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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

JAMES FRYER, on behalf of himself and others similarly situated, Plaintiff, v. T. E. ROBERTS, INC.; and DOES 1 through 100, inclusive, Defendants.	Case No. 30-2023-01341160-CU-OE-CXC Assigned for all purposes to: Hon. David A. Hoffer, Dept. CX103 **<u>CLASS ACTION</u>** **NOTICE OF MOTION AND PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT, ATTORNEYS' FEES AND COSTS, ADMINISTRATION COSTS, AND CLASS REPRESENTATIVE'S ENHANCEMENT PAYMENT; MEMORANDUM OF POINTS AND AUTHORITIES** [Declarations of Anthony J. Orshansky, James Fryer, and Regina Cutler, and Proposed Final Approval Order and Judgment submitted concurrently herewith] <u>Final Approval Hearing</u> Date: January 5, 2026 Time: 1:30 p.m. Dept. CX103

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:

PLEASE TAKE NOTICE that on January 5, 2026 at 1:30 p.m., or as soon thereafter as the matter may be heard before the Honorable David A. Hoffer in Department CX103 of the above-captioned court located at 751 W. Santa Ana Blvd., Santa Ana, California 92701, Plaintiff James Fryer ("Plaintiff" or "Class Representative"), individually and on behalf of all others similarly situated, will and hereby does move this Court for entry of an order pursuant to Code of Civil Procedure section 382 and California Rules of Court, Rule 3.769:

1. Granting final approval of the settlement as fair, adequate, and reasonable based upon the terms set forth in the parties' Stipulation of Class and Representative Action Settlement and Amendment to Stipulation of Class and Representative Action Settlement (collectively, "Settlement Agreement") entered into with Defendant T. E. Roberts, Inc.;

2. Confirming certification of the conditionally certified Class for settlement purposes under Code of Civil Procedure section 382;

3. Confirming the appointment of Plaintiff as the Class Representative for settlement purposes;

4. Confirming the appointment of CounselOne, PC as Class Counsel for settlement purposes;

5. Approving an award of $225,000 in attorneys' fees to Class Counsel;

6. Approving an award of $19,048.95 in litigation costs to Class Counsel;

7. Approving an award of $21,500 to CPT Group, Inc. for its settlement administration services;

8. Approving an award of $10,000 to Plaintiff as an enhancement payment, in recognition of his services as Class Representative; and

9. Entering final judgment in the form of the Proposed Final Order and Judgment Granting Plaintiff's Motion for Final Approval of Class and Representative Action Settlement, Attorneys' Fees and Costs, Administration Costs, and Class Representative's Enhancement Payment, submitted concurrently herewith.

This motion is made on the grounds that: (1) the conditionally certified Class continues to meet the requirements for class certification for settlement purposes only under Code of Civil Procedure section 382; (2) Plaintiff and Class Counsel continue to be adequate representatives of the Class; (3) the settlement is a fair, adequate, and reasonable compromise of disputed wage and hour claims; and (4) the requested awards of attorneys' fees and costs, enhancement payment, and settlement administration costs are all fair, adequate, and reasonable, and (5) in light of the foregoing, the Proposed Final Order and Judgment Granting Plaintiff's Motion for Final Approval of Class and Representative Action Settlement, Attorneys' Fees and Costs, Administration Costs, and Class Representative's Enhancement Payment, submitted concurrently herewith, should be entered to give finality to, and allow for disbursements from, the settlement.

This Motion is based on this Notice; the attached Memorandum of Points and Authorities; the concurrently filed Declarations of Anthony J. Orshansky, James Fryer, and Regina King of CPT Group, Inc., and exhibits attached thereto; the Settlement Agreement; all other pleadings and papers on file in this action; and on any further oral or documentary evidence or argument presented at the time of hearing.

Dated: December 9, 2025

Respectfully submitted,

COUNSELONE, PC

By: ______________________

Anthony J. Orshansky
P. Bartholomew Quintans
Attorneys for Plaintiff, Settlement Class Members, and PAGA Group Members

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

Other Authorities

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff James Fryer ("Plaintiff" or "Class Representative") hereby submits this Memorandum of Points and Authorities in support of his Motion for Final Approval of this class and representative action settlement on behalf of all current and former hourly paid or non-exempt employees who worked for Defendant T. E. Roberts, Inc. ("Defendant") within the State of California during the Class Period, which is defined as the period beginning on August 8, 2019 and ending on March 29, 2024 (the "Class" or "Class Members;" "Settlement Class" or "Settlement Class Members" are Class Members who do not opt out of the settlement).

The Stipulation of Class and Representative Action Settlement, and Amendment to Stipulation of Class and Representative Action Settlement (collectively, "Settlement Agreement")[1] entered into between Plaintiff and Defendant (the "Parties"), if approved, will resolve specific claims of Plaintiff, Settlement Class Members, and PAGA Group Members[2] in exchange for Defendant's agreement to pay ***Seven Hundred Fifty Thousand Dollars ($750,000)*** into a non-reversionary common settlement fund. This is a favorable resolution of the disputed wage and hour claims in this case. As of the date of filing of this Motion, not a single Class Member has objected to the settlement after receiving notice of the proposed settlement and the projected individual settlement payments, and only one (1) Class Member has requested exclusion from the settlement, resulting in a 99.64% settlement participation rate. (See Declaration of Regina Cutler of CPT Group, Inc. ("CPT") Regarding Notification and Settlement Administration ("Cutler Decl."), filed concurrently herewith, at ¶¶ 9-11.)

The Court should grant Plaintiff's motion because: (1) the conditionally certified Class continues to meet the requirements for class certification for settlement purposes under Code of Civil Procedure section 382; (2) the settlement is a fair, adequate, and reasonable compromise of the

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[1] A copy of the Settlement Agreement is attached to the Declaration of Anthony J. Orshansky ("Orshansky Decl.), filed concurrently herewith, at Exh. A. The Parties' original Settlement Agreement is Exhibit A-1; the Amendment to the Settlement Agreement is Exhibit A-2.

[2] "PAGA Group Member(s)" are defined as all Class Members employed by Defendant within California during the PAGA Period. (Settlement Agreement ¶ 27.) "PAGA Period" is defined as the period beginning on May 8, 2022 and ending on March 29, 2024. (*Id.* at ¶ 30 and Amended ¶ 7.)

disputed claims in this case; and (3) the amounts requested for Class Counsel's attorneys' fees and costs, Plaintiff's enhancement payment, and settlement administration costs are all fair, adequate, and reasonable. In light of the foregoing, this Court should enter the Proposed Final Order and Judgment Granting Plaintiff's Motion for Final Approval of Class and Representative Action Settlement, Attorneys' Fees and Costs, Administration Costs, and Class Representative's Enhancement Payment, submitted concurrently herewith.

II. BACKGROUND

This action seeks to recover unpaid wages, premiums for non-compliant meal and rest breaks, restitution, liquidated damages, penalties for improper wage statements, waiting time penalties, civil penalties pursuant to California's Private Attorneys General Act, Labor Code section 2698 et seq. ("PAGA"), injunctive and other equitable relief, prejudgment interest, and attorneys' fees and costs. (Orshansky Decl. ¶ 27.) Defendant denied Plaintiff's allegations of wrongdoing, but in an effort to reach a compromise, the Parties participated in a full-day mediation before Steve Rottman, Esq. (*Id.* at ¶¶ 28, 31.) The Parties engaged in extensive discovery, informally exchanging information and documents, and reviewing and analyzing extensive data made available by Defendant, all of which enabled the Parties to thoroughly evaluate Plaintiff's claims, the claims of the Class Members, and the aggrieved employees' PAGA claim, along with Defendant's affirmative defenses, and the likely outcomes, risks, and expense of pursuing litigation. (*Id.* at ¶¶ 29-30.) Pursuant to the mediator's proposal, the Parties came to an agreement on all material terms of the settlement. (*Id.* at ¶ 32.)

Following the filing of Plaintiff's Motion for Preliminary Approval of the Settlement, in response to points raised by this Court in its July 11, 2025 Minute Order, the Parties entered into the Amendment to the Settlement Agreement and submitted supplemental papers to advise the Court of the same. (Orshansky Decl. ¶ 16.) This Court, finding that the supplemental papers sufficiently addressed the issues that it had raised, issued a minute order on September 22, 2025, granting Plaintiff's Motion for Preliminary Approval and scheduling a final approval hearing. (*Ibid.*) The Court also entered a separate Amended Order Granting Preliminary Approval of Class and

Representative Action Settlement (ROA #114). (*Ibid.*) Now, through this Motion, Plaintiff seeks final approval of the settlement that the Court preliminarily approved, as described herein.

III. SUMMARY OF THE SETTLEMENT

The settlement provides for a release on behalf of Plaintiff, Settlement Class Members, and PAGA Group Members in exchange for the creation by Defendant of a non-reversionary common fund of Seven Hundred and Fifty Thousand Dollars ($750,000) ("Gross Settlement Amount"). The amount available for distribution to Settlement Class Members is determined by deducting the following from the Gross Settlement Amount:

- Up to $225,000—which is 30% of the Gross Settlement Amount—in attorneys' fees, and up to $20,000 in litigation costs to Class Counsel [actual costs are $19,048.95] ("Attorneys' Fees and Costs");
- Up to $10,000 to Plaintiff ("Enhancement Payment")—in recognition of his service as the Class Representative and in exchange for a general release of claims ;
- Up to $60,000 to settle all claims under the PAGA ("PAGA Payment")—of which 75% ($45,000) is allocated for payment to the LWDA for civil penalties pursuant to statute ("LWDA Penalties"), and 25% ($15,000) is allocated to PAGA Group Members; and
- Up to $22,000 to the Settlement Administrator to notify Class Members and administer the settlement [actual costs are $21,500] ("Administration Costs").

(Orshansky Decl. ¶ 8; Settlement Agreement ¶ 54.) The amount remaining after the foregoing deductions ("Net Settlement Amount"), approximately $414,451.10,[3] will be paid out pro rata to Settlement Class Members based on the number of workweeks worked during the Class Period, and PAGA Group members will receive their pro rata share of the 25% of the PAGA Payment based on the number of pay periods worked during the PAGA Period. (Settlement Agreement ¶ 54.) Settlement Class Members shall receive payments ("Individual Settlement Shares") without the need

[3] The Parties originally estimated the Net Settlement Amount to be $388,000. However, pursuant to the Court's request, the attorneys' fees award requested was revised to 30% of the Gross Settlement Amount in the Amendment to the Settlement Agreement. Further, Class Counsel's actual litigation costs was under the allotted amount of $20,000, and CPT discounted their fee below the allotted amount of $22,000.

to submit a claim form, and PAGA Group Members shall receive PAGA payments irrespective of whether they opt out of the settlement. (*Id.* at ¶¶ 59, 66(b).)

IV. NOTICE AND ADMINISTRATION

On October 21, 2025, CPT, the Court-approved settlement administrator, mailed the Notice of Pendency of Class and Representative Action Settlement ("Class Notice") and Request for Exclusion Form ("Notice Packet"), as revised, to Class Members and PAGA Group Members via first class U.S. mail. (Cutler Decl. ¶¶ 6-7 and Exh. A [Notice Packet].) CPT made reasonable efforts to obtain current mailing addresses before the mailing, and performed skip traces on and re-mailed returned Class Notices. (*Id.* at ¶¶ 5, 8.) Class Members had until December 5, 2025 to submit disputes, requests for exclusion, or objections. (*Id.* at ¶ 7.) Not a single Class Member has submitted a dispute as to workweeks listed on the Class Notice or objected to the settlement, and only one (1) Class Member requested exclusion from the class settlement; accordingly, this results in a 99.64% settlement participation rate. (*Id.* at ¶¶ 9-11.) The average Individual Settlement Share to Settlement Class Members is $1,498.19, and the average individual PAGA payment to PAGA Group Members is $81.08. (*Id.* at ¶¶ 12-13; Orshansky Decl. ¶ 15.)

V. ARGUMENT

A. This Court Should Confirm Its Conditional Certification of the Settlement Class under Code of Civil Procedure § 382.

Under Code of Civil Procedure section 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 predominate over questions unique to individual class members; (3) the representative's claims are typical of the class's claims; and (4) the representative will fairly and adequately represent the class's interests. (See *Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470.) Here, this Court found that the proposed Class meets all the requirements for class certification for settlement purposes when it granted preliminary approval of the Settlement Agreement on September 22, 2025. (See Orshansky Decl. ¶ 16; ROA Nos. 111, 114, & 116.) Since then, no events have cast doubt on this determination, and in fact the reaction of the Class Members has been overwhelmingly supportive of the settlement, with not a single Class Member objecting to the settlement, and only a single Class Member opting out of the settlement, for a 99.64% settlement participation rate. (See Cutler Decl. ¶¶ 9-11.) This Court should therefore confirm its conditional certification of the Class.

B. The Court Should Finally Approve the Settlement Because It Is a Fair, Adequate, and Reasonable Compromise of Disputed Claims

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

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

> [T]he strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.

(*Ibid.*) The trial court should tailor the factors to each case and give due regard to "what is otherwise a private consensual agreement between the parties." (*Ibid.*)

1. The Strength of Plaintiff's Case

Although Plaintiff steadfastly maintains that his claims are meritorious, he acknowledges that there were substantial risks and uncertainty in proceeding with class certification and trial. (Orshansky Decl. ¶ 37.) Defendant presented numerous defenses to Plaintiff's claims, both on the merits and with respect to certification. (*Id.* at ¶ 38.) Among other arguments, Defendant contended that it maintained compliant policies; that determining the incidence and amount of off-the-clock work would be difficult and result in a series of mini-trials, especially because Class Members worked in a variety of departments with different requirements and managers; that alleged off-the-clock work was de minimis; that Defendant "provided" meal and rest breaks as required under *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, by making them available; that individualized issues arise from determining whether Class Members voluntarily waived their breaks; and that any class or representative litigation would be unmanageable. (Orshansky Decl., *passim*.) Although Plaintiff was prepared to litigate such claims through certification and, ultimately, trial, given the substantial amount offered in settlement, it was far from certain that he would recover more.

2. Risk, Expense, Complexity, and Duration of Further Litigation

Although Plaintiff investigated the claims prior to settlement, the Parties agreed to focus on exhausting early settlement efforts before launching into full-fledged and hotly contested litigation. Therefore, absent settlement, the Parties would have needed to conduct substantial additional discovery, such as the production of voluminous records and numerous depositions of experts and percipient witnesses and prepare the case for class certification and trial. The Parties would have had to depose a number of people such as managers, supervisors, human resource representatives, and employees in order to establish liability. Discovery disputes would have been in the offing and liability likely would have entailed a battle of experts. This settlement avoids the considerable time, attorneys' fees and costs, and party resources associated with conducting additional discovery, moving for class certification, summary judgment or adjudication, and trial, as well as the risks and the accompanying burden of continued litigation on the Court. (Orshansky Decl. ¶ 39.)

3. Risk of Maintaining Class Action Status

Settlement was reached prior to class certification, and the result was a successful outcome for the Class. Yet, class certification was by no means a foregone conclusion. For example, Class Members worked in different job positions with different requirements and different managers, and, as a result, Defendant contended there was variation to the circumstances that could allegedly cause the employees to work off the clock and/or be deprived of the opportunity to take compliant, duty-free meal and rest periods, and this variation in circumstances raised highly individualized questions of fact. Defendant disputed Plaintiff's characterization of working conditions, liability, and damages, and possessed documentary and testimonial evidence rebutting Plaintiff's allegations. (Orshansky Decl. ¶¶ 40-41.)

In addition, Plaintiff would face significant hurdles to certification given that Class Members signed arbitration agreements with class action waivers as a condition of their employment. (See *Epic Sys. Corp. v. Lewis* (2018) 584 U.S. 497 [class action waivers in arbitration agreements are enforceable]; Orshansky Decl. ¶ 42.) If Defendant's arbitration agreement defense is successful, it would severely limit the potential relief available to those Class Members who signed arbitration agreements with class action waivers. Even if Plaintiff prevailed and certified a class action as to them, there is no guarantee Defendant would not later move for and obtain decertification. If the Court either denied class certification or later decertified it, the Class would recover nothing, and Class Members would be forced to retain their own counsel and proceed on the basis of individual claims only.

Although Plaintiff was prepared to litigate these claims through class certification and ultimately through trial, given the substantial amount offered in settlement, Class Counsel predicted that it was far from certain that Plaintiff would be able to recover a greater amount at trial, particularly after considering the increased litigation costs that would accrue. (Orshansky Decl. ¶ 43.)

4. Amount Offered in Settlement Given Realistic Value of Claims

The settlement provides a fair and reasonable monetary recovery for the Settlement Class in the face of disputed claims. A settlement is not judged against what might have been recovered had a plaintiff prevailed at trial, nor does the settlement have to provide 100 percent of the damages to be fair and reasonable. (*Wershba v. Apple Computer, Inc*. (2001) 91 Cal.App.4th 224, 246, 250.)

Plaintiff's estimate of the settlement recovery is a reasonable percentage of possible recoverable damages at trial. Utilizing a class-wide damages study to assess the nature and magnitude of the claims in question (see *Kullar v. Foot Locker Retail, Inc*. (2008) 168 Cal.App.4th 116, 129-131), this case meets requirements establishing that the class settlement is within the "ballpark" of reasonableness. Based on discovery and their investigation, Class Counsel determined Defendant's degree of liability, prepared an exposure analysis, and forecasted the expected recovery for each claim. (Orshansky Decl. ¶¶ 44-79.) The aggregate dollar amount result is $4,216,997.97 in total damages and penalties. (*Id.* at ¶ 79.) Thus, the proposed settlement amount of $750,000 represents approximately 17.8% of Plaintiff's potential realistic recovery, while avoiding the further expense and serious risk of proceeding toward class certification and trial. (*Ibid*.) Taking into account the risk of non-certification, failure to prevail on the merits, and the Court's power to reduce civil penalties under PAGA, the settlement falls within the realm of being fair, reasonable, and adequate.

5. Investigation Was Sufficient to Allow Counsel to Act Intelligently

Courts review the discovery process and information received through it to assist them in assessing whether the parties sufficiently developed the claims and their supporting factual basis before reaching settlement. (*Kullar, supra*, 168 Cal.App.4th at pp. 129-131.) Information is sufficient where it allows the parties and the court to form "an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation." (*Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 801.) This requirement exists so that the parties can provide the court with "a meaningful and substantiated explanation of the manner in which the factual and legal issues have been evaluated." (*Kullar, supra*, 168 Cal.App.4th at pp. 132-133.)

Class Counsel conducted a thorough investigation to enable them to assess the strength of Plaintiff's claims and calculate Defendant's exposure. Defendant produced information and documentation concerning the alleged violations, such as Defendant's written policies concerning those claims, including Defendant's employee handbook, policies and procedures regarding the payment of wages, the provision of meal and rest breaks, and time keeping policies, such as recording hours, issuance of wage statements, and providing all wages at separation, as well as composite data regarding the number of Class Members and PAGA Group Members and the mix of current versus former employees, total number of pay periods, total number of workweeks, and the average hourly rate in effect (Orshansky Decl. ¶ 29.) Class Counsel also interviewed Class Members, analyzed the documents and data produced, and spent significant time consulting with an expert, to determine Defendant's degree of liability and potential amounts due in damages. (*Id.* at ¶ 30.)

6. The Experience and Views of Counsel

Class Counsel have extensive experience litigating wage-and-hour class and representative actions, and have been appointed as class counsel in numerous cases. (Orshansky Decl. ¶¶ 80-84.) Based on this experience, Class Counsel believe that the settlement is fair and reasonable and serves the best interests of the Settlement Class Members and PAGA Group Members. (*Id.* at ¶ 35; 83.)

7. The Presence of a Governmental Participant

Plaintiff has provided notice of the settlement to the LWDA, the decision of which not to intervene suggests approval of the settlement. (Orshansky Decl. ¶¶ 24, 26, 128-130.)

8. The Reaction of the Class Members to the Proposed Settlement

As described above, not a single Class Member has objected to the settlement, and only 1 Class Member opted out. (Cutler Decl. ¶¶ 9, 11.) Thus, this factor significantly supports settlement approval.

C. The Requested Award of Attorneys' Fees Is Reasonable as a Percentage of the Common-Fund Total Settlement Amount

A percentage method may be used to calculate a reasonable fee in a common fund case such as this. (*Laffitte v. Robert Half Int'l, Inc*. (2016) 1 Cal.5th 480, 503.) A fee award is justified where the legal action has produced its benefits by way of a voluntary settlement. (See, e.g., *Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1290-91; *Westside Community for Independent Living, Inc. v. Obledo* (1983) 33 Cal.3d 348, 352-53.) When a settlement results in a common fund for the benefit of a class, class counsel may be awarded fees as a percentage of the common fund. (See *Wershba*, *supra*, 91 Cal.App.4th at p. 254 [recognizing the "percentage of recovery" method].) The California

Supreme Court confirmed in *Laffitte v. Robert Half Int'l, Inc.* that "[t]he percentage of fund method survives in California class action cases." (1 Cal.5th at p. 506.) Specifically, the *Laffitte* Court held:

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

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

The settlement calls for the payment of up to thirty percent (30%) of the Gross Settlement Amount in attorneys' fees and up to $20,000 in litigation costs, for which only $19,048.95 is sought for actual reimbursement. (Settlement Agreement at Amended ¶¶ 2, 54(a); Orshansky Decl. ¶ 92.) Class Counsel's fee request is fair and reasonable based on a percentage of the recovery, and adequate to compensate Class Counsel for the substantial work they have put into this case and the risk they assumed by taking it in the first place. (*Ibid.*)

This request is fair, reasonable, and adequate to compensate Class Counsel for the excellent results achieved in a wage-and-hour case with substantial payments to Settlement Class Members.

In fact, not a single Settlement Class Member objected to the settlement or to Class Counsel's requested fees. (Cutler Decl. ¶ 9.) That Class Counsel achieved these results in the face of serious defense challenges and an uncertain legal landscape confirms the strength of the results achieved. (Orshansky Decl. ¶ 93.) The attorneys' fees award requested is also consistent with Class Counsel's experience in similar wage and hour class action matters. (Orshansky Decl. ¶ 95.) Indeed, the attorneys' fees award requested is less than what courts generally have awarded in other class and representative action cases. The following list shows PAGA/class action cases where attorney's fees were awarded on a common fund basis in a range between 33.33% and 40%:

- *Banda v. Verizon California, Inc.*, Los Angeles Superior Court Case No. BC434587 (**35% fee awarded** on $15,000,000 settlement of mixed PAGA/class claims);
- *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 of mixed PAGA/class claims); and
- *Zelada v. Majestic Terminal Services*, San Bernardino Superior Court Case No. CIVDS1916968 (**38% fee awarded** on $1,800,000 settlement of a PAGA only case).

Class Counsel's application for attorneys' fees in light of the facts and circumstances surrounding the case is well within the range of reasonableness. In fact, historically courts have awarded fees as high as fifty percent (50%) of the settlement in complex actions. (See *In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494 [**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.* (S.D.N.Y. 1979) 480 F.Supp. 1195 [awarding approximately **53% of the settlement as attorneys' fees**]; *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 fn. 11 [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.* (N.D.Cal. 1995) 901 F.Supp. 294, 297-298 [observing that "[m]ost of the cases Class Counsel have cited in which high percentages such as 30-50 percent of the fund were awarded involved relatively smaller funds of less than $10 million"]; see also 4 Conte & Newberg, Newberg on Class Actions (4th Ed. 2002) § 14.6 ["No general rule can be articulated on what is a reasonable percentage of a common fund. Usually 50%

of the fund is the upper limit on a reasonable fee award from a common fund in order to assure that the fees do not consume a disproportionate part of the recovery obtained for the class, although somewhat larger percentages are not unprecedented."].)

The attorneys' fees award is intended to reimburse Class Counsel for all the uncompensated work that they have already done and for all the work they will continue to do. (Orshansky Decl. ¶ 97.) To investigate, litigate, and ultimately negotiate and craft the settlement, Class Counsel spent a significant amount of time involved in activities, including but not limited to, the following: (1) thorough pre-litigation investigation of facts with a focus on class certification elements; (2) investigation of Defendant's organizational and corporate structure as it relates to the employment and management of employees; (3) comparative analysis and cross-checking of all available job postings by Defendant in order to determine any variation and identify job duties and responsibilities that would be susceptible to being performed off the clock or during meal or rest breaks; (4) research and investigation regarding staffing models and staffing levels; (5) drafting the PAGA notice to the LWDA and pleadings, including substitution of Plaintiff Fryer in place of Plaintiff Gutierrez and drafting the amended complaint, and additional PAGA notice to the LWDA on behalf of Plaintiff Fryer; (6) extensive legal research and analysis into substantive law; (7) interviewing Class Members; (8) reviewing Defendant's policies and procedures regarding payment of wages, provision and tracking of meal and rest breaks, and timekeeping protocol, including recording hours, issuance of wage statements, and providing all wages at separation; (9) examining Class Members' time records and wage statements in conjunction with Class Member interviews to determine Defendant's degree of liability; (10) meeting and conferring with defense counsel; (11) engaging a consultant; (12) building a comprehensive damages model; (13) preparing the mediation brief; (14) preparing for and attending mediation; (15) negotiating and preparing the long-form Settlement Agreement; (16) preparing the motion for preliminary approval and supporting documents; (17) conferring with defense counsel and preparing the Amendment to the Settlement Agreement and supplemental paperwork submitted to the Court in support of preliminary approval; (17) overseeing the notice process; (18) responding to questions from Class Members; and (19) preparing the motion for final approval and supporting documents. (*Ibid.*) It bears mentioning that Class Counsel's responsibilities will not end with final approval. (*Ibid.*) Class Counsel will remain available to answer any Settlement Class Member inquiries and to work with Defendant's counsel and the Settlement Administrator to complete administration and finalize this settlement. (*Ibid.*) Based on prior experience, this will likely add further hours of work by Class Counsel and their staff. (*Ibid.*)

The fee award requested here is also justified because Class Counsel achieved a significant monetary recovery for Settlement Class Members and PAGA Group Members in an uncertain, complex, and risky case while bearing the substantial burdens of representation on a contingency basis, and the fees requested are in line with the market rate. (See *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1048-1051 [finding that exceptional results in a contingency case, significant risk, and the absence of supporting precedents are proper considerations in awarding attorneys' fees]; Orshansky Decl. ¶ 98.) Here, Class Counsel negotiated a substantial recovery for the Settlement Class, and not a single Class Member objected to the settlement, nor to Class Counsel's requested fees. (See Cutler Decl. ¶ 9.) The average individual settlement payment to Settlement Class Members in this case far exceeds average settlement payments in similar wage and hour class action settlements.[4] (*Id.* at ¶ 12; Orshansky Decl. ¶ 98.) Class Counsel achieved these results in the face of serious defense challenges, and in the face of an uncertain legal landscape. (*Id.* at ¶ 100.)

Since this case presented significant risk as to both class certification and merits considerations, it is fair and reasonable to account for these risks in compensating Class Counsel. (Orshansky Decl. ¶ 103.) Class Counsel should be compensated for the risks involved in undertaking this litigation and expending considerable effort, all while working on a pure contingency basis.

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

(*Ibid.*) Since undertaking representation of Plaintiff, Class Counsel bore all the costs of litigation without receiving any compensation to date. (*Ibid.*) Given the considerable potential for adverse outcomes in this case, including, but not limited to, being unable to proceed on a class-wide basis and/or risking unfavorable adjudication on the merits, the contingent risk borne by Class Counsel was great. (*Id.* at ¶ 105.)

Class Counsel's previous experience litigating wage-and-hour class and representative actions also supports the reasonableness of the fee request. (Orshansky Decl. ¶ 101.) Class Counsel are well-versed in plaintiff-side wage and hour class action litigation, with substantial experience litigating claims for unpaid wages, meal and rest period violations, and related penalties, and have been certified as class counsel in numerous other cases. (*Id.* at ¶¶ 80-84, 101.) Class Counsel's experience in similar matters was integral to evaluating the strengths and weaknesses of this case and the reasonableness of the settlement. (*Id.* at ¶ 102.) Practice in the narrow field of wage-and-hour litigation requires skill and knowledge concerning the rapidly evolving substantive state and federal law, as well as the procedural law of class action litigation. (*Ibid.*)

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

D. The Lodestar Cross-Check Confirms That the Requested Award of Attorneys' Fees Is Reasonable

Trial courts have discretion to assess reasonableness of fee awards with tools such as the lodestar cross-check, though they are not required to do so. (*Laffitte*, *supra*, 1 Cal.5th at p. 506.) A lodestar cross-check analysis typically happens in three steps. First, a trial court must determine a baseline guide or "lodestar" figure based on the time spent and reasonable hourly compensation for each attorney involved in the case. (*Serrano, supra*, 20 Cal.3d at p. 48.) The court then sets a reasonable hourly fee to apply to the time expended, with reference to the prevailing rates in the geographical area. (*Bihun v. AT&T Information Systems, Inc.* (1993) 13 Cal.App.4th 976, 997.) Finally, a "multiplier" is selected with reference to factors substantially similar to those applied to the common-fund analysis: (1) the novelty and difficulty of issues involved, (2) the skill displayed in presenting them, (3) the extent to which the nature of the litigation precluded other employment by attorneys, and (4) the contingent nature of the fee award, based on the uncertainty of prevailing on the merits and of establishing eligibility for the award. (*Serrano*, *supra*, 20 Cal.3d at p. 49.)

The lodestar "cross-check" supports the fee request here. First, Class Counsel have spent a significant amount of time on this case and expect to spend additional time overseeing this case through completion. (Orshansky Decl. ¶¶ 97, 107, 111 and Exh. B.) Next, Class Counsel's hourly rates are commensurate with the prevailing market rates for attorneys of comparable experience and skill handling complex litigation, and their rates have been approved by state and federal courts in California. (*Id*. at ¶ 112.) The reasonableness of Class Counsel's hourly rates are further confirmed in light of the hourly rates identified based on years of experience in the inflation-adjusted Laffey Matrix. (*Id.* at ¶ 113.)

Class Counsel's lodestar amount is $161,880.50. (Orshansky Decl. ¶ 114.) Therefore, Class Counsel respectfully request a multiplier of approximately 1.39. (*Id*. at ¶ 115.) This multiplier is fair and reasonable based on the contingent nature of the case, the risks and difficulties presented, and the result achieved. As discussed above, Defendant argued that Plaintiff would be unable to certify a class outside of the settlement context because Plaintiff's claims on the merits would require a series of individualized mini-trials. There were factual risks and evidentiary challenges of substantiating Defendant's failure to authorize and permit breaks on a class-wide basis. Additionally, Plaintiff would face significant hurdles to certification given that Defendant raised individualized issues regarding whether meal and rest breaks were "provided" under *Brinker, supra*, 53 Cal.4th at p. 10, whether employees voluntarily waived their meal and rest breaks (including the existence of written voluntary waivers by some employees of their meal periods), the occurrence of off-the-clock work in light of what Defendant contended were legally compliant policies, and so forth. If Plaintiff prevailed and certified a class action, there is no guarantee that Defendant would not later move for and obtain decertification. If the Court either denied class certification or later decertified it, the Class would recover nothing and Class Members would be forced to retain their own counsel and proceed on the basis of individual claims only.

Class Counsel invested a significant amount of time in this case and advanced all costs incurred by Plaintiff to date. (Orshansky Decl. ¶ 115.) As described above, Class Counsel performed this work, diligently prosecuting this action for Plaintiff against a sophisticated corporate entity represented by experienced employment attorneys, all while facing an uncertain legal landscape with no guarantee of recovery. (*Ibid.*) Further, their work on this case prevented them from taking on other matters, including hourly and flat-fee work. (*Ibid.*) Despite these circumstances, Class Counsel zealously represented Plaintiff and Class Members and negotiated a settlement providing for significant recovery to Class Members. (*Ibid.*) That Class Counsel achieved these results without engaging in a protracted legal battle, in the face of serious defense challenges and an uncertain legal landscape, confirms the strength of the results achieved. (*Ibid.*)

Finally, the requested multiplier of 1.39 is within even the modest multipliers that are awarded by California courts, and in fact is much lower than in many comparable cases. (See *Vizcaino, supra*, 290 F.3d at pp. 1050-1051 [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.* (Cal. Sup. Ct. Aug. 16, 1982) Case No. 643872 [**multiplier of 10**]; *Glendora Comm. Redev. Agency v. Demeter* (1984) 155 Cal.App.3d 456, 465 [affirming **multiplier of 12**, and expressly rejecting argument that fee was either exorbitant or unconscionable]; *Wershba, supra*, 91 Cal.App.4th at p. 255 [noting that **"[m]ultipliers can range from 2 to 4 or even higher**"]; *Van Vranken, supra*, 901 F.Supp. at p. 298 [**multipliers of 3-4** are in the "range [of] common" multipliers for class actions]; *Holleran v. Rita Medical Systems, Inc*. (Cal. Super. Oct. 04, 2007, No. RG06302394) 2007 WL 7759253 [**multiplier of 4.57**]; *Gutierrez v. Wells Fargo Bank, N.A*. (N.D.Cal. May 21, 2015, No. C 07-05923 WHA) 2015 WL 2438274, at *7 & 8 fn. 3 [**multiplier of 4.53**]; *Johnson v. Fujitsu Tech. & Bus. of Am., Inc*. (N.D.Cal. May 11, 2018, No. 16-CV-03698-NC) 2018 WL 2183253, at *7 [**multiplier of 4.375**]; *Buccellato v. AT & T Operations, Inc*. (N.D.Cal. Jun. 30, 2011, No. C10-00463-LHK) 2011 WL 3348055, at *2 [**multiplier of 4.3**]; *Chau 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"].)

Therefore, the requested multiplier is warranted in this case. The lodestar cross-check affirms that the fee award requested does in fact fall within the range of reasonableness.

E. The Court Should Approve the Requested Reimbursement for Litigation Costs

The Settlement Agreement provides for reimbursement of up to $20,000 to Class Counsel in litigation costs. (Settlement Agreement ¶ 54(a).) Class Counsel respectfully request reimbursement of $19,048.95 in litigation costs. (Orshansky Decl. ¶ 119 and Exh. C.) The costs for which Plaintiff seeks reimbursement are the types of costs routinely approved by courts. (*See*, *e.g.*, *Harris v. Marhoefer* (9th Cir. 1994) 24 F.3d 16, 19 [counsel should recover "those out-of-pocket expenses that would normally be charged to a fee paying client"].)

F. The Court Should Approve the Requested Administration Costs

Plaintiff also requests that the Court approve $21,500 in Administration Costs to as the Settlement Administrator. (Settlement Agreement ¶ 54(b) [agreeing to an amount up to $22,000]); Cutler Decl. ¶ 14.) CPT performed and will continue to perform all duties required under the Settlement Agreement and discounted its costs to below the allotted amount. (*Id.* at ¶¶ 2, 14 and Exh. B.) The administration costs are fair, reasonable, and adequate, and should be finally approved.

G. The Court Should Approve the Requested Enhancement Payment to the Class Representative

Courts routinely approve enhancement payments to compensate named plaintiffs for the services they provide and the risks they incur during class action litigation. (*See*, *e.g.*, *Bell v. Farmers Ins. Exchange* (2004) 115 Cal.App.4th 715, 726.) Plaintiff's request for an enhancement payment is reasonable given his efforts in prosecuting the action, the time and effort involved, the substantial benefits conferred on the Settlement Class Members and PAGA Group Members, and the risks assumed by him, and the fact that Plaintiff agreed to a general release of all claims subject to a waiver of Civil Code section 1542. (Orshansky Decl. ¶ 124.) Plaintiff actively participated in the prosecution of this matter, in particular but not exclusively through his discussions with Class Counsel, identifying potential witnesses, providing factual information to Class Counsel about

Defendant's business, policies, practices, and procedures, monitoring the progress of the case, evaluating the terms of the settlement, and reviewing and signing the Settlement Agreement. (*See* Orshansky Decl. ¶¶ 123-125; Declaration of James Fryer ("Fryer Decl."), filed concurrently herewith, at ¶¶ 9-10, 13-17.) Plaintiff invested significant time and effort into seeing this litigation through resolution. (Orshansky Decl. ¶ 124; Fryer Decl. ¶ 17.)

Plaintiff has diligently, adequately, and fairly represented Class Members, is a member of the Class, has no conflicts as outlined above, and has not placed his interests above those of any member of the Class. (Orshansky Decl. ¶ 125; Fryer Decl. ¶ 9.) Furthermore, the requested enhancement payment was fully disclosed to Class Members in the Class Notice and no objections have been made. (See Cutler Decl. ¶ 9.) Thus, Plaintiff's request for an enhancement payment is appropriate and justified as part of the settlement and should be finally approved.

H. Posting of Final Order and Judgment upon Final Approval

The Court's Final Approval Order and Judgment will be posted on the Settlement Administrator's website pursuant to California Rules of Court, Rule 3.771(b) for a period of one hundred and eighty (180) days after entry of the Final Approval Order and Judgment.

VI. CONCLUSION

Plaintiff respectfully requests that this Court grant this Motion for Final Approval.

Dated: December 9, 2025

Respectfully submitted,

COUNSELONE, PC

By: ______________________

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