or her

1 Workweeks during the PAGA Periods, defined as July 24, 2019 through October 15, 2021 as to the
2 “PAGA Group A Period” (corresponding to the 41 employees inadvertently omitted from the *Torre*
3 settlement) and October 16, 2021 to July 18, 2022 as to the “PAGA Group B Members” (as to all
4 328 current and former employees from whom Defendant is securing a release beyond the time
5 period released in *Torre*). *See id.*; Orshansky Decl., ¶ 9.

6 After reduction for the employee’s share of taxes on the wage portion,⁴ the net payment to
7 each participating Class Member will be the sum of his or her individual settlement payment, plus
8 his or her share of the eligible PAGA Payment. As a result of the distribution formula, the
9 consideration paid to each participating Class Member is tailored to the impact of Defendant’s
10 alleged violations as well to the claims he or she is releasing. Orshansky Decl., ¶ 10. Finally, any
11 Class Member who prefers to preserve his or her right to pursue relief or seek an alternative recovery
12 may opt out.⁵ *See id.*, ¶ 65.

13 **C. Summary of Notice Process.**

14 On March 20, 2025, counsel for Defendant provided CPT Group, Inc. (“CPT”), the Court-
15 approved Settlement Administrator, with a list of Class Members containing the full names, last
16 known mailing addresses, Social Security numbers, number of pay periods and workweeks during
17 the Class Periods and PAGA Periods, and employment dates for each Class Member/PAGA Group
18 Member. Morales Decl., ¶ 5. On March 24, 2025, CPT performed a National Change of Address
19 (“NCOA”) search to update and verify addresses. Morales Decl., ¶ 6. As a result of the NCOA
20 search, CPT was able to locate 13 new addresses. *Id.* On March 25, 2025, CPT mailed the Class
21 Notice to all Class Members/PAGA Group Members via U.S. first class mail. *Id.*, ¶ 6. The Class
22 Notice was printed in both English and Spanish. *Id.*, ¶ 4, Exhibit A.

23
24
25 ⁴ The Parties agreed to allocate 20% of each individual settlement payment to wages and 80% of
26 each individual settlement payment to interest, penalties, and other non-wage damages. *See*
27 Settlement Agreement, ¶ 60(a).

28 ⁵ Again, if approved, all Class Members will receive their individual *pro rata* PAGA Payment
irrespective of whether they opt-out of the Class. *See* Settlement Agreement, ¶ 56.

Class Members have until May 24, 2025, to submit disputes, requests for exclusion, or objections. *Id.*, ¶ 7. As of the date of this filing, not a single Class Member has submitted a dispute as to workweeks or pay periods listed on the Class Notice, objected to the settlement, nor has any Class Member opted out of the settlement; accordingly, this results in a **100% settlement participation rate**. *Id.*, ¶¶ 9-12. The deadline for Class Members to opt out or object to the settlement is May 24, 2025; however, as of the filing of this Motion, the Settlement Administrator has reported to Class Counsel that there have been no opt-outs or objectors. Following the expiration of the opt-out period, Class Counsel will file a supplemental declaration from the Settlement Administrator providing the final number of participating Class Members. Orshansky Decl., ¶ 21.

D. Timing of Payments & *Cy Pres* Recipient.

The settlement calls for the Gross Settlement Amount along with the Defendant's share of the payroll and employment taxes to be funded within ten (10) calendar days of the Effective Date. Settlement Agreement, ¶ 68(a). The Settlement Administrator shall distribute settlement payments within ten (10) calendar days after Defendant funds the settlement. *Id.*, ¶ 68(b).

In the event any settlement checks are not cashed, deposited, or negotiated within one hundred and eighty (180) calendar days from the date of issuance, then the check(s) will be cancelled and the funds associated with the cancelled check(s) will be transmitted to *cy pres* recipient Bet Tzedek in accordance with Code of Civil Procedure § 384. *Id.*, ¶ 68(c).

E. Posting of Final Order and Judgment upon Final Approval.

The Final Approval Order and Judgment will be posted on the Settlement Administrator's website pursuant to California Rules of Court, Rule 3.771(b). Orshansky Decl., ¶ 130.

IV. ARGUMENT

A. This Court Should Confirm Its Conditional Certification of the Settlement Class for Settlement Purposes Because It Meets All of the Requirements for Class Certification under Code of Civil Procedure § 382.

Under Code of Civil Procedure § 382, a class may be certified if: (1) it is ascertainable and its members are too numerous for joinder to be practical; (2) the representative and absent class members share a community of interest, and questions of law and fact common to the class

1 predominate over questions unique to individual class members; (3) the representative's claims are
2 typical of the class' claims; and (4) the representative will fairly and adequately represent the class'
3 interests. *See Richmond v. Dart Industries, Inc.*, 29 Cal.3d 462, 470 (1981). Here, this Court found
4 that the proposed Class meets all the requirements for class certification for settlement purposes
5 when it granted preliminary approval of the Settlement Agreement on March 5, 2025. *See Orshansky*
6 *Decl.*, ¶ 17, Exhibit 2 (Order Granting Preliminary Approval). Since then, no events have cast doubt
7 on the propriety of this determination, and in fact, the reaction of the Class Members has been
8 overwhelmingly supportive of the settlement, with no Class Member objecting to the settlement and
9 no Class Member opting out of the settlement, for a 100% settlement participation rate. *See Morales*
10 *Decl.*, ¶¶ 9-12. This Court should therefore confirm its conditional certification of the Class.⁶

11 **B. This Court Should Finally Approve the Settlement Because It Is a Fair,**
12 **Adequate, and Reasonable Compromise of Disputed Wage and Hour Claims.**

13 California courts have a strong policy in favor of settlement. *See, e.g., Stambaugh v. Superior*
14 *Court*, 62 Cal.App.3d 231, 236 (1976). Unlike individual settlements, class settlements involve a
15 court approval process that exists to prevent fraud, collusion, and unfairness to class members.
16 *Malibu Outrigger Bd. of Governors v. Superior Court*, 103 Cal.App.3d 573, 578-79 (1980). This
17 approval process consists of preliminary settlement approval, notice given to class members, and a
18 final fairness and approval hearing at which class members have the opportunity to be heard with
19 respect to the settlement. *Id.* Now that notice has been provided to Class Members, Plaintiff
20 respectfully requests that the Court finally approve the settlement as fair, adequate, and reasonable.

21 ///

22 ///

23 ///

24 ///

25 ///

26 _____
27 ⁶ Following the expiration of the opt-out period, Class Counsel will file a supplemental declaration
28 from the Settlement Administrator providing the final number of participating Class Members.
Orshansky Decl., ¶ 21.

1 **1. The Settlement Was Reached at Arm’s Length, through Experienced**
2 **Counsel, and Was Based on Sufficient Information to Intelligently**
3 **Negotiate a Fair Settlement in Light of the Claims Asserted and Risks of**
4 **Continued Litigation.**

5 A settlement is presumptively fair where it is reached through arm’s-length bargaining, it is
6 based on sufficient discovery and investigation to allow counsel and the court to act intelligently,
7 counsel is experienced in similar litigation, and the percentage of objectors to the settlement is small.
8 *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1802 (1996). In deciding whether to approve a
9 proposed settlement, a trial court has broad powers to determine if the proposed settlement is fair
10 under the circumstances of the case. *Mallick v. Superior Court*, 89 Cal.App.3d 434, 438 (1979). In
11 exercising these powers, the overriding concern is to ensure that a proposed settlement is “fair,
12 adequate, and reasonable.” *Dunk*, 48 Cal.App.4th at 1801 (internal quotations omitted). Relevant
13 factors for the Court to consider include, but are not limited to:

14 [T]he strength of plaintiffs’ case, the risk, expense, complexity and likely duration of
15 further litigation, the risk of maintaining class action status through trial, the amount
16 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.

17 *Id.* These factors require balancing, are non-exhaustive and, as such, trial courts should tailor the
18 factors to each case and give due regard to “what is otherwise a private consensual agreement
19 between the parties.” *Id.*

20 “In the context of a settlement agreement, the test is not the maximum amount plaintiffs
21 might have obtained at trial on the complaint, but rather whether the settlement is reasonable under
22 all of the circumstances.” *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 250 (2001).
23 Because settlements inherently involve compromise, even settlements providing for substantially
24 narrower relief than what may be obtained if the suit were successfully litigated can be reasonable
25 because “the public interest may indeed be served by a voluntary settlement in which each side gives
26 ground in the interest of avoiding litigation.” *Ibid.* (quoting *Air Lines Stewards, etc., Local 550 v.*
27 *American Airlines, Inc.*, 455 F.2d 101, 109 (7th Cir. 1972)).

1 Here, the settlement resulted from extensive arm's-length settlement negotiations between
2 qualified and experienced counsel. *See* Orshansky Decl., ¶ 32. While Plaintiff maintains that his
3 claims are meritorious, Plaintiff acknowledges the substantial risks and uncertainty in proceeding
4 with class certification and eventually trial, which justify a downward departure from the maximum
5 exposure that Plaintiff calculated for each claim. *Id.*, ¶¶ 35-36. For the reasons discussed herein,
6 Class Counsel posit that the settlement is fair, adequate, and reasonable for all Class Members.

7 As detailed in Plaintiff's Motion for Preliminary Approval and the supplemental filings in
8 support thereof previously submitted, Defendant argued that Plaintiff would be unable to certify a
9 class outside of the settlement context for a variety of reasons. For example, Defendant defended
10 against the minimum and overtime wage claims by relying on written policies that explicitly
11 prohibited Class Members from engaging in off-the-clock work. Orshansky Decl., ¶ 37. Defendant
12 also argued that Class Members worked in different job positions and had different managers, and
13 that, as a result, Defendant contended there was variation to the circumstances that could allegedly
14 cause employees to be deprived of the opportunity to take legally compliant, duty-free meal and rest
15 periods, and this variation in circumstances raised highly individualized questions of fact. *Id.*
16 Additionally, with regard to Plaintiff's meal period violation claims, Defendant contended that it
17 utilized a "bell system" for meal periods, whereby a bell would ring to notify all employees to take
18 their meal period, and another bell would ring at the end of the meal period to notify all employees
19 to return to work. *Id.* Moreover, Defendant alleged it provided 35-minute meal periods rather than
20 the 30 minutes required by law. *Id.* Further, Defendant contended Plaintiff would face significant
21 hurdles to certification given that Class Members signed arbitration agreements with class action
22 waivers as a condition of their employment, which if enforceable would convert a putative class
23 action (with the potential for class-wide damages) into an individual dispute and action – effectively
24 forcing Class Members to retain their own counsel and proceed on the basis of individual claims
25 only. *Id.*, ¶ 36; *see also Epic Sys. Corp. v. Lewis*, 138 S.Ct. 1612 (2018) (class action waivers in
26 arbitration agreements are enforceable). If Defendant's arbitration agreement defense is successful,
27 it would severely limit the potential relief available to those Class Members who signed arbitration
28 agreements with class action waivers. Orshansky Decl., ¶ 39.

1 In addition, Defendant contended Plaintiff would face significant hurdles to certification
2 given that Defendant raised individualized affirmative defenses such as waiver of meal periods and
3 that on-premises rest breaks are not equivalent to on-call liability in the *Augustus* case progeny. *Id.*,
4 ¶ 109. If Plaintiff prevailed and certified a class action, there is no guarantee that Defendant would
5 not later move for and obtain decertification. *Id.* If the Court either denied class certification or later
6 decertified it, the Settlement Class would recover nothing and Settlement Class Members would be
7 forced to retain their own counsel and proceed on the basis of individual claims only. *Id.*

8 Looking at the merits of Plaintiff's claims, Defendant contended that there is substantial
9 uncertainty due to the factual and legal complexity of the case (*i.e.*, factual variance and evidentiary
10 difficulty of proving off-the-clock claims and legal complexity as to defenses such as utilization of
11 a bell system for meal periods, waiver of meal and rest breaks, the legality of on-premises rest breaks
12 absent other indicia of control, and/or unpaid meal and rest break premiums as predicate for wage
13 statement and waiting time penalties). Applying the *Clark* and *Kullar* analysis, Class Counsel's
14 valuation is that the Gross Settlement Amount recovery reflects an ***estimated 26.3% of the potential***
15 ***damages recoverable at trial.*** Orshansky Decl., ¶ 41. Specifically, the Parties posited as follows:

16 Unpaid Minimum and Overtime Wages

17 Plaintiff, along with other hourly non-exempt employees, performed pre- and post- shift off
18 the clock work to minimize the incidence of overtime. Orshansky Decl., ¶ 43. Plaintiff contended
19 that all off-the-clock work is compensable time. *Id.* An employer must pay its employees no less
20 than the minimum wage for all hours worked, *see* Labor Code § 1197, thus, Plaintiff sought to
21 recover at least the minimum wage for all off-the-clock work, plus liquidated damages in that
22 amount under Labor Code § 1194.2. *Id.*

23 In the prior *Torre* matter, Class Counsel analyzed the documents and data produced by
24 Defendant and, in conjunction with interviews of Plaintiff and Class Members, determined
25 Defendant's degree of liability and amounts due in damages – specifically, the incidence and amount
26 of purported off-the-clock activity. Orshansky Decl., ¶ 44. Notwithstanding the obvious evidentiary
27 challenge of quantifying unrecorded off-the-clock hours, Plaintiff estimated that Defendant is liable
28 for an aggregate of approximately twenty (20) minutes of unpaid straight and overtime pay per

workweek. Orshansky Decl., ¶ 45. Based on Defendant’s records, at the average straight time hourly rate of \$15.82 and the average overtime hourly rate of \$23.73, such yields an estimated damages amount of \$205,904.81. *Id.* Plaintiff also concluded that inequitable rounding occurred with a net loss of 6,885.27 hours being unpaid to employees, thus adding an additional \$154,782.43 to that off-the-clock sum. Thus, the estimated total of unpaid straight and unpaid overtime wages is \$360,687.24, without discounting for risks associated with certification or merits. *Id.* However, given that the bulk of the workweeks at issue post-date the *Torre* litigation, after which Defendant credibly indicated that it had significantly tightened up its practices around uncompensated off-the-clock and rounded time, Class Counsel determined that a 75% reduction was appropriate, yielding an estimated \$90,171.81 was a more realistic maximum recoverable amount on this claim.

In opposition to certification, Defendant contended that Plaintiff’s claim for off-the-clock work is not amenable to class treatment, because employees worked in a variety of departments with different requirements, and it would require an unmanageable series of mini-trials to determine how much time was spent without pay. Orshansky Decl., ¶ 46. Further, in terms of merit defenses, Defendant vigorously disagreed with Plaintiff’s theories regarding how much off-the-clock work occurred in reality, and the credibility of those claimed hours given Defendant’s express written policies to the contrary. *Id.* The failure to track all hours poses evidentiary difficulties because it is hotly contested how much off-the-clock work actually occurred. *Id.* Although Class Counsel conducted multiple Class Member interviews, for Plaintiff to establish the quantity of specific disputed and unrecorded work activities – especially over multiple job titles, at differing pay rates – would have been costly, time-consuming, and daunting. *Id.*

Defendant further responded that any off-the-clock time is *de minimis*. Orshansky Decl., ¶ 47. Plaintiff countered that such defense lacks viability in light of *Troester v. Starbucks Corp.*, 5 Cal.5th 829 (2018), given that the California Supreme Court refused to allow the *de minimis* defense to insulate Starbucks from having to pay employees for small amounts of work regularly performed off-the-clock. *Id.* What is not clear, however, is to what extent the *de minimis* defense would apply where the uncaptured hours were associated with an occasionally recurring activity. *Id.*

1 In light of these considerations – especially the evidentiary difficulties of demonstrating off-
2 the-clock work on a class-wide basis – Class Counsel applied a discount that incorporated the risks
3 of non-certification and being unsuccessful on the merits. Orshansky Decl., ¶ 49.

4 Meal and Rest Period Violations

5 Plaintiff asserted that there are compliance issues with respect to meal breaks meal breaks –
6 some are late, missed, short, or interrupted. Orshansky Decl., ¶ 50. Moreover, notwithstanding
7 Defendant’s otherwise compliant policy, Plaintiff and Class Members were not always allowed to
8 leave the premises during meal periods. *Id.* Further, Defendant failed to provide Plaintiff and Class
9 Members with second 30-minute meal periods for shifts lasting longer than 10 hours. *Id.*

10 On February 25, 2021, in *Donohue v. AMN Services, LLC*, 11 Cal.5th 58 (2021), the
11 California Supreme Court reversed the Fourth Appellate District and set forth two clear rules:
12 (1) employers are not permitted to round time records when determining if employees are entitled
13 to meal premium pay, and (2) it is the employer’s burden to show that compliant meal periods were
14 provided to employees if the time records show otherwise. Using this opportunity to echo its long
15 stance that California liberally construes the Labor Code and wage orders to favor protection of
16 employees, the California Supreme Court emphasized that meal periods are part of the remedial
17 worker protection framework to protect the health and safety of employees. Here, however,
18 Defendant employed an automatic meal period deduction policy and did not provide a mechanism
19 by which Plaintiff and Class Members could override the auto-deduction if they did indeed work
20 during a meal period. Orshansky Decl., ¶ 50.

21 According to Defendant’s policy, employees “must accurately record all hours worked,
22 including the start and stop times at the beginning and end of their shift, as well as the start and end
23 of their meal periods. Failure to do so will result in disciplinary action.” Orshansky Decl., ¶ 51.
24 However, pursuant to Wage Order 4, § 7(A)(3), an “employer shall keep accurate information with
25 respect to each employee including the following . . . [t]ime records showing when the employee
26 begins and ends each work period. Meal periods, split shift intervals and total daily hours worked
27 shall also be recorded.” Under California law, employers, not employees, have the burden to record
28

1 and maintain accurate time records. The California Supreme Court in *Donohue* also reiterated that
2 it is the employer's duty to maintain accurate time records for meal periods. *See* 11 Cal.5th at 81.

3 Significantly, there is no indication that Defendant made any payments of a meal period
4 premium for "missed," "short," or "late" meal periods to employees. Orshansky Decl., ¶ 52.
5 Consequently, Plaintiff alleged that Defendant violated Labor Code §§ 226.7, 512, and applicable
6 Wage Orders by failing to compensate Plaintiff and Class Members for short, late, interrupted, and
7 missed meal periods. *Id.*

8 Defendant contended that it had practices, policies, and procedures to provide meal and rest
9 breaks every workday to their employees that fully complied with the law. Orshansky Decl., ¶ 53.
10 Defendant vehemently argued that it complied with the requirements articulated by the California
11 Supreme Court in *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012). Orshansky
12 Decl., ¶ 53. Specifically, Defendant maintained that it "provides" employees with a reasonable
13 opportunity to take timely meal periods of at least 30 minutes, relieves employees of all duties during
14 meal periods, and relinquishes control over employees' activities, including the ability to leave the
15 premises during meal periods. *Id.* In fact, Defendant alleged that it employs a "bell system," by
16 which a bell rings to notify employees to take their meal periods, where all employees take their
17 meal periods at the same time, and a bell rings again to notify employees it is time to return to work.
18 *Id.* Defendant claimed that because of this system, it cannot be liable for meal period violations given
19 all employees take timely meal periods. *Id.* Additionally, Defendant maintained employees certify
20 that they have been provided all meal periods and rest breaks that they were due on their time sheets
21 or timecards each pay period, except for any instances duly recorded by the employee on the Missed
22 Meal and Rest Period Sign In Sheet. *Id.*

23 Further, after the prior similar class and representative action against the same Defendant in
24 the *Torre* case, Defendant contended it has since further tightened its policies and procedures to
25 ensure compliance with California law. Thus, Defendant argued, the failure of an employee to take
26 a full meal period cannot be a fault of company policy, as it provides more than the minimum time
27 prescribed by law for meal periods. *Id.*

1 Like most employers facing meal period litigation, Defendant argued that employees were
2 apprised of their right to take meal periods and provided compliant meal periods, but some may
3 voluntarily have waived them. Orshansky Decl., ¶ 54. Defendant contended that the issue of
4 voluntary waiver would necessarily devolve into a series of individualized mini-trials, precluding
5 class certification. *Id.*; see also *Duran v. U.S. Bank National Association*, 59 Cal.4th 1, 25 (2014)
6 (holding that the defendant must be provided an opportunity to litigate affirmative defenses, even
7 when they turn on individual questions).

8 Based upon the analysis of Class Members' time and payroll records and, in conjunction
9 with interviews of Plaintiff and Class Members, Plaintiff determined that 10% of eligible shifts were
10 the subject of unique violations for missed, short, or late meal periods, and calculated the potential
11 exposure of this claim to be \$173,881.62. Orshansky Decl., ¶ 55.

12 Plaintiff also alleged that Class Members did not receive authorized rest breaks as required
13 whereby employers "relinquish control over how employees spend their time and relieve employees
14 of all duties." Orshansky Decl., ¶ 56; see also *Augustus v. ABM Security Service, Inc.*, 2 Cal.5th 257,
15 260 (2016). Due to Defendant's work demands and inadequate staffing, Plaintiff alleged he and
16 Class Members did not receive timely and compliant rest breaks, nor did Defendant relinquish
17 control over how employees spent their 10-minute rest periods. *Id.* As with the meal periods, Plaintiff
18 did not receive rest break premium payments for non-compliant rest breaks, nor is there evidence
19 that Defendant made rest break premium payments to Class Members. *Id.*, ¶ 57. Thus, Plaintiff
20 alleged that Defendant did not provide premium pay for each non-compliant rest break as required
21 under Labor Code § 226.7. *Id.*

22 Here again, Defendant disputed liability and damages. Defendant maintained that it
23 authorized and permitted duty-free rest breaks of not less than ten minutes for every major fraction
24 of four hours worked as required by Labor Code § 226.7. Orshansky Decl., ¶ 58. Defendant
25 explained that Class Members had ample opportunity to take, and did take, regular rest breaks. *Id.*
26 As with meal periods, Defendant argued that any Class Member who failed to take a rest break, or
27 took a short or late rest break, did so voluntarily and that all applicable rest breaks were still
28 authorized and provided. *Id.* Defendant also attempted to distinguish *Augustus*, *supra*, which

1 involved security guards who were required to monitor a pager, phone, or other device as having an
2 added constraint that is not present in this case. *Id.*

3 Class Counsel applied a 10% violation rate based on the narratives of Plaintiff and other
4 Class Members for a maximum exposure rate of \$173,881.62. *Id.*, ¶ 59. For settlement purposes,
5 and to account for the difficulties of certifying and proving unrecorded rest break violations, a
6 downward departure from that maximum exposure was and is warranted. *Id.*

7 Unreimbursed Expenses

8 Plaintiff alleged a cause of action under Labor Code § 2802(a), which states that an employer
9 must reimburse employees for all necessary expenditures that employees incur in discharging their
10 duties. Orshansky Decl., ¶ 60. Here, Plaintiff and Class Members were required to use their personal
11 cell phones to communicate with supervisors and coworkers for reasons related to work, yet
12 Defendant failed to reimburse for these necessary business expenses. *Id.* Defendant contended that
13 it has a policy and practice of reimbursing employees for necessary business-related expenses. *Id.*,
14 ¶ 61. Defendant also contended that, with respect to the alleged expenses for which Plaintiff and
15 other Class Members never requested reimbursement from Defendant, Defendant did not know and
16 had no reason to know that the alleged business-related expenses were incurred. *Id.* Moreover, to
17 the extent it occurred, Defendant asserted that this claim is not suitable for class treatment as it
18 would require individualized determinations as to whether each employee used a personal cell phone
19 for work-related purposes and, if so, how much of that use was a reasonable percentage of his or her
20 individual monthly phone bill. *Id.* Defendant also argued that the California Labor Code only
21 requires reimbursement of “necessary” expenses – as opposed to any expense that is incurred in the
22 course of performing work – and argued that distinguishing a necessary expense from an
23 unnecessary one would require individualized inquiry. *Id.*, ¶ 62; *see also* Labor Code § 2802;
24 *Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal. 4th 554 (2007). Furthermore, whether an expense
25 was necessary would depend in part on the reasonableness of the employee’s choice and would thus
26 have to be established by way of extensive individual factual inquiry and/or statistical evidence.
27 *Cochran v. Schwan’s Home Services, Inc.*, 228 Cal.App.4th 1137 (2014).

1 For the foregoing reasons, and taking into account the wide variety of telephone plans,
2 providers and costs which creates evidentiary complexities on an individual basis, let alone class-
3 wide, Plaintiff assigned *de minimis* value to this claim. Orshansky Decl., ¶ 63.

4 Wage Statement Violations

5 Plaintiff alleges a cause of action under Labor Code § 226(a) for Defendant's failure to
6 provide accurate itemized wage statements. Orshansky Decl., ¶ 64. Failure to comply with the
7 statute entitles employees to recover the greater of all actual damages or fifty dollars (\$50) for the
8 initial pay period in which a violation occurs and one hundred dollars (\$100) for each violation in a
9 subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000). *See*
10 Labor Code § 226(e). This cause of action is derivative of the foregoing causes of action because if
11 Defendant did not provide wages for all hours worked, premiums for non-compliant meal and rest
12 breaks, and so forth, then the wage statements were inevitably inaccurate. Defendant contended,
13 however, that Labor Code § 226(e) penalties are not automatic. Orshansky Decl., ¶ 65. Rather, the
14 employee must show that Defendant's noncompliance was "knowing and intentional." *Id.*
15 Defendant suggested that any noncompliance was not knowing and intentional. *Id.*

16 Because the damages for this cause of action are penalties, the statute of limitations is only
17 one year prior to the filing of the original complaint. *See* Code Civ. Proc. § 340. The Parties
18 discussed these issues and, based on the \$50 initial violation plus the \$100 per pay period subsequent
19 violation rates, Plaintiff estimates the total maximum wage statement exposure to be \$445,345.12.
20 Orshansky Decl., ¶ 66. However, for settlement purposes, and in consideration of the risks of a loss
21 on the merits of the underlying derivative claim(s) and/or good faith defense,⁷ a downward departure
22 from that maximum exposure was and is warranted. *See id.*

23
24 ⁷ *See, e.g., Naranjo v. Spectrum Security Services, Inc.* 15 Cal.5th 93 (2022). In 2023, the Court of
25 Appeals, re-visiting *Naranjo* on remand, substantiated such good faith arguments because penalties
26 for missed meal rest breaks were not clearly established law until the May 2022 California Supreme
27 Court decision. *See Naranjo v. Spectrum Security Services, Inc.*, 88 Cal.App.5th 937 (2023). On
28 May 6, 2024, the California Supreme Court, on review, clarified that an employer is not liable for
statutory penalties for inaccurate wage statements when it had a good faith and reasonable belief
that the issued statements were accurate. *Naranjo v. Spectrum Security Services, Inc.*, 15 Cal.5th
1056 (2024).

- 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

- 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

1 meal and/or rest periods. *Id.*, ¶ 73. Defendant further argued that these issues presented challenges
2 not only to liability but also challenges to Plaintiff’s ability to show that a PAGA claim could be
3 efficiently and manageably adjudicated without abridging Defendant’s due process rights. *Id.*

4 Finally, Defendant maintained that the Court has discretion to reduce any award of PAGA
5 penalties where it views them as duplicative. Orshansky Decl., ¶ 74; *see also* Labor Code
6 § 2699(e)(2) (the Court may “award a lesser amount than the maximum civil penalty amount
7 [authorized by PAGA] if, based on the facts and circumstances of the particular case, to do
8 otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.”).

9 Class Counsel applied discounts for the risks of possible bifurcation of discovery and/or
10 trial, the risks regarding success on the merits and establishing liability, and the risks with proving
11 the extent of penalties that are warranted and possible discretionary reduction of penalties by the
12 Court. *Id.* As a result, Plaintiff used the “initial” \$100 per pay period violation (as opposed to the
13 \$200 subsequent per violation rate) to calculate a realistic estimate of \$123,941.57, in potential
14 PAGA penalty exposure – of which, by statute, only 25%, or \$30,985.39 – would be recoverable
15 by aggrieved employees. *Id.*

16 Summary

17 The foregoing factors each indicate that the interests of Class Members are best served by
18 a settlement of this action in the manner and upon the terms set forth in the Settlement Agreement.
19 Using the estimated figures for each of the claims described above, Plaintiff determined that
20 approximately **\$1,083,157.74⁸** as the potential recovery to the Class. Without any discount for
21 risks for certification or liability, the proposed recovery to the Class of \$285,000 thus represents
22 26.3% of the realistic possible exposure to Defendant. Orshansky Decl., ¶ 76. After carefully
23 analyzing the claims in this matter, Plaintiff and Class Counsel have concluded that the value of
24 this settlement is fair, reasonable, and adequate.

25
26
27 ⁸ *I.e.*, \$90,171.81 (unpaid wage exposure) + \$173,881.62 (meal break exposure) + \$173,881.62 (rest
28 break exposure) + \$445,345.12 (wage statement exposure) + \$75,936.00 (waiting-time penalties
exposure) + \$123,941.57 (PAGA penalty exposure) = \$1,083,157.74 (total potential exposure).

1 **2. The Settlement Fairly, Reasonably, and Adequately Compensates**
2 **Settlement Class Members and PAGA Group Members Because Each**
3 **Member Will Be Paid Based on the Extent of His or Her Injury.**

4 Individual settlement payments will be calculated based on (1) the number of workweeks
5 worked by each Settlement Class Member during the Class Period, and (2) the number of pay periods
6 worked each PAGA Group Member during the PAGA Period. Orshansky Decl., ¶¶ 8-9; Settlement
7 Agreement, ¶ 58. This method of distribution compensates Settlement Class Members and PAGA
8 Group Members based on the estimated extent of their injuries, as individuals employed for a longer
9 period would have been subject to more of the alleged wage and hour violations than those who
10 employed for a shorter period. Thus, the formulas for compensating Settlement Class Members and
11 PAGA Group Members are fair, adequate, and reasonable, as they are tethered to the damages and
12 penalties that could be recovered by them.

13 **3. The 100% Participation Rate and Absence of Any Objections Confirms**
14 **That the Settlement Is Fair, Adequate, and Reasonable.**

15 The Class Members’ response to the settlement is relevant in evaluating whether it merits
16 final approval. *Dunk*, 48 Cal.App.4th at 1801. Further, the absence of objections and requests for
17 exclusion support a fairness presumption. *See 7-Eleven Owners for Fair Franchising v. Southland*
18 *Corp.*, 85 Cal.App.4th 1135, 1152-53 (2000) (finding 9 objections and 80 opt-outs showed a
19 “particularly impressive” response from class members). Here, ***not a single Class Member objected***
20 ***to the settlement and not a single Class Member opted out*** of the settlement, resulting in a ***100%***
21 ***settlement participation rate***. Morales Decl., ¶¶ 9-12. This extremely positive reaction from the
22 Class further confirms that the settlement is fair, adequate, and reasonable. Following the expiration
23 of the opt-out period, Class Counsel will file a supplemental declaration from the Settlement
24 Administrator providing the final number of participating Class Members.

25 **C. The Requested Award of Attorneys’ Fees Is Reasonable as a Percentage of the**
26 **Common Fund.**

27 A percentage method may be used to calculate a reasonable fee in a common fund case.
28 *Laffitte v. Robert Half Intern. Inc.*, 1 Cal.5th 480, 503 (2016). A fee award is justified where the

1 legal action has produced its benefits by way of a voluntary settlement. *See, e.g., Maria P. v. Riles*,
2 43 Cal.3d 1281, 1290-91 (1987); *Westside Community for Independent Living, Inc. v. Obledo*, 33
3 Cal.3d 348, 352-53 (1983). When a settlement results in a common fund for the benefit of a class,
4 class counsel may be awarded fees as a percentage of the common fund. *See Wershba*, 91
5 Cal.App.4th at 254 (recognizing the “percentage of recovery” method). The California Supreme
6 Court confirmed in *Laffitte v. Robert Half Int’l, Inc.* that “[t]he percentage of fund method survives
7 in California class action cases.” *Laffitte*, 1 Cal.5th at 506. Specifically, the *Laffitte* Court held:

8 The recognized advantages of the percentage method - including relative ease of
9 calculation, alignment of incentives between counsel and the class, a better
10 approximation of market conditions in a contingency case, and the encouragement it
11 provides counsel to seek an early settlement and avoid unnecessarily prolonging the
12 litigation - convince us the percentage method is a valuable tool that should not be
13 denied our trial courts.

14 *Id.* at 503 (internal citation omitted); *see also, e.g., Serrano v. Priest*, 20 Cal.3d 25, 34 (1977)
15 (“[W]hen a number of persons are entitled in common to a specific fund, and an action brought by a
16 plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund, such
17 plaintiff or plaintiffs may be awarded attorney’s fees out of the fund.”); *Serrano v. Unruh*, 32 Cal.3d
18 621, 627 (1982) (in awarding a fee from the common fund, the trial court acts within its equitable
19 power to prevent the other parties’ unjust enrichment); *Rawlings v. Prudential-Bache Properties,*
20 *Inc.*, 9 F.3d 513, 516 (6th Cir. 1993) (the percentage of the fund method for calculating attorneys’
21 fees more accurately reflects the results achieved for the putative class than the lodestar method and
22 “establishes reasonable expectations on the part of plaintiffs’ attorneys as to their expected recovery;
23 and it encourages early settlement, which avoids protracted litigation”); *In re Rite Aid Corp.*
24 *Securities Litigation*, 396 F.3d 294, 300 (3d Cir. 2005) (“The percentage-of-recovery method is
25 generally favored in common fund cases because it allows courts to award fees from the fund ‘in a
26 manner that rewards counsel for success and penalizes it for failure.’”).

27 The settlement calls for the payment of up to 35% of the Gross Settlement Amount for
28 attorneys’ fees. Settlement Agreement, ¶ 58(a). This request is fair, reasonable, and adequate to
compensate Class Counsel for the excellent results achieved with anticipated average settlement
payments of \$373.21, no objectors, and a 100% settlement participation rate. *See Orshansky Decl.*,

¶¶ 13; Morales Decl., ¶¶ 9-12. That Class Counsel achieved these results in the face of serious defense challenges (*i.e.*, evidentiary challenges of off-the-clock work, the “bell system” for meal breaks, waiver of meal and rest break arguments), and in the face of an uncertain legal landscape (*i.e.*, potential distinguishability of *Augustus* as to on-premises rest breaks, existence of arbitration agreements, and the California Supreme Court’s *Naranjo* decision) confirms the strength of the results achieved. Orshansky Decl., ¶ 102.

The attorneys’ fees requested is also consistent with Class Counsel’s experience in similar wage and hour class action matters. Orshansky Decl., ¶ 96. In fact, numerous courts have awarded attorneys’ fees of up to, or in excess of 40% of the common fund. *See Ammari Electronics, et al. v. Pacific Bell Directory*, Alameda County Sup. Ct., Case No. RG05198014 (awarded 43.8%); *Zelada v. Majestic Terminal Services*, San Bernardino Super. Ct., Case No. CIVDS1916968 (38% fee awarded on \$1,800,000 settlement); *In re California Indirect Purchaser X Ray Film Antitrust Litigation*, San Francisco Super. Ct. (citing *Abzug v. Kerkorian*, Los Angeles Super. Ct., Case No. CA-00981 (45%) and *Haitz v. Meyer*, Alameda County Sup. Ct., Case No. 5729683 (45%)); *Banda v. Verizon California, Inc.*, Los Angeles Super. Ct., Case No. BC434587 (35% fee on \$15,000,000 settlement); *Hall v. Cinema 7, Inc.*, San Francisco Super. Ct., Case No. CGC-01-409105 (53%); *Birch v. Office Depot*, United States District Court for the Southern District of California, Case No. 06cv1690 DMS (40% fee awarded on \$16,000,000 settlement); and *Rundberg v. Intrawest Napa Dev. Co.*, Napa County Super. Ct., Case No. 26-56886 (40%).

Some courts have awarded fees as high as fifty percent (50%) of the settlement in complex actions. *See In re Ampicillin Antitrust Litig.*, 526 F.Supp. 494 (D.D.C. 1981) (**awarding attorneys’ fees in the amount of 45%** of the \$7.3 million total settlement amount); *Beech Cinema, Inc. v. Twentieth- Century Fox Film Corp.*, 480 F. Supp. 1195 (S.D.N.Y. 1979) (awarding approximately **53% of the settlement as attorneys’ fees**); *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66 n.11 (2008) (lower court found the range of contingency fees in marketplace to be **up to 40 percent** and determined such a percentage fee was appropriate); *Van Vranken v. Atlantic Richfield Co.*, 901 F.Supp. 294, 297-98 (N.D. Cal. 1995) (observing that “[m]ost of the cases Class Counsel have cited

1 in which high percentages such as **30-50 percent of the fund** were awarded involved relatively
2 smaller funds of less than \$10 million”).

3 The fee award requested here is also justified because Class Counsel achieved a significant
4 monetary recovery for the Settlement Class in an uncertain, complex, and risky case while bearing
5 the substantial burdens of representation on a contingency basis, and the fees requested are in line
6 with the market rate. *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048-51 (9th Cir. 2002).
7 (finding that exceptional results in a contingency case, significant risk and the absence of supporting
8 precedents, are proper considerations in awarding attorneys’ fees). Class Counsel negotiated a
9 substantial recovery for the Class Members, resulting in a settlement participation rate of 100%, and
10 no Settlement Class Member objected to the settlement or to Class Counsel’s requested fees. *See*
11 *Morales Decl.*, ¶¶ 9-12. Further, The anticipated average settlement payment in this case of \$373.21
12 far exceeds average settlement payments in other wage and hour class and representative action
13 settlements.⁹

14 As discussed above, this case presented significant risks of both non-certification as well as
15 potential challenges on the merits of Plaintiff’s claims. *See Orshansky Decl.*, *passim*. Accordingly,
16 it is fair and reasonable to account for these risks in compensating Class Counsel. Class Counsel
17 should also be compensated for the risks involved in undertaking this litigation and expending
18 considerable effort, all while working on a pure contingency basis. *Id.*, ¶¶ 103-106. Given the
19 considerable potential for adverse outcomes in this case, including, but not limited to, being unable
20
21

22 ⁹ *See, e.g., Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal. 2008) (wage
23 and hour class action settlement approved where average class member recovery was approximately
24 \$60); *Ressler v. Federated Department Stores, Inc.*, Case No. BC335018 (L.A. County Super. Ct.
25 Jan. 2, 2009) (average recovery of \$90); *Palencia v. 99 Cents Only Stores*, Case No. 34-2010-
26 00079619 (Sacramento County Super. Ct. 2010) (average recovery of \$80); *Lim v. Victoria’s Secret*
27 *Stores, Inc.*, Case No. 04CC00213 (Orange County Super. Ct. Jan. 20, 2006) (average recovery of
28 \$35); *Gomez v. Amadeus Salon, Inc.*, Case No. BC392297 (L.A. County Super. Ct. July 23, 2010)
(average recovery of \$20); *Schiller v. David’s Bridal, Inc.*, 2012 WL 2117001, at *17 (E.D. Cal.
2012) (finding that average payment to class members of less than \$200 was a “good” result);
Williams v. Centerplate, Inc., 2013 WL 4525428, at *4 (S.D. Cal. 2013) (granting final approval of
class action settlement where average recovery for each class member was approximately \$108.

1 to proceed on a class-wide basis and/or risking unfavorable adjudication on the merits, the
2 contingent risk borne by Class Counsel was great. *Id.*, ¶ 106.

3 Class Counsel’s previous experience litigating wage and hour class actions also supports the
4 reasonableness of the fee request. Class Counsel are well-versed in plaintiff-side wage and hour
5 class and representative action litigation, with substantial experience litigating claims for unpaid
6 wages, meal and rest period violations, and related penalties, and have been certified as class counsel
7 in numerous other cases. Orshansky Decl., ¶¶ 82-85. Class Counsel’s experience in similar matters
8 was integral to evaluating the strengths and weaknesses of this case and the reasonableness of the
9 settlement. *Id.*, ¶ 102. Practice in the narrow field of wage and hour litigation requires skill and
10 knowledge concerning the rapidly evolving substantive state and federal law, as well as the
11 procedural law of class and representative action litigation. *Id.*

12 Because it is reasonable to compensate Class Counsel commensurate with their skill,
13 reputation, and experience, the requested fee award is fair and reasonable, in accord with the
14 principles outlined by the California Supreme Court in *Laffitte*, and should therefore be approved.

15 **D. The Requested Award of Attorneys’ Fees Is Reasonable as Evidenced by the**
16 **Lodestar Cross-Check Method.**

17 Significantly, *Laffitte* also held that trial courts have discretion to assess reasonableness of
18 fee awards with tools such as the lodestar cross-check, though they need not do so. *Laffitte*, 1 Cal.5th
19 at 506 (“We hold further that trial courts have discretion to conduct a lodestar cross-check on a
20 percentage fee . . . they also retain the discretion to forego a lodestar cross-check and use other
21 means to evaluate the reasonableness of a requested percentage fee.”). This Court can and should
22 award attorneys’ fees and costs based on the percentage fee alone in light of the excellent results
23 achieved and for the reasons stated herein. Nevertheless, the lodestar “cross-check” here also
24 supports the requested contingency-fee percentage.

25 Notably, “regardless of whether the percentage method or the lodestar method is used, fee
26 awards in class actions average around one-third of the recovery.” *Chavez*, 162 Cal.App.4th at 66
27 n.11; *see also, e.g., Cicero v. DirectTV, Inc.*, No. EDCV 07-1182, 2010 WL 2991486, at * 7 (C.D.
28 Cal. July 27, 2010) (“30-50% [is] commonly awarded in cases in which the common fund is

1 relatively small” and that in California, “courts usually award attorneys’ fees in the 30-40% range
2 in wage and hour class actions...”); *Williams v. Costco Wholesale Corp.*, No. 02-cv-2003 IEG
3 (AJB), 2010 WL 2721452, at * 6 (S.D. Cal. July 7, 2010) (collecting cases where courts awarded
4 between 33.33% and 40% in attorneys’ fees in wage and hour class actions).

5 A lodestar cross-check analysis typically happens in three steps. First, a trial court must
6 determine a baseline guide or “lodestar” figure based on the time spent and reasonable hourly
7 compensation for each attorney involved in the case. *Serrano v. Priest*, 20 Cal.3d 25, 48 (1975). The
8 court then sets a reasonable hourly fee to apply to the time expended, with reference to the prevailing
9 rates in the geographical area in which the action is pending. *Bihun v. AT&T Information Systems,*
10 *Inc.*, 13 Cal.App.4th 976, 997 (1993). Finally, a “multiplier” is selected with reference to factors
11 substantially similar to those applied to the common-fund analysis: (1) the novelty and difficulty of
12 issues involved, (2) the skill displayed in presenting them, (3) the extent to which the nature of the
13 litigation precluded other employment by the attorneys, and (4) the contingent nature of the fee
14 award, based on the uncertainty of prevailing on the merits and of establishing eligibility for the
15 award. *Serrano*, 20 Cal.App.3d at 49.

16 The *Serrano* factors militate strongly in favor of the requested fee award. Orshansky Decl.,
17 ¶ 109. Chief among these are factual risks and evidentiary challenges of substantiating unrecorded
18 time and Defendant’s failure to authorize and permit breaks on a class-wide basis. *Id.* Also, Class
19 certification was by no means a foregone conclusion. Defendant argued that Plaintiff would be
20 unable to certify a class outside of the settlement context because Plaintiff’s claims on the merits
21 would require a series of individualized mini-trials. *Id.* Defendant utilized a “bell system” for meal
22 periods, whereby a bell would ring to notify all employees to take their meal period, and another
23 bell would ring at the end of the meal period to notify all employees to return to work. *Id.* Defendant
24 alleged it provided 35-minute meal periods rather than the 30 minutes required by law. *Id.* Moreover,
25 Plaintiff would face significant hurdles to certification given that Defendant raised individualized
26 affirmative defenses such as waiver of meal periods and that on-premises rest breaks are not
27 equivalent to on-call liability in the *Augustus* case progeny. *Id.* Further, Defendant contended
28 Plaintiff would face significant hurdles to certification given that Class Members signed arbitration

1 agreements with class action waivers, which if enforceable would convert a putative class action
2 (with the potential for class-wide damages) into an individual dispute and action. *Id.* If Plaintiff
3 prevailed and certified a class action, there is no guarantee that Defendant would not later move for
4 and obtain decertification. *Id.* If the Court either denied class certification or later decertified it, the
5 Settlement Class would recover nothing and Settlement Class Members would be forced to retain
6 their own counsel and proceed on the basis of individual claims only. *Id.*

7 The attorneys' fees award is intended to reimburse Class Counsel for all uncompensated
8 work that they have already done and for all the work they will continue to do. Class Counsel
9 expended a significant amount of time involved in activities, including but not limited to, the
10 following: pre-filing investigation; analyzing Plaintiff's claims; engaging in discovery; reviewing
11 Class Members' time and pay records; meeting and conferring over information and data, including
12 Defendant's employee handbooks, policies and procedures regarding the payment of wages, the
13 provision of meal and rest breaks, time keeping policies, such as recording hours, issuance of wage
14 statements, and providing all wages at separation, as well as composite data regarding the number
15 of Class Members and the mix of current versus former employees, total number of pay periods,
16 total number of workweeks, and the average hourly rate in effect; preparing and submitting notice
17 to the LWDA; negotiating and preparing the long-form Settlement Agreement and Class Notice;
18 preparing the motions for preliminary and final approval; and otherwise litigating the case.
19 Orshansky Decl., ¶ 110.

20 The work CounselOne did was meaningful, and their hourly rates are commensurate with
21 experience and the prevailing rates among defense and plaintiffs' firms that regularly litigate wage-
22 and-hour class actions. Orshansky Decl., ¶ 111. Class Counsel's rates are commensurate with the
23 prevailing market rates in California for attorneys of comparable experience and skill handling
24 complex litigation. *Id.*, ¶ 114. Class Counsel's rates have also been approved in California and Ninth
25 Circuit courts. *Id.* The reasonableness of Class Counsel's hourly rates is further confirmed in light
26 of the hourly rates identified based on years of experience in the *Laffey* Matrix, submitted
27 concurrently herewith. *See* Orshansky Decl., ¶ 115 and Exhibit 5 (*Laffey* Matrix).

As set forth in detail in the accompanying Declaration of Anthony J. Orshansky, Class Counsel spent a substantial amount of time during the course of its representation of Plaintiff and the prosecution of this action, for a total aggregated lodestar figure of \$91,920.50. Orshansky Decl., ¶ 111 and Exhibit 4 (Attorney Task and Time Chart). With this amount, a multiplier of only 1.08 is necessary to yield the requested fees – *i.e.*, practically no multiplier at all is needed. *Id.*, ¶ 116. The requested multiplier in this case is within even the modest multipliers that are awarded by California courts. *See Vizcaino*, 290 F.3d at 1050-51 (looking to multipliers awarded in comparable cases as evidence of reasonableness; **affirming 3.65 multiplier**). **Multipliers routinely range from 3 to 5**, and it is not uncommon that **multipliers of between 5 and 10**, or higher, are applied. *See, e.g., Wilson v. Bank of Am. Natl. Trust & Savs. Assn.*, Case No. 643872 (Cal. Sup. Ct., Aug. 16, 1982) (**multiplier of 10**); *Glendora Comm. Redev. Agency v. Demeter*, 155 Cal.App.3d 456, 465 (1984) (affirming **multiplier of 12**, and expressly rejecting argument that fee was either exorbitant or unconscionable); *Wershba*, 91 Cal.App.4th at 255 (noting that “[m]ultipliers can range from 2 to 4 or even higher”); *Van Vranken v. Atlantic Richfield Co.*, 901 F.Supp. 294, 298 (N.D. Cal. 1995) (**multipliers of 3-4** are in the “range [of] common” multipliers for class actions); *Holleran v. Rita Medical Systems, Inc.*, No. RG06302394, 2007 WL 7759253 (Cal. Super. Oct. 04, 2007) (**multiplier of 4.57**); *Gutierrez v. Wells Fargo Bank, N.A.*, No. C 07-05923 WHA, 2015 WL 2438274, at *7 & 8 n.3 (N.D. Cal. May 21, 2015) (**multiplier of 4.53**); *Johnson v. Fujitsu Tech. & Bus. of Am., Inc.*, No. 16-CV-03698-NC, 2018 WL 2183253, at *7 (N.D. Cal. May 11, 2018) (**multiplier of 4.375**); *Buccellato v. AT & T Operations, Inc.*, No. C10-00463-LHK, 2011 WL 3348055, at *2 (N.D. Cal. Jun. 30, 2011) (**multiplier of 4.3**); *Chau, et al v. CVS RX Services, Inc.*, Los Angeles County Superior Court No. BC349224, Order Granting Final Approval of Class Action Settlement, Reasonable Attorneys’ Fees and Costs and Service Payments to the Class Representatives (a **3.8 multiplier** was applied based primarily on contingent risk and the “excellent results [] obtained [] with relative efficiency”).

Hence, the lodestar cross-check affirms that the fee award requested does in fact fall within the range of reasonableness. Orshansky Decl., ¶ 117.

E. The Requested Costs Reimbursement is Fair, Adequate, and Reasonable.

Class Counsel incurred and respectfully request reimbursement of \$3,761.54—which is less than the Settlement Agreement’s allocation of up to \$10,000—in litigation costs. Orshansky Decl., ¶ 119, along with itemized cost chart. Class Counsel’s request is fair, adequate, and reasonable, as all of these costs are documented and reasonably incurred. Moreover, the costs for which Plaintiff seeks reimbursement are all the types of costs routinely approved by courts. *See, e.g., Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (counsel should recover “those out-of-pocket expenses that would normally be charged to a fee paying client”); *Ashker v. Sayre*, No. 05-03759-CW, 2011 WL 825713, at * 3 (N.D. Cal. 2011) (“[C]osts of reproducing pleadings, motions and exhibits are typically billed by attorneys to their fee-paying clients [and are reimbursable].”); *Trustees of Const. Industry & Laborers Health and Welfare Trust v. Redland Ins. Co.*, 460 F.3d 1253, 1258-1259 (9th Cir. 2006) (legal research costs are reimbursable); *In re Immune Response Securities Litigation*, 497 F.Supp.2d 1166, 1177-78 (S.D. Cal. 2007) (mediation expenses, legal research, copies, postage, filing fees, messenger and overnight delivery costs are reimbursable). The requested reimbursement of costs of up to \$10,000 was fully disclosed to Class Members and there have been no objections. *See Morales Decl.*, ¶ 10. Because the expenses by Class Counsel were reasonably incurred, and no Class Member has objected to them, the Court should grant the request for reimbursement of \$3,761.54 in litigation costs.

F. The Court Should Approve the Requested Settlement Administrator Expenses.

Plaintiff requests that the Court approve \$10,000 in administration costs to the Settlement Administrator. *See Settlement Agreement*, ¶ 58(b) (agreeing to an amount up to \$10,000); *Morales Decl.*, ¶ 15. As detailed in the Settlement Administrator’s declaration submitted concurrently with this Motion, CPT performed duties in connection with this settlement that were instrumental in effectuating the settlement and the notice process. Among other things, CPT calculated each Class Member’s individual settlement payment, updated addresses contained in the class data supplied by Defendant (*e.g.*, NCOA and skip-traces), formatted the Class Notices for mailing, mailed Class Notices to all Class Members and PAGA Group Members, kept the Parties informed of any communications received from the Class Members and PAGA Group Members, and otherwise

administered the settlement. *See* Morales Decl., *passim*. For these reasons, CPT’s requested costs are fair, reasonable, and adequate, and should be finally approved.

G. The Court Should Approve Plaintiff’s Requested Class Representative’s Service Award Because the Amount Is Fair, Adequate, and Reasonable in Light of Plaintiff’s Efforts and Risks Assumed on Behalf of the Class.

A class representative must possess the same interest and suffer the same injury as the class members. “To assure ‘adequate’ representation, the class representative’s personal claim must not be inconsistent with the claims of other members of the class.” *J.P. Morgan & Co., Inc. v. Sup. Ct. (Heliotrope General, Inc.)*, 113 Cal.App.4th 195, 212 (2003). Thus, the adequacy requirement is satisfied when the class representative’s interests are not antagonistic to those of the class. *McGhee v. Crocker-Citizens Nat. Bank*, 60 Cal.App.3d 442, 451 (1976). Plaintiff has no conflicts with the Settlement Class and in fact his interests are aligned with those of the Settlement Class. *See* Orshansky Decl., ¶¶ 122-24 and Exhibit 6 thereto; Declaration of Agustin Flores (“Flores Decl.”), ¶¶ 5-6. Because Plaintiff’s claims are the same as those that would be asserted by unnamed class members were they before the Court, Plaintiff has every interest in zealously representing the unnamed class members. *See* Orshansky Decl., ¶ 122; Flores Decl., ¶¶ 5-6. Plaintiff has not shirked from his responsibility; on the contrary, Plaintiff, along with his counsel, prosecuted this case with allegiance and dedication. *See* Flores Decl., ¶¶ 7-8.

Courts routinely approve service awards or enhancement payments to compensate named plaintiffs for the services they provide and the risks they incur during class action litigation. The amount requested here is consistent with, and even less than, the \$25,000 service awards approved for each of the class representatives in the seminal case of *Clark v. American Residential Services, LLC*, 175 Cal.App.4th 785, 807 (2009), and indeed, California courts routinely grant approval of enhancements in excess of this amount in wage-and-hour cases. *See, e.g., Joel v. Athlete’s Foot Group*, Los Angeles County Super. Ct. Case No. BC234231 (\$25,000); *Fiez v. Brown Group Retail Inc., dba Famous Footwear*, Orange Super. Ct. Case No. 01CC00381 (\$35,000 to current employee of defendant and \$20,000 to former employee); *Barry v. Cost Plus, Inc.*, Orange Super. Ct. Case No. 01CC00380 (\$35,000 for each named plaintiff); *Lajoie v. The Picture People, Inc.* (Orange

1 County Super. Ct. Case No. 01CC00324 (\$25,000 each for two named plaintiffs); *Crandall v. U-*
2 *Haul Corporation*, Los Angeles County Super. Ct. Case No. BC178775 (\$20,000 for each named
3 plaintiff); *Franco v. Vans, Inc.*, Orange County Super. Ct. Case No. 01CC03995 (\$35,000 for each
4 named plaintiff); *Hogue v. WH Smith of Nevada, Inc.*, San Diego Super. Ct. Case No. G1C 830653
5 (\$20,000); *Bennett v. Countrywide Financial Corporation*, San Diego Super. Ct. Case No.
6 GIC840981 (\$35,000).

7 Here, Plaintiff seeks a service award in the amount of \$5,000, and believes that this request
8 is reasonable given his time and effort in this case, the positive response by Class Members, the
9 risks he undertook on behalf of Class Members, the potential of being assessed Defendant's costs
10 of suit, prosecuting the action during economically uncertain times, and his general release of all
11 claims against Defendant subject to a waiver of Civil Code § 1542. *See* Orshansky Decl., ¶¶ 124-
12 26; Flores Decl., ¶¶ 5-8. Plaintiff invested significant time and effort into seeing this litigation
13 through resolution, and actively participated in the prosecution of this matter, in particular but not
14 exclusively through his discussions with Class Counsel, identifying potential witnesses, providing
15 factual information to Class Counsel about Defendant's policies, practices, and procedures,
16 monitoring the progress of the case, participating in settlement discussions, evaluating the terms of
17 the settlement, and reviewing and signing the Settlement Agreement. *See* Orshansky Decl., ¶¶ 124-
18 26; Flores Decl., ¶¶ 5-8.

19 Plaintiff has diligently, adequately, and fairly represented Class Members, is a member of
20 the Settlement Class, has no conflict as outlined above, and has not placed his interests above those
21 of any member of the Class. *See* Orshansky Decl., ¶¶ 124-26; Flores Decl., ¶¶ 5-8. Furthermore, the
22 requested service award to the Class Representative was fully disclosed to Class Members in the
23 Class Notice and no objections have been made. *See* Morales Decl., ¶ 4, 10, Exhibit A.

24 Thus, Plaintiff's request for a service award is appropriate and justified as part of the
25 settlement and should be finally approved.

26 **V. CONCLUSION**

27 For the reasons stated herein, Plaintiff respectfully requests that this Court grant Plaintiff's
28 Motion and enter the [Proposed] Final Order and Judgment Granting Plaintiff's Motion for Final

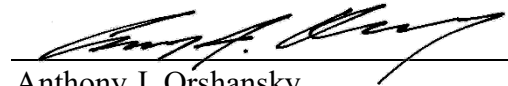
1 Approval of Class and Representative Action Settlement, Attorneys' Fees and Costs, and Class
2 Representative's Service Award.

3
4 Dated: May 11, 2025

Respectfully submitted,

5 COUNSELONE, P.C.

6 By:



7 Anthony J. Orshansky
8 P. Bartholomew Quintans
9 Attorneys for Plaintiff
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28