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behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF VENTURA

ZIYAH BLACKSTONE, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

THE BOATYARD, INC., dba The Boatyard
Pub Seafood Restaurant, a California
Corporation, and DOES 1 through 20,
inclusive,

Defendants.

CASE NO. 2023CUOE010578

**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: March 6, 2025

Time: 8:20 a.m.

Department: 41

Complaint Filed: June 22, 2023

1 PLEASE TAKE NOTICE that on March 6, 2025 at 8:20 a.m., or as soon thereafter as the
2 matter may be heard in Department 41 of the above-entitled court. Plaintiff Ziyah Blackstone
3 (“Plaintiff”) will and hereby does move this Court for: (1) an order determining the good faith of
4 and granting final approval of the proposed class action and PAGA settlement; (2) entry of the
5 proposed Order of Final Approval and Judgment; (3) an order awarding costs to the claims
6 administrator; and (4) an order awarding attorneys’ fees and costs and a class representative
7 enhancement awards 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 Joint Stipulation of Settlement and Release of Class Action (“Settlement Agreement”)
10 between Plaintiff and Defendant The Boatyard, Inc. (together with the Plaintiff, jointly hereafter
11 the “Parties”) is fair, reasonable, and adequate, achieved as the result of informed, arms-length
12 negotiations, and deserving of approval for the benefit of the Settlement Class members to whom it
13 pertains.

14 This Motion is based on this Notice and Motion, the declarations of Daniel Bass, Ziyah
15 Blackstone and Chantal Soto-Najera on behalf of CPT Group, Inc., the other papers on file in this
16 action, and such other and further oral and documentary evidence as may be submitted at or before
17 the hearing on the Motion.

18
19 Dated: February 10, 2025

MAKAREM & ASSOCIATES, APLC

20
21 By: Daniel Bass
22 Daniel Bass
23 Attorneys for Plaintiffs
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1 **I. INTRODUCTION**

2 Pursuant to California Rules of Court, Rule 3.769(g), Plaintiff Ziyah Blackstone
3 (“Plaintiff”), as Class Representatives—of the “Settlement Class” or “Settlement Class Members”
4 of all persons employed by The Boatyard, Inc. and paid on an hourly basis at any location in
5 California at any time between June 22, 2019 and June 7, 2024. (Declaration of Daniel Bass
6 [“Bass Decl.”], Exh. A)

7 The Settlement will resolve all of Plaintiff’s class claims against Defendant. As set forth in
8 Plaintiff’s Motion for Preliminary Approval, which was granted by this Court on November 12,
9 2024, this Court should approve as fair and reasonable the class-wide, non-reversionary Joint
10 Stipulation of Settlement and Release of Class Action (“Settlement Agreement”). (Bass Decl., Exh.
11 A). The amount of \$500,000.00, inclusive of all fees and costs shall be paid for settlement of the
12 claims of the Settlement Class. (Bass Decl., ¶ 13).

13 Zero Settlement Class members have opted out and it is anticipated that all 118
14 Participating Class Members will part of this Settlement. (Declaration of Chantal Soto-Najera on
15 Behalf of CPT Group, Inc. Regarding Settlement Administration. [“CPT Decl.”], ¶¶ 9-12).
16 Moreover, as no one has objected to the Settlement, this reflects that the Settlement was well-
17 received by all class members. *See* CPT Decl., ¶ 9; *see also, Anderson v. Nextel Retail Stores,*
18 *LLC*, 2010 U.S. Dist. LEXIS 43377 at *49 (C.D. Cal. 2010) (holding that a relatively high
19 participation rate and extremely low objection rate weighed in favor of approving the settlement).
20 Similarly, zero workweek disputes were submitted. (CPT Decl., ¶ 10). This unanimous
21 participation rate “supports the fairness, reasonableness, and adequacy of the settlement.”
22 *Williams v. Costco Wholesale Corp.*, 2010 U.S. Dist. LEXIS 67731 at *13 (S.D. Cal. 2010).

23 Moreover, the Court should grant Plaintiff’s requested Service Payment of \$20,000 (Bass
24 Decl., ¶¶ 15-16, 64-65), Plaintiff’s request for attorneys’ fees of \$175,000 (Bass Decl., ¶¶ 14, 63),
25 litigation costs of \$12,209.50 (*Id.*), and settlement administration costs of \$11,000 (CPT Decl., ¶
26 16), because each payment is reasonable and based on diligent work performed or costs incurred
27 for the benefit of all Class Members.

1 Accordingly, the Settlement, and all of its terms, satisfies California Rules of Court, Rule
2 3.769, and other applicable laws, such that this Court should grant final approval.

3 **II. STATUS OF THE LITIGATION**

4 **A. Factual and Procedural History**

5 This case is a putative class action alleging violations of California state law. Defendant
6 operates a restaurant inside of Ventura Harbor. (Declaration of Daniel J. Bass (“Bass Decl.”), ¶ 2).
7 Plaintiff was employed by Defendants, during the class period, as a server. During the time that she
8 was employed, Plaintiff was subject to the same policies and procedures as all other hourly
9 employees including Defendants’ meal and rest break practices. (*Id.* at ¶ 3).

10 **B. Commencement of the Action and Pleadings**

11 This action was initially filed on June 22, 2023, asserting a wage and hour class action filed
12 by Plaintiff on behalf of herself and all nonexempt employees employed by Defendants in the State
13 of California within the statutory period, and was amended on August 29, 2023 to also include an
14 action for civil penalties under the Labor Code Private Attorneys General Act, Cal. Labor Code §
15 2698, et seq. The First Amended Class Action Complaint sets forth claims for (i) failure to pay
16 minimum wages; (ii) failure to pay overtime wages; (iii) failure to provide meal periods; (iv) failure
17 to provide rest periods; (v) failure to furnish accurate wage statements; (vi) failure to indemnify
18 employees for necessary expenditures and losses; (vii) failure to pay earned wages upon termination
19 or discharge; (viii) unfair competition in violation of Business & Professions Code Section 17200;
20 and (ix) violation of Labor Code section 2698, et. seq. Plaintiff alleged these claims on behalf of all
21 of Defendants’ non-exempt employees in California. (Bass Decl., ¶ 4). Plaintiff alleged that
22 Defendants, throughout the class period, across the Defendants’ locations, lacked written policies.
23 Plaintiff further alleges that Defendants, as a practice, required employees to skip or take non-
24 compliant meal and rest periods in order to complete additional work, resulting in meal periods that
25 were regularly less than thirty minutes in length and were frequently taken after the fifth hour of
26 work. As a result of these violations, Plaintiff sought to recover meal and rest period premiums,
27 unpaid minimum wages, penalties for unpaid wages upon termination, penalties for non-compliant
28 wage statements, prejudgment interest, costs of suit, and attorneys’ fees. (*Id.* at ¶ 5)

1 Defendants contend that at all times they complied with California law. Defendants assert
2 that they properly paid employees for all time worked. Defendants further contend that they
3 provided Plaintiff and other putative class members with compliant meal and rest periods, and
4 that to the extent any employee did not take a compliant meal or rest period, the reason for the
5 non-compliant meal or rest period would be an individualized issue that would preclude class
6 certification. (*Id.* at ¶ 6).

7 **C. Investigation**

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

15 After filing the lawsuit, Class Counsel conducted an extensive investigation of the facts
16 and claims giving rise to the action, including: (1) reviewing and analyzing time and payroll
17 records and Defendants' written policies and procedures;(2) researching the applicable law and
18 evaluating potential defenses; (3) evaluating the damages based on countervailing interpretations
19 of California law; (4) Conducting formal discovery; and (5) reviewing other documentation
20 provided in litigation, including information relating to Defendants' operations, policies and
21 procedures, meal and rest breaks, premium pay for non-compliant meal and rest breaks,
22 timekeeping records, and recording of hours worked. (*Id.* at ¶ 8).

23 Defendants, for their part, vigorously contested liability, the amount of claimed damages,
24 and the propriety of class certification. After Class Counsel analyzed the relevant documentary and
25 testamentary evidence, reviewed Defendants' policies and procedures, and prepared for mediation,
26 Class Counsel determined that this case was appropriate for resolution via settlement. (*Id.* at ¶ 9).

27 **D. Mediation and Settlement**

28

1 The Parties agreed to participate in settlement discussions over the course of the litigation,
2 including mediation. Specifically, the Parties conducted a private mediation with experienced
3 mediator Henry Bongiovi on June 7, 2024. A settlement in principle was eventually reached and the
4 Parties thereafter negotiated the details of a long form settlement agreement. As a result, the Parties
5 eventually negotiated the details of the settlement agreement which cut-off the settlement class at a
6 specific date to not increase the negotiated class size and which Plaintiff now seeks the Court's
7 approval thereof. (*Id.* at ¶ 10, Ex. A).

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

9 **A. Settlement Class**

10 "Class" means *all persons employed by Defendant The Boatyard, Inc. and paid on an hourly*
11 *basis at any location in California at any time between June 22, 2019 and June 7, 2024.* CPT
12 received a data file from Defense Counsel containing Class Members' names, last-known mailing
13 addresses, social security numbers, and employment dates. The finalized mailing list contained one-
14 hundred and eighteen (118) Class Members. (CPT Decl., ¶ 4). Zero Settlement Class members have
15 opted out and it is anticipated that a total of 118 Participating Settlement Class Members that will be
16 sent an individual settlement payment, which represents 100% participation rate. (CPT Decl., ¶¶ 11-
17 14). Moreover, as no one has objected to the Settlement, this reflects that the Settlement was well-
18 received by all class members. See CPT Decl., ¶ 9. Similarly, zero potential disputes were submitted.
19 (CPT Decl., ¶ 10).

20 **B. Settlement Consideration**

21 Under the terms of the proposed agreement, the parties have agreed that all claims brought
22 on behalf of the Class shall be fully and finally resolved for a "Gross Settlement Amount" of
23 \$500,000.00. (Bass Decl. ¶ 13). The Gross Settlement Amount is non-reversionary and no portion
24 of the Settlement Amount will be returned to the Defendant. (*Id.*). The following amounts will be
25 deducted from the Gross Settlement Amount, with the amount remaining after these deductions
26 constituting the Net Settlement Amount (*Id.* at ¶¶ 14-18; CPT Decl. ¶ 13):

- 27 • **Attorneys' Fees and Costs:** Up to 35% of the Gross Settlement Amount or \$175,000.00
28 plus up to \$18,000 in actual costs and expenses, though Plaintiff's costs have been limited
to \$12,209.50;
- **Service Award:** Up to \$20,000 to the named Plaintiff as a class representative;

- **Settlement Administration Costs:** \$11,000 from the Gross Settlement Amount for the costs associated with administration of the Settlement (CPT Decl. ¶ 16);
- **PAGA Payment:** \$10,000 of the Gross Settlement Amount will be allocated to the PAGA Payment, 75%, or \$7,500.00, will be paid to the California Labor & Workforce Development Agency as the LWDA PAGA Payment, and 25%, or \$2,500, will be paid to the PAGA Members as their Individual PAGA Payments.

Thus, the Net Settlement Amount was estimated to be around \$266,000.00 (CPT Decl., ¶ 13), though this number will increase by at least \$5,790.50 in authorized but unspent litigation costs (Bass Decl., ¶¶ 14-19). Each Participating Class Member shall be eligible to receive an Individual Settlement Payment, which is a share of the Net Settlement Amount based on the pro rata number of weeks worked by the Participating Class Members during the Class Settlement Period as a proportion of all weeks worked by all Participating Class Members. (Bass Decl., ¶ 19). Based on estimated settlement calculations, prior to increasing the Net Settlement Amount for any unused costs, the average gross payment to each Settlement Class Member is \$2,254.74 and the highest is \$7,611.76. (CPT Decl., ¶ 14).

C. Claims and Settlement Fund Distribution Procedure

According to the Settlement Agreement “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur. (Bass Decl., ¶ 21, Exh. A at 1.18). Within 14 calendar days after Defendant funds the Gross Settlement Amount, 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. (*Id.*, Exh. A at 4.4)

According to the Agreement, 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. The face of each check shall prominently state the date (not less than

1 180 days after the date of mailing) when the check will be voided. The Administrator will cancel
2 all checks not cashed by the void date. The Administrator will send checks for Individual
3 Settlement Payments to all Participating Class Members (including those for whom Class Notice
4 was returned undelivered). The Administrator will send checks for Individual PAGA Payments to
5 all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved
6 Employees (including those for whom Class Notice was returned undelivered). (Bass Decl., ¶ 22,
7 Exh. A at 4.4.1). For any Class Member whose Individual Class Payment check is uncashed and
8 cancelled after the void date, the Administrator shall transmit the funds represented by such
9 checks to the California Controller's Unclaimed Property Fund in the name of the Class Member
10 thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil
11 Procedure Section 384, subd. (b). (*Id.* at 4.4.3)

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, moving for
25 class certification, at trial, and in the appellate courts. (Bass Decl., ¶ 28). Liability remains highly
26 contested by Defendants, who deny that they engaged in any violations of the law, and further deny
27 any liability or engagement in wrongdoing of any kind associated with the claims alleged in the
28 Action. Defendants contend that, at all times, they complied with all wage-and-hour laws in

1 connection with the employment of the Class Members. (*Id.* ¶ 29).

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

8 The Parties have also considered the uncertainty and risk of the outcome of further
9 litigation, and the difficulties and delays inherent in such litigation. Plaintiff is also aware of the
10 burdens of proof necessary to establish liability for the claims asserted in the action, the defenses
11 thereto, and the difficulties in establishing damages. (*Id.* ¶ 31). In evaluating the settlement, the
12 Court will seek a reasonable estimate of the nature and amount of recovery that each class member
13 could have obtained if the Plaintiff had prevailed in the litigation. Numerous decisions summarize
14 a trial court's task when considering whether to approve the settlement of a putative class action.

As Division Five of this Court stated:

15 The trial court has broad discretion to determine whether the settlement is fair.
16 [Citation.] It should consider relevant factors, such as the strength of plaintiffs' case,
17 the risk, expense, complexity and likely duration of further litigation, the risk of
18 maintaining class action status through trial, the amount offered in settlement, the
extent of discovery completed and the stage of the proceedings, the experience and
views of counsel, the presence of a governmental participant, and the reaction of the
class members to the proposed settlement.

19 *Cellphone Fee Termination Cases* (2009) 180 Cal.App.4th 1110, 1117-18, quoting *Dunk*, 48
20 Cal.App.4th at 1801.

21 The court's consideration of relevant factors, however, does not transform the settlement
22 approval "into a trial or rehearsal for trial on the merits." *7-Eleven Owners for Fair Franchising*,
23 85 Cal.App.4th at 1145 (internal citation omitted). The record need only provide the trial court
24 with an understanding of the amount that is in controversy and the realistic range of outcomes of
25 the litigation. Because settlements are inherently a compromise, once the parties have provided it
26 with the requisite "basic information," the trial court must only "satisfy itself that the class
27 settlement is within the 'ballpark' of reasonableness." *Tech-Bilt, Inc. v. Woodward-Clyde & Assoc.*
28 (1985) 38 Cal.3d 488, 499-500.

1 Here, in preparation for settlement discussions, Plaintiff calculated Defendants' liability to
2 Class Members to be in excess of the settlement amount. Plaintiff's valuation assumed that
3 Plaintiff: (1) prevailed in certifying the class; (2) prevailed in establishing liability on the merits;
4 and (3) was awarded the full amount of all discretionary penalties. (Bass Decl., ¶ 32).

5 The realistic range of outcomes for this litigation took into account the present state of the
6 law regarding meal and rest break claims and the other claims brought in the Action, Defendant's
7 defenses for each claim, and the likelihood of prevailing on a class certification motion as well as
8 trial and any appeals. Moreover, Plaintiff had to consider the significant difficulties in adding class
9 claims against the Defendant and thus factor in how much they could realistically consider for
10 settlement. (*Id.* ¶ 33). Where both sides face significant uncertainty, the attendant risks favor
11 settlement. *Hanlon v. Chrysler Corp.* (9th Cir. 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 money available to fund a settlement. In this case, Plaintiff sought unpaid
17 wages and statutory penalties as well as the equitable remedies of declaratory relief, disgorgement,
18 accounting, and restitution. (Bass Decl., ¶ 34). As explained further below, Plaintiff estimated
19 Defendants' total exposure unpaid wages and penalties pursuant to Labor Code section 203
20 approximately \$3,775,446.35. (Bass Decl., ¶ 35). Of that exposure approximately \$1,944,401.95 is
21 due to unpaid wages, and the remaining \$1,831,044.40 represents potential penalties pursuant to
22 Labor Code section 203. As such, the \$500,000 settlement represents over 13% of the estimated
23 unpaid wages due in this case. This is a reasonable recovery, particularly given the number of class
24 members at issue and the size of Defendants' operations. (*Id.*).

25 Courts have determined that settlements are, of course, reasonable even where plaintiffs
26 recover only a portion of their actual losses. *See Behrens v. Wometco Enters., Inc.* (S.D. Fla. 1988)
27 118 F.R.D. 534, 542, *aff'd*, (11th Cir. 1990) 899 F.2d 21 ("[T]he fact that a proposed settlement
28 amounts to only a fraction of the potential recovery does not mean the settlement is unfair or

1 inadequate.”). Indeed, “[a] settlement can be satisfying even if it amounts to a hundredth or even -
2 a thousandth of a single percent of the potential recovery.” *Id.*; see also *City of Detroit v. Grinnell*
3 *Corp.* (S.D.N.Y. 1972) 356 F.Supp. 1380, 1386 [a recovery of 3.2% to 3.7% of the amount sought
4 is “well within the ball park”], *aff’d in part, rev’d on other grounds*, (2d Cir. 1974) 495 F.2d 448;
5 *Martel v. Valderamma* (C.D. Cal. 2015) 2015 U.S. Dist. LEXIS 49830 * 17 (approving a settlement
6 of \$75,000 when potential damages were \$1.2 million); *In re Toys R US FACTA Litig.* (C.D. Cal.
7 2014) 295 F.R.D. 438, 453 (approving settlement with vouchers (not cash) potentially worth a
8 maximum of three percent (3%) if all possible claims were actually made, or \$391.5 million
9 aggregate voucher potential where the class could have recovered \$13.05 billion); 4 William B.
10 Rubenstein et al., *Newberg on Class Actions* (5th ed. 2016) § 13:15 (the range of reasonableness
11 percentage could be as low as 1/100th or 1/1000th of 1%); *Ma v. Covidien Holding, Inc.*, (C.D. Cal.
12 Jan. 31, 2014, No. SACV 12-02161-DOC) 2014 WL 360196, at *5 (finding a settlement worth
13 9.1% of the total value of the action “within the range of reasonableness”); *Balderas v. Massage*
14 *Envy Franchising, LLC*, (N.D. Cal. July 21, 2014, No. 12-CV-06327 NC) 2014 WL 3610945, at
15 *5 (granting preliminary approval of a net settlement amount representing 5% of the projected
16 maximum recovery at trial); *Glass v. UBS Fin. Servs., Inc.* (N.D. Cal. Jan. 26, 2007, No. C-06-4068
17 MMC) 2007 WL 221862, at *9, *aff’d*, 331 Fed. Appx. 452 (9th Cir. 2009) (approving a settlement
18 of an action claiming unpaid overtime wages where the settlement amount constituted
19 approximately 25% to 35% of the estimated actual loss to the class).

20 The Parties have capped this settlement at 9,157 workweeks during the class period. (Bass
21 Decl., ¶ 36). Any additional workweeks thereafter (representing an increase over 5%) will result in
22 a proportional increase to the settlement amount. (*Id.*) Below, Plaintiff details the issues that
23 necessitated deductions from the maximum potential value of this case to arrive at the reasonable
24 settlement of this action:

25 **Rest Periods**

26 Plaintiff calculated Defendants’ potential liability based on the records reviewed in advance
27 of mediation. Plaintiff calculated Defendant’s maximum liability to be 4.1 violations per employee
28 per workweek at the average hourly rate of \$21.89 per violation. As such, with the pre-mediation

1 estimate of 8,100 workweeks during the class period, Plaintiff estimated that Defendant's exposure
2 could be as high as \$726,966.90. Plaintiff did not discount this number or the calculations that
3 follow in order to arrive at the settlement; rather, Plaintiff discounted the number in order to reach
4 a settlement that understood the risks of continued litigation and difficulties in showing a 100%
5 violation rate for rest breaks during employee shifts. Here the realities of case supported settlement.
6 Though Plaintiff was confident in certifying such a claim given the Defendants lacked any written
7 meal policy, often the necessary testimony at trial to prove such a claim will raise manageability
8 concerns for the court. Moreover, as Defendants need only authorize such breaks an employee's
9 individual choice on when to or whether to take a break can be a determinative factor for liability
10 and damages. With these issues in mind, maintaining the cause of action's viability could even be
11 in question, so Plaintiff's counsel believed settlement an appropriate path. (*Id.* ¶ 37)

12 **Meal Periods**

13 Plaintiff calculated Defendants' potential liability based on the records reviewed in advance
14 of mediation. Those time records showed an 87.8% violation rate, most of which were meal break
15 eligible shifts that simply did not show a meal break was taken. A 87.8% violation rate at 4.1 shifts
16 per week at the average hourly rate of \$21.89 per violation over 8,100 workweeks, Plaintiff
17 estimated that Defendant's exposure could be as high as \$638,276.94. Plaintiff did not discount
18 this number or the calculations that follow in order to arrive at the settlement; rather, Plaintiff
19 discounted the number in order to reach a settlement that understood the risks of continued litigation
20 and difficulties in showing high violation rate for meal breaks during employee shifts based on a
21 lack of records. (*Id.* ¶ 38)

22 **Unpaid Overtime and Doubletime**

23 From a review of Plaintiff's time records Defendant did not pay daily overtime whenever
24 an employee worked over 8 hours. To calculate unpaid overtime, Plaintiff estimated that 28.5% of
25 shifts were 8 hours or longer, and 1 hour was underpaid per shift. At an average of 4.1 shifts per
26 week and 8,100 workweeks in the class period, and an average rate of pay of \$10.95 above the
27 regular rate, Plaintiff estimated \$103,592.78 in unpaid overtime. To calculate unpaid doubletime,
28 Plaintiff estimated that 7.9% of shifts were 10 hours or longer and 1 hour was underpaid per shift/

1 At an average of 4.1 shifts per week and 8,100 workweeks in the class period, and an average rate
2 of pay of \$10.95 above the overtime rate, Plaintiff estimated \$28,715.19 in unpaid doubletime.
3 Plaintiff discounted the number in order to reach a settlement that understood the risks of continued
4 litigation and difficulties in showing these violation rates given Defendant's inconsistent records.
5 (*Id.* ¶ 39)

6 **Unfair Competition**

7 Plaintiff did not maintain a standalone claim for unfair competition, but rather as detailed
8 in Plaintiff's operative Complaint "As alleged herein, Defendants' failure to, inter alia, pay all
9 wages earned, including minimum and overtime wages, and failure to pay premium wages in lieu
10 of missed or non-compliant meal and rest periods, all in violation of the Labor Code and Wage
11 Orders, constitutes an unlawful, unfair or fraudulent business act or practice, in violation of
12 Business & Professions Code sections 17200, et seq." Plaintiff's claims pursuant to the Business
13 & Professions Code are not separately analyzed, but rather extended period for recovering from
14 three years before filing to four years before filing for Plaintiff's Meal Period, Rest Period and
15 Unpaid Wage claims. (*Id.* ¶ 40)

16 **Penalties: Waiting Time, Wage Statement and PAGA**

17 Although the Class arguably could have seen a payout of approximately \$1,831,044.40 for
18 waiting time penalties, wage statement penalties, unpaid wage penalties, overtime penalties, failure
19 to maintain records penalties, and PAGA penalties, Plaintiff's Counsel had to weigh the likelihood
20 of recovery against probable defenses and the wide discretion Courts have exercised in awarding
21 Labor code penalties. Along these lines, Plaintiff considered that Defendant would argue that
22 Plaintiff could not prove the "willful" prong needed to obtain waiting time penalties under Cal.
23 Lab. Code § 203 and would further argue that Plaintiff could not show that Class Members suffered
24 an "injury" as a result of wage statement violations, as required by Cal. Lab. Code § 226. Further,
25 Plaintiff arguably could not recover any waiting time penalties for meal and rest claims. Moreover,
26 Plaintiff would not recover any derivative penalties if he failed to prove the underlying claims.
27 (Bass Decl. ¶ 41).

28 In addition, given Defendants' operations, Plaintiff considered the likelihood of the Court

1 using its discretion to reduce the substantial PAGA penalties as unjust, arbitrary, oppressive, or
2 confiscatory. *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157. These reductions can be
3 quite substantial, reducing the proven PAGA penalties down to a few percentage points of what
4 they were initially, even after being successfully proven. (*Id.*)

5 Plaintiff, in agreeing to the settlement had to take into account the difficulties in certifying
6 a class and maintaining any such certification. What's more, Plaintiff had to take into account the
7 uncertainties, including business uncertainties facing Defendants and similar employers during the
8 COVID 19 pandemic. Each of these concerns weighed into Plaintiff's analysis to eventually agree
9 to a settlement that is less than Defendant's total projected liability even if Plaintiff eventually won
10 every aspect of this case including potential appeal. A settlement now guarantees that class
11 members will 1) obtain a recovery and 2) that they will get the recovery in a time period that is
12 shorter than one if the case went through a full trial and appeal process. (Bass Decl., ¶ 42).

13 **Certification in General**

14 The great discretion afforded trial courts in electing to grant or deny class certification, and
15 the resultant possibility that this Court would deny certification of any of the claims, resulting in
16 no recovery whatsoever for those unnamed class members further weighed in favor of settlement.
17 Indeed, going into mediation and during the course of constructing the settlement, Class Counsel
18 bore in mind similar meal and rest break cases wherein class certification was denied. *See e.g. In*
19 *re Lamps Plus Overtime Cases* (2012) 209 Cal.App.4th 35; *Washington v. Joe's Crab Shack* (N.D.
20 Cal. 2010) 271 F.R.D. 629 ("individualized inquiry will be required to determine whether any
21 single employee failed to take a meal break because he/she was too busy, and also to determine
22 whether a particular employee signed a waiver based on a decision not to take meal breaks");
23 *Hernandez v. Chipotle Mexican Grill, Inc.* (2012) 146 Cal.Rptr.3d 424, 2012 WL 3579567, *10.

24 **Trial and Manageability Issues**

25 While Plaintiff was confident in the strength of her claims, as is always the case with a trial,
26 Plaintiff needed to accept that there was a possibility that he would not prevail at trial. Compromise
27 is inherent and necessary in the settlement process. Thus, even if "the relief afforded by the
28 proposed settlement is substantially narrower than it would be if the suits were to be successfully

1 litigated,” this is no bar to a class settlement because “the public interest may indeed be served by
2 a voluntary settlement in which each side gives ground in the interest of avoiding litigation.” *Id.* at
3 250 (quoting *Air Line Stewards, Loc. 550 v. American Airlines, Inc.*, (7th Cir.1972) 455 F.2d 101,
4 109. The Ninth Circuit observed “the very essence of a settlement is compromise, ‘a yielding of
5 absolutes and an abandoning of highest hopes.’” *Officers for Justice v. Civil Serv. Commission* (9th
6 Cir.1982) 688 F.2d 615, 624 (citation omitted). Thus, when analyzing the amount offered in
7 settlement, the Court should examine “the complete package taken as a whole,” and the amount is
8 “not to be judged against a hypothetical or speculative measure of what might have been achieved
9 by the negotiators.” *Id.* at 625, 628.

10 Given the difficulties Plaintiff and the Settlement Class faced, both in terms of certification
11 and in adjudicating their claims on the merits, the litigation discounts afforded by Plaintiff are
12 appropriate and the settlement is fair, reasonable, and adequate. In the present case, it is clear that
13 the settlement before this Court is the best course of action as it ensures a fair and adequate recovery
14 for the members of the class. Thus, it was clearly reasonable for Plaintiff to negotiate a smaller
15 certain award rather than seek the full recovery but risk recovering nothing. (Bass Decl., ¶¶ 36-37).

16 The settlement amount was a negotiated compromise, factoring in the risks related to
17 certification, liability, and damages. Taking into account all of the circumstances of the action and
18 the significant factual and legal defenses raised by Defendant against certification, liability, and
19 damages, Class Counsel believe that the settlement is fair and reasonable. Each Class Member’s
20 individual share of the settlement amount is tailored to the number of workweeks worked by each
21 Class Member during the class period so the distribution is weighted in favor of those Class
22 Members who were potentially most affected by the alleged violations. Moreover, because the
23 class consists of several employees, it was unlikely that the potential monetary claims of individual
24 Class Members would have proved viable without the class-action mechanism. (Bass Decl., ¶ 43).

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

26 This “Parties represented by competent counsel are better positioned than courts to
27 produce a settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pacific*
28 *Enterprises Security Litigation*, 47 F.3d 373, 378 (9th Cir. 1995). Here, Plaintiff is represented by

1 competent and experienced counsel who possess extensive experience litigating wage and hour
2 class actions and have been appointed as class counsel in numerous cases alleging similar claims.
3 (Bass Decl., ¶¶ 44-54).

4 There is an initial presumption that a proposed settlement is fair and reasonable if it is the
5 result of arms-length negotiations. See *Williams v. Vukovich*, 720 F.2d 909, 922-923 (6th Cir,
6 1983) (“The court should defer to the judgment of experienced counsel who have competently
7 evaluated the strengths of his proofs.”); *In re Excess Value Ins. Coverage Litig.*, No. M-21-84
8 (RMB) 2004 WL 1724980, at *10 (S.D.N.Y. July 30, 2004) (“Where ‘the court finds the
9 settlement is the product of arm’s length negotiations conducted by experienced counsel
10 knowledgeable in complex class litigation, the settlement will enjoy a presumption of fairness.’”);
11 *In re Inter-Op Hip Prosthesis Liab. Litig.*, 204 F.R.D. 330, 351 (N.D. Ohio 2001) (granting
12 preliminary approval of settlement “where the settlement is the result of extensive negotiations by
13 experienced counsel...”); see also 2 Hebert Newberg & Alba Conte, *Newberg on Class Actions*,
14 §11.41 at 90 (4th Ed. 2001).

15 Counsel for Plaintiff have extensive experience in employment law, particularly wage and
16 hour class action litigation. (Bass Decl., ¶¶ 44-54). Counsel for Plaintiff and Defendant each
17 zealously negotiated on behalf of their respective clients’ best interests, and the Settlement was
18 reach after lengthy negotiations. As a result, the Settlement is presumed to be fair and reasonable,
19 and was not the product of collusion.

20 **D. No Class Members Objected to the Settlement**

21 As part of CPT’s preparation for mailing, all 3,878 names and addresses contained in the
22 Class List were processed against the National Change of Address (“NCOA”) database,
23 maintained by the United States Postal Service (“USPS”), for purposes of updating and
24 confirming the mailing addresses of the Settlement Class Members before mailing of the Notice
25 Packet. (See CPT Decl., ¶ 5). On December 5, 2024, the Notices were mailed by U.S. first class
26 mail to the Settlement Class Members. The deadline to submit requests for exclusion or objection
27 was February 3, 5 (*Id.*, ¶ 6). 20 Notice Packets were returned, all of which were skipped traced
28 and 9 were mailed again to the newly discovered addresses. (*Id.*, ¶¶ 7-8). Ultimately, 11 Notice

1 Packets were undeliverable with no forwarding address, where no new address could be found
2 through the Post Office or skip trace. (*Id.*, ¶ 8).

3 The Administrator has received 0 requests for exclusion from the Settlement, 0 disputes
4 and 0 objections. (*Id.*, ¶¶ 9-12). A 100% participation rate is anticipated. (*Id.*, ¶ 14). Accordingly,
5 all factors typically used by California courts to determine the appropriateness of final approval
6 of a class action settlement weigh in favor of finding that this Settlement is a fair and reasonable
7 result after well-represented parties who engaged in arms-length negotiations over hotly-
8 contested and unclear issues of California's wage and hour laws, culminating in a settlement that
9 provides a substantial benefit to all Class Members. In other words, the Settlement as proposed by
10 the parties should be finally approved.

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

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

13 In the Settlement, Defendant agreed, subject to Court approval, to pay Class Counsel an
14 award of reasonable attorneys' \$175,000.00 in attorney's fees, and actual litigation costs and
15 expenses not to exceed \$18,000 (Bass Decl., Exh., A), for work performed for the benefit of the
16 Class. To date, Class Counsel has incurred only \$12,209.50 in litigation costs. (Bass Decl., ¶ 62,
17 Exh. D;). In terms of their actual time spent on the matter, Class Counsel will have collectively
18 spent more than 238.1 hours. (Bass Decl., ¶ 58) Multiplying the hours by their hourly rates, Class
19 Counsel's incurred fees exceeds \$180,478.50. (Bass Decl., ¶¶ 58-60). Class Counsel anticipate
20 spending additional time attending the final approval hearing and working with the Settlement
21 Administrator through the disbursement and accounting process, that will likely exceed 30 hours.
22 (Bass Decl., ¶ 60).

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

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

1 *Lealao*, 82 Cal.App.4th 19, 26-27. As stated above, Class Counsel’s fees incurred litigating this
2 case already exceeds \$180,478.50. (Bass Decl., ¶¶ 58-60). Beyond a simple review of Class
3 Counsel’s hours worked, the fee award presently requested comports with attorneys’ fee awards
4 issued by other courts under both the “common fund” and “lodestar” methodologies.

5 Because the requested award is well within those typically provided a multiplier when
6 approved by California courts, and because it is fully supported by the factors that California
7 courts consider in determining the reasonableness of attorney fee awards in class action cases,
8 Class Counsel respectfully submit that their request for \$175,000 in fees is appropriate.

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

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

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

25 **1. The “Common Fund” Doctrine**

26 The California Supreme Court has held it is advisable for trial courts to employ the
27 “common fund” doctrine to award attorneys' fees and costs to Class Counsel in class actions,
28 where litigants proceeding in a representative capacity have secured a monetary settlement or

1 judgment on behalf of the class. *Serrano*, 20 Cal.3d at 35-40. The United States Supreme Court
2 has specifically endorsed the use of the percentage of the fund method in paradigmatic common
3 fund cases such as this one. *Blum v. Stenson*, 465 U.S. 886, 900 fn. 16 (1984) [“... under the
4 ‘common fund doctrine,’ ... a reasonable fee is based on a percentage of the fund bestowed on the
5 class...”]; see also, *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Vincent v. Hughes Air*
6 *West, Inc.*, 557 F.2d 759, 769 (9th Cir.1977).

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

14 Various federal courts have made similar attorneys’ fee awards of a similar or greater
15 percentage to that requested in this case. (See, e.g., *In re Pacific Enters. Sec. Litig.* (9th Cir. 1995)
16 47 F.3d 373, 379 (affirming an award equal to 33% of the common fund); *In re Activision Sec.*
17 *Litig.* (N.D. Cal. 1989) 723 F. Supp. 1373, 1375 (awarding plaintiffs’ counsel 32.8% of the
18 common fund created to settle the litigation); *In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526
19 F. Supp. 494, 500-503 (awarding 45% of \$7.3 million settlement fund); *Beech Cinema, Inc. v.*
20 *Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F. Supp. 1195, 1197-1199
21 (approximately 53% of the settlement fund awarded); *Van Gemert v. Boeing Co.* (S.D.N.Y. 1981)
22 516 F. Supp. 412, 420 (awarding 36% of settlement fund); *Parker v. City of Los Angeles* (1974)
23 44 Cal.App.3d 556, 557-68 (affirming fee award to counsel of one-third of recovery achieved).)

24 In fact, fees amounting to 35% or more of the settlement fund are often awarded. In
25 *Crandall v. U-Haul* (Los Angeles County Super. Ct., Case No. BC178775), the Honorable Steven
26 Czuleger awarded a 40% attorney fee request in an overtime-exemption class action; in *Bushnell*
27 *v. Cremar, Inc.* (Orange County Super. Ct., Case No. 657778), the Honorable Donald E.
28 Smallwood awarded attorneys’ fees in the amount of 38%; in *Abzug v. Kerkorian* (CA000981,

1 Los Angeles County Super. Ct., November 1990), the Honorable R. William Schoettler awarded
2 a 45% fee; in *Haitz v. Meyer, et al.* (Alameda County Super. Court, 8-20-1990 No. 572968-3), the
3 court awarded a 40% fee; in *Elliott v. Clothestime* (Orange County Super. Ct., Case No. 01-
4 CC00333), the Honorable Jonathan Cannon awarded a 40% fee in a wage-and-hour class action
5 which had not yet proceeded to the class certification stage; and in both *Rippee v. Boston Market*
6 *Corporation* (C.D. Cal. Case No.: 05 CV 1359 BTM (JMA)) and *Barile v. Boston Market*
7 *Corporation* (C.D. Cal. Case No.: 05 CV 1360 BTM (JMA)), the Honorable Judge Barry T.
8 Moskowitz awarded a 40% fee to plaintiffs' counsel in wage and-hour class actions that had not
9 proceeded to the class-certification stage.

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

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

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

21 The lodestar method requires that a trial court first determine a "lodestar" figure based on
22 a "careful compilation of the time spent in reasonable hourly compensation for each attorney
23 involved in the presentation of the case." *Serrano*, 20 Cal.3d at 48. Presently, the "lodestar"
24 figure exceeds \$180,478.50. (Bass Decl., ¶¶ 57-60). The lodestar figure may then be increased by
25 the application of a "multiplier." (*Id.*) This settlement comes after protracted litigation, and Class
26 Counsel has provided this Court with both a summary of their hourly rates and hours billed in this
27 matter that attest to their diligent efforts. To summarize the lodestar, Class Counsel's time
28 summaries show that they worked over 238.1 hours on this case, not even including all the hours

1 spent on this motion, for the final approval hearing, and through the distribution and accounting
2 process thereafter. (Bass Decl., ¶¶ 57-60). Based on their hourly rates, the lodestar calculation
3 produces over \$180,478.50, not even requiring a multiplier to reach the requested fees. (*Id.*)

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

5 The lodestar amount may be increased by applying a multiplier. *See Serrano*, 20 Cal.3d at
6 49; *Beasley v. Wells Fargo Bank* (1991) 235 Cal.App.3d 1407. In California, “[m]ultipliers can
7 range from two to four or even higher” and are routinely applied in the range requested by Class
8 Counsel. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 254; *see also Chavez v.*
9 *Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 (upholding 2.5 multiplier); *Glendora Community*
10 *Redevelopment Agency v. Demeter* (1984) 155 Cal.App.3d 465 (affirming a fee award that
11 included a 12.0 multiplier); *Craft v. County of San Bernardino* (C.D. Cal. 2008) 624 F.Supp.2d
12 1113, 1125 (awarding a common fund fee which amounted to a 5.2 multiplier); *Vizcaino v.*
13 *Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051 (approving a 3.65 multiplier); *Van Vranken*
14 *v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 298-299 (approving multiplier of
15 3.6). Some of the factors a trial court considers when determining whether to apply a multiplier
16 are: “(1) the novelty and difficulty of the questions involved, (2) the skill displayed in presenting
17 them, (3) the extent to which the nature of the litigation precluded other employment by the
18 attorneys, (4) the contingent nature of the fee award.” *See Ketchum v. Moses* (2001) 24 Cal.4th
19 1122, 1132 (citations omitted). The ultimate goal is “to entice competent counsel to undertake
20 difficult public interest cases.” *San Bernardino Valley Audubon Soc. v. County of San*
21 *Bernardino* (1985) 155 Cal.App.3d 738, 755. Fee awards that are too small “chill the private
22 enforcement essential to the vindication of many rights....” *Lealao v. Beneficial California, Inc.*
23 (2000) 82 Cal.App.4th 19, 53. In the Los Angeles Superior Court the Honorable Amy D. Hogue
24 approved a multiplier of 3.25 based on similar factors in *Sofia Lopez v. Citrus Valley Health*
25 *Partners, Inc.*, Los Angeles Superior Court case number BC544139 (Final approval granted
26 November 19, 2015) and in the Alameda Superior Court, the Honorable Paul D. Herbet Awarded
27 Makarem & Associates a fee award with a multiplier over 2.5 in *Porter et al. v. Equinox*
28

1 *Holdings, Inc.*, Alameda Superior Court case number RG19009052 (judgment entered September
2 26, 2023).

3 In *Ketchum*, the California Supreme Court held that fee enhancement in contingency cases
4 is necessary to (1) fully compensate counsel for the “loan” of legal services in light of the
5 inherent high risk of “default” posed by losing the case, and (2) encourage competent counsel to
6 take on fee award cases. *Ketchum*, 24 Cal.4th at 1132-1133. As the court noted, “A lawyer who
7 both bears the risk of not being paid and provides legal services is not receiving the fair market
8 value of his work if he is paid only for the second of these functions. If he is paid no more,
9 competent counsel will be reluctant to accept fee award cases.” *Id.* at 1133 (citations omitted).
10 Similarly, in *Greene v. Dillingham Construction N.A., Inc.* (2002) 101 Cal.App.4th 418, 426, the
11 Court of Appeal held that the trial court erred by refusing to consider contingent risk as a factor in
12 the decision to apply a multiplier. The court recognized that “[t]he adjustment to the lodestar
13 figure, e.g., to provide a fee enhancement reflecting the risk that the attorney will not receive
14 payment if the suit does not succeed, constitutes earned compensation; unlike a windfall, it is
15 neither unexpected nor fortuitous. Rather, it is intended to approximate market-level
16 compensation for such services, which typically includes a premium for the risk of nonpayment
17 or delay in payment of attorney fees.” *Id.* (citations omitted).

18 Application of a multiplier would be appropriate but is unnecessary. Having filed
19 Plaintiff’s initial case on June 22, 2023, Class Counsel will have been litigating this case for two
20 years before receiving any reimbursement, expending significant time and resources which could
21 have been directed towards other cases. Class Counsel agreed to litigate this case on a contingent
22 fee basis, and in the process assumed considerable risk given the uncertain proposition these types
23 of cases entail. (Bass Decl., ¶¶ 55, 61). As the results in other cases demonstrate, the risk
24 presented in this case was significant. Courts frequently dismiss class and representative
25 allegations and compel arbitration in similar cases. Class Counsel takes multiple risks while
26 trying to vindicate the rights of workers and serve to illustrate the recognition by the California
27 Supreme Court in *Ketchum* that, if multipliers are not awarded to class counsel in the cases that
28 are successfully settled, counsel’s fees are essentially being cut because the lodestar in and of

1 itself would not account for contingent risk. Thus, application of a multiplier would be
2 appropriate given the contingent risk incurred by Class Counsel, the difficulty of the questions
3 involved, the substantial benefit conferred on the Class and State as a result of the Settlement, and
4 the skill displayed by Class Counsel. Plaintiffs respectfully requests that the Court award Class
5 Counsel the requested fees of \$175,000, under the common fund theory with a lodestar cross-
6 check.

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

8 In the course of this litigation, Class Counsel have incurred costs totaling \$12,209.50 and
9 will incur additional expenses in filing this motion and through the completion of the
10 disbursement and accounting process (including, but not limited to, filing this Motion and
11 appearance at the hearing, and other appearances and communications regarding final
12 accounting). Such litigation-related costs are reimbursable in class action cases. *In re United*
13 *Energy Corp. Sec. Litig.*, 1989 U.S.Dist. LEXIS 19146 at *16 (C.D. Cal. 1989) [quoting
14 Newberg, Attorney Fee Awards § 2:19 (1987)].

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

19 **D. The Proposed Service Award to the Plaintiff Is Reasonable**

20 The parties have agreed to a service award of no more than \$20,000.00 to Plaintiff (Bass
21 Decl., Exh. A). The Service Award is proper for several reasons. First, service awards “are not
22 uncommon and can serve an important function in promoting class action settlements.” *Sheppard*
23 *v. Consolidated Edison Co. of New York, Inc.*, 2002 WL 2003206, * 5 (E.D.N.Y. 2002); see also
24 *Petrovic v. Amoco Oil Co.*, 200 F.3d 1140 (8th Cir. 1999) (noting that class representatives
25 frequently receive substantial incentive payments); *In re Southern Ohio Correctional Facility*,
26 175 F.R.D. 270, 272 (S.D. Ohio 1997) (“[c]ourts routinely approve incentive awards to
27 compensate named plaintiffs for the services they provided and the risks they incurred during the
28 course of the class action litigation”).

1 Second, the service award is proper considering that Plaintiff spent a substantial amount
2 of her own time to ensure that the class claims could proceed and to ensure that class members
3 received a benefit in this case. (Bass Decl., ¶¶ 64-65). Plaintiff worked with counsel to assist in
4 this case. Plaintiff fully participated in this action throughout the pendency of the litigation,
5 including through the very contentious settlement negotiation. Plaintiff was kept well informed
6 of the nature and extent of settlement discussions and approved the same. As such, the Service
7 Award of \$20,000 sought for Plaintiff is reasonable, represents a small percentage of the Net
8 Settlement Amount, and does not even account for all of the damages Plaintiff could have sought
9 for herself individually. Absent the actions taken by Plaintiff, none of the Class Members would
10 have reaped the rewards of this action. It is estimated that over the course of the lawsuit, Plaintiff
11 has spent over 85 hours working on the case for the benefit of both herself and the other members
12 of the class. (Bass Decl., ¶ 65; Blackstone Decl., ¶¶ 4-11)

13 Third, the parties - who conducted arms-length settlement negotiations – have agreed that
14 the Service Award is fair and reasonable in light of: (i) Class Representative’s efforts as plaintiff
15 in the Litigation and (ii) her execution of a full, general release.

16 Fourth, notice was provided to the class that the service award would be paid, and no class
17 member has objected as of the filing of this motion. The other class members, who undertook
18 none of the risks which Plaintiff did, stand to substantially benefit from the Plaintiff’s willingness
19 to come forward without having to take any action to recover for unpaid wages.

20 Lastly, courts have frequently approved substantial incentive payments to class members
21 for their participation in class action lawsuits. See *In re Southern Ohio Correctional Facility*,
22 *supra*, 175 F.R.D. at 272 (recognizing that “[c]ourts routinely approve incentive awards to
23 compensate named plaintiffs for the services they provided and the risks they incurred during the
24 course of the class action litigation.”); *Ingram v. The Coca-Cola Co.*, 200 F.R.D. 685, 694 (N.D.
25 Ga. 2001) (\$300,000 incentive award to each named plaintiff); *Enterprise Energy Corp. v.*
26 *Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 250-251 (S.D. Ohio 1991) (incentive
27 payments of \$50,000 to each class representative); *In re Dunn & Bradstreet Credit Services*
28 *Consumer Litigation*, 130 F.R.D. 366, 373-374 (S.D. Ohio 1990) (incentive payments amounting

1 to \$35,000 to \$55,000 for each class representative); see also, *Van Vranken v. Atlantic Richfield*
2 *Co.*, 901 F.Supp. 294, 299-300 (N.D. Cal. 1995) (approving \$50,000 participation award); *Lo Re*
3 *v. Chase Manhattan Corp.*, 1979 U.S. Dist. LEXIS 12210, *16-17 (S.D.N.Y. 1979) (payment of
4 \$229,000 out of \$1,579,000 settlement fund to settle named plaintiffs claims did not cause the
5 settlement to be unreasonable).

6 In sum, the named Plaintiff took risks, bore hardships, and made sacrifices that absent
7 class members did not. Indeed, Plaintiff suffered from particularly high violations, including of
8 overtime pay which she could have recovered and done so more quickly on an individual basis.
9 (Bass Decl., ¶¶ 64-65; Blackstone Decl., ¶¶ 4-11). Rewarding her efforts is a proper incentive for
10 individuals who come forward to challenge employment practices on a class-wide level, thus
11 fulfilling the policies and purposes underlying the Labor Code.

12 **E. Submission to the LWDA and Review by Defendants**

13 Concurrently with this submission to the Court, Plaintiffs' Counsel uploaded this motion,
14 supportive declarations, Proposed Order and Judgment to the LWDA's website. (Bass Decl., ¶ 67,
15 Exh. E). A draft of Plaintiff's Motion and Proposed Order and Judgment was provided to counsel
16 for Defendant before they were filed. (Bass Decl., ¶ 68) Defendant did not raise any issues with
17 the form or content of the Motion and provided consent to their filing. (*Id.*) Therefore it is
18 Plaintiff's understanding that final approval will not be contested by the Defendant. (*Id.*)

19 **VI. CONCLUSION**

20 For the foregoing reasons, Plaintiffs respectfully request that the Court grant final
21 approval the proposed settlement, certifying the Settlement Class, and entering the Proposed
22 Order and Judgment submitted concurrently herewith.

23
24 Dated: February 10, 2025

MAKAREM & ASSOCIATES, APLC

25
26 By: Daniel Bass
27 Daniel Bass
28 Attorney for Plaintiffs