

FILED
Superior Court of California
County of Los Angeles

NOV 16 2023

David W. Slayton, Executive Officer/Clerk of Court

By: N. Navarro, Deputy

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES**

EDWIN ENRIQUEZ, individually and on behalf of others similarly situated and similarly aggrieved employees,

Plaintiff,

v.

THE JOHNNY ROCKETS GROUP, an active Delaware Corporation; and DOES 1 through 10,

Defendants.

Case No.: 19STCV43986

mn
~~PROPOSED~~ ORDER GRANTING MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

Date: November 16, 2023
Time: 9:00 a.m.
Dept.: SSC-17

I. BACKGROUND

Plaintiff Edwin Enriquez sues his former employer, The Johnny Rockets Group, for alleged wage and hour violations. Defendant is in the business of franchising Johnny Rockets restaurants as well as directly owning and operating Johnny Rockets-

1 branded restaurants. Plaintiff seeks to represent a class of Defendant’s current and
2 former non-exempt employees.

3 On December 9, 2019, Plaintiff filed the class action complaint against
4 Defendant. On August 17, 2020, Plaintiff filed the operative First Amended Complaint
5 asserting the following causes of action: (1) Failure to Pay Wages (Labor Code §§ 510,
6 1194, 1194.2); (2) Failure to Provide Meal Periods (Labor Code §§ 226.7, 512); (3)
7 Failure to Provide Paid Rest Periods (Labor Code § 226.7); (4) Failure to Timely Pay
8 Wages at Termination (Labor Code §§ 201, 202, 203); (5) Failure to Provide Accurate
9 Wage Statements (Labor Code §§ 226(a), 226(b)); (6) Violation of Unfair Business
10 Practices Act (Bus. & Prof. Code §§ 17200, et seq.); and (7) Penalties Pursuant to
11 Private Attorneys General Act (Labor Code § 2699, et seq.) (“PAGA”).

12 On May 12, 2021, the parties participated in a full-day mediation before Jeffrey
13 Krivis, which did not result in settlement. The parties resumed litigation while
14 attempting to negotiate a settlement, and ultimately reached the proposed settlement
15 before the Court. The terms of settlement were finalized in the long-form Stipulated
16 Settlement Agreement, a copy of which was filed with the Court on October 5, 2022.

17 On February 22, 2023, the Court issued a “checklist” to the parties pertaining to
18 deficiencies in the proposed settlement and called the matter of Plaintiff’s Motion for
19 Preliminary Approval of Settlement for hearing. Subsequently, the parties filed further
20 briefing, including the Amended Stipulated Settlement Agreement attached to the
21 Supplemental Declaration of Haik Hacopian filed April 28, 2023. All references below
22 are to that agreement.

23 The settlement was preliminarily approved on July 7, 2023. Notice was given to
24 the Class Members as ordered (see Declaration of Kaylie O’Connor (“O’Connor
25 Decl.”)). Now before the Court is Plaintiff’s motion for final approval of the

1 Settlement Agreement, including for payment of fees, costs, and a service award to the
2 named plaintiff. For the reasons set forth below, the Court grants final approval of the
3 settlement.

4
5 **II. THE TERMS OF THE SETTLEMENT**

6
7 **A. SETTLEMENT CLASS DEFINITION**

8 “Settlement Class” and “Settlement Class Members” means shall refer to the
9 following: All non-exempt employees who previously were employed by Defendant in
10 California during the Class Period. (¶1.22)

11 “Class Period” means the period starting November 18, 2016 to March 1, 2022.
12 (¶1.5)

13 “Aggrieved Employees” means all non-exempt employees who are or previously
14 were employed by Defendant The Johnny Rockets Group, Inc. in California during the
15 PAGA Period. (¶1.3)

16 “PAGA Period” means the period starting December 9, 2018 to March 1, 2022.
17 (¶1.13)

18 “Participating Settlement Class Member” means a Settlement Class Member
19 who has not timely opted-out of the Settlement. (¶1.14)

20
21 **B. THE MONETARY TERMS OF SETTLEMENT**

22 The essential monetary terms are as follows:

- 23 • The Settlement Amount is **\$600,000** (¶1.21). This includes payment of a PAGA
24 penalty of **\$20,000** to be paid 75% to the LWDA (\$15,000) and 25% to the
25 Aggrieved Employees (\$5,000) (¶3.9).

- 1 ○ It is estimated that the Settlement Class consists of approximately 530
- 2 individuals during the Class Period who worked approximately 37,662
- 3 workweeks during the Class Period. If the workweek number is greater
- 4 than 110% of the workweek estimate provided for herein, Defendant may
- 5 either: (1) increase the Settlement Amount on a pro rata basis for each
- 6 workweek in excess of the 110% workweek estimate; or (2) adjust the end
- 7 date of the Class Period so that the number of workweeks during the
- 8 Class Period does not exceed 110% of the estimate. (¶1.21)
- 9 ○ At final approval, the settlement administrator represents that Class
- 10 Members in aggregate worked a total of 26,430 workweeks during the
- 11 Class Period. (O'Connor Decl. ¶15.) Accordingly, the escalator clause
- 12 was not triggered.
- 13 • The Net Settlement Amount (“Net”) (\$322,000) estimated at preliminary
- 14 approval is the Settlement Amount less:
 - 15 ○ Up to **\$210,000** (35%) for attorney fees (¶3.6);
 - 16 ○ Up to **\$25,000** for attorney costs (*Ibid.*);
 - 17 ○ Up to **\$10,000** for a service award to the proposed class representative
 - 18 (¶3.8); and
 - 19 ○ Estimated **\$13,000** for settlement administration costs (¶3.7).
- 20 • Employer-side payroll taxes will be paid by Defendant in addition to the
- 21 Settlement Amount (¶1.21).
- 22 • Assuming the Court approves all maximum requested deductions, approximately
- 23 \$330,201.41 will be available for automatic distribution to participating class
- 24 members. The average settlement share will be approximately \$663.05.
- 25 (\$330,201.41 Net ÷ 498 class members = \$663.05). In addition, each Aggrieved

1 Employee will receive a portion of the PAGA penalty, estimated to be \$23.81
2 per Aggrieved Employee. ($\$5,000$ or 25% of $\$20,000$ PAGA penalty \div 210
3 Aggrieved Employees = $\$23.81$).

- 4 • There is no Claim Requirement (§4.2.d).
- 5 • The settlement is not reversionary (§1.12).
- 6 • Individual Settlement Share Calculation: To determine the Individual Settlement
7 Amount to be included in the Class Notice sent to Settlement Class Members,
8 the Settlement Administrator will: (§4.3)
 - 9 ○ Determine the total number of Workweeks Worked by the Settlement
10 Class during the Class Period as provided in the Class List and Data
11 Report. (§4.3.a)
 - 12 ○ Divide the Net Settlement Amount by the total number of Workweeks
13 Worked by the Settlement Class to determine the Per Workweek
14 Settlement Amount. The Per Workweek Settlement Amount shall then be
15 multiplied by the number of Workweeks Worked by each Settlement
16 Class Member during the applicable Class Period to determine each
17 Settlement Class Member's Individual Settlement Amount. All
18 Settlement Class Members will be entitled to payment for at least one (1)
19 workweek. (§4.3.b)
 - 20 ○ Any portion of the Net Settlement Amount not payable to Settlement
21 Class Members shall be distributed to Participating Settlement Class
22 Members on a basis proportional to the number of Workweeks Worked
23 by each Participating Settlement Class Member, including Workweeks
24 Worked enhancements. (§4.9.a)

- 1 • Calculation of Individual PAGA Settlement Payment Amounts: The sum
2 attributable to each Aggrieved Employee shall be allocated based on the
3 proportionate number of weekly pay periods worked by the individual
4 Aggrieved Employee during the PAGA Period relative to the total number of
5 weekly pay periods worked by all Aggrieved Employees during the PAGA
6 Period. (§4.3.c)
- 7 • Tax Withholdings: Each Participating Settlement Class Member's Individual
8 Settlement Payment shall be apportioned as 20% wages, 80% interest and
9 penalties. (§§4.9.b, 4.9.c) 100% of each Aggrieved Employee's Individual
10 PAGA Settlement Payment shall be apportioned to penalties. (§4.9.d)
- 11 • Funding of Settlement: Within thirty (30) days after the Effective Date,
12 Defendant shall deliver the Settlement Amount, or Six Hundred Thousand
13 Dollars and No Cents (\$600,000.00), and the corresponding share of employer
14 taxes to the Settlement Administrator. (§4.12)
- 15 • Distribution: The Settlement Administrator shall make a distribution from the
16 Qualified Settlement Fund not later than fourteen (14) days after receiving the
17 Settlement Amount from Defendant. With the distribution, the Settlement
18 Administrator is to make distributions to the appropriate parties for payments
19 due under this Agreement as follows: (§4.13)
 - 20 ○ Settlement Class Counsel's attorneys' fees and costs as awarded by the
21 Court under Paragraph 3.6. (§4.13.a)
 - 22 ○ The service award to Plaintiff Enriquez as awarded by the Court under
23 Paragraph 3.8. (§4.13.b)
 - 24 ○ The PAGA payments to the LWDA and Aggrieved Employees as set
25 forth in Paragraph 3.9. (§4.13.c)

1 o Payment to the Settlement Administrator for the costs of settlement
2 administration as set forth in Paragraph 3.7 and approved by the Court.

3 (¶4.13.d)

4 o Individual Settlement Payments to Participating Class Members as set
5 forth in Paragraph 4.3 and 4.9. (¶4.13.e)

- 6 • Uncashed Settlement Payment Checks: All checks for Individual Settlement
7 Payments shall remain valid and negotiable for 180 days from the date of their
8 issuance. Any checks not cashed during the 180 day period after distribution
9 shall be void, and the Participating Settlement Class Member's release set forth
10 herein shall remain valid. After the 180 day period following the final
11 distribution, all funds will escheat to the State of California's Unclaimed
12 Property Fund in the name of the Class Member. (¶4.15)

13
14 **C. TERMS OF RELEASES**

- 15 • Release As To All Participating Class Members: Upon the Effective Date and
16 funding in full of the Settlement Amount by Defendant, all Settlement Class
17 Members who do not timely opt out of the Settlement ("Participating Class
18 Members"), including their heirs, assigns, estates and representatives, shall be
19 deemed to fully forever, irrevocably and unconditionally release and discharge
20 the Released Parties from the Released Claims. The Settlement Agreement shall
21 be in full settlement, compromise, release and discharge of the Released Claims
22 and each of them, and the Released Claims by the Class Representative, and the
23 Released Parties shall have no further or other liability or obligation to any Class
24 Member and/or the Class Representative with respect to the Released Claims and
25

1 Class Representative's Released Claims, except as expressly provided herein.

2 (¶5.1)

3 ○ "Released Claims" means: all class claims alleged in the operative
4 complaint which occurred during the Class Period, and expressly
5 excluding all other claims, including claims for vested benefits, wrongful
6 termination, unemployment insurance, disability, social security, workers'
7 compensation, and class claims outside of the Class Period. This release
8 includes claims for failure to pay all wages, failure to pay overtime
9 wages, failure to provide meal periods, failure to provide rest periods,
10 failure to provide itemized wage statements, failure to pay all wages and
11 termination and unfair business practices under the California Business
12 and Professions Code associated with same. (¶1.17)

- 13 • Release As To All Aggrieved Employees: Upon the Effective Date and funding
14 in full of the Settlement Amount by Defendant, Plaintiff and the State of
15 California shall be deemed to fully forever, irrevocably and unconditionally
16 release and discharge the Released Parties from the Released PAGA Claims.

17 (¶5.1)

18 ○ "Released PAGA Claims" means all PAGA claims alleged in the
19 operative complaint and Plaintiff's PAGA notice to the LWDA which
20 occurred during the PAGA Period, and expressly excluding all other
21 claims, including claims for vested benefits, wrongful termination,
22 unemployment insurance, disability, social security, workers'
23 compensation, and PAGA claims outside of the PAGA Period. This
24 release includes PAGA claims for failure to pay all wages, failure to pay
25 overtime wages, failure to provide meal periods, failure to provide rest

1 periods, failure to provide itemized wage statements, failure to pay all
2 wages and termination and unfair business practices under the California
3 Business and Professions Code associated with same. (§1.18)

- 4 • “Released Parties” means Defendant, and each of Defendant’s respective past,
5 present, and/or future, direct and/or indirect, officers, directors, members,
6 managers, exempt employees, agents, representatives, attorneys, insurers,
7 partners, investors, shareholders, administrators, parent companies, subsidiaries,
8 related entities, affiliates, divisions, predecessors, successors, assigns, and joint
9 venturers. (§1.19)
- 10 • The named Plaintiff will also provide a general release and a waiver of the
11 protections of Cal. Civ. Code §1542. (§5.2)
- 12 • The releases are effective upon the Effective Date and funding in full of the
13 Settlement Amount by Defendant, which will occur within thirty (30) days after
14 the Effective Date. (§4.12)

15
16 **III. ANALYSIS OF SETTLEMENT AGREEMENT**

17 “Before final approval, the court must conduct an inquiry into the fairness of the
18 proposed settlement.” Cal. Rules of Court, rule 3.769(g). “If the court approves the
19 settlement agreement after the final approval hearing, the court must make and enter
20 judgment. The judgment must include a provision for the retention of the court's
21 jurisdiction over the parties to enforce the terms of the judgment. The court may not
22 enter an order dismissing the action at the same time as, or after, entry of judgment.”
23 Cal. Rules of Court, rule 3.769(h).

24 As discussed more fully in the Order conditionally approving the settlement, “[i]n
25 a class action lawsuit, the court undertakes the responsibility to assess fairness in order to

1 prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class
2 action. The purpose of the requirement [of court review] is the protection of those class
3 members, including the named plaintiffs, whose rights may not have been given due
4 regard by the negotiating parties.” See *Consumer Advocacy Group, Inc. v. Kintetsu*
5 *Enterprises of America* (2006) 141 Cal. App.4th 46, 60 [internal quotation marks
6 omitted]; see also *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245
7 (“*Wershba*”), disapproved on another ground in *Hernandez v. Restoration Hardware*
8 (2018) 4 Cal.5th 260 [Court needs to “scrutinize the proposed settlement agreement to the
9 extent necessary to reach a reasoned judgment that the agreement is not the product of
10 fraud or overreaching by, or collusion between, the negotiating parties, and that the
11 settlement, taken as a whole, is fair, reasonable and adequate to all concerned.”] [internal
12 quotation marks omitted].

13 “The burden is on the proponent of the settlement to show that it is fair and
14 reasonable. However ‘a presumption of fairness exists where: (1) the settlement is
15 reached through arm's-length bargaining; (2) investigation and discovery are sufficient to
16 allow counsel and the court to act intelligently; (3) counsel is experienced in similar
17 litigation; and (4) the percentage of objectors is small.’” See *Wershba, supra*, 91
18 Cal.App.4th at pg. 245, citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794,
19 1802. Notwithstanding an initial presumption of fairness, “the court should not give
20 rubber-stamp approval.” See *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th
21 116, 130. “Rather, to protect the interests of absent class members, the court must
22 independently and objectively analyze the evidence and circumstances before it in order
23 to determine whether the settlement is in the best interests of those whose claims will be
24 extinguished.” *Ibid.*, citing 4 Newberg on Class Actions (4th ed. 2002) § 11:41, p. 90. In
25 that determination, the court should consider factors such as “the strength of plaintiffs’

1 case, the risk, expense, complexity and likely duration of further litigation, the risk of
2 maintaining class action status through trial, the amount offered in settlement, the extent
3 of discovery completed and stage of the proceedings, the experience and views of
4 counsel, the presence of a governmental participant, and the reaction of the class
5 members to the proposed settlement.” *Id.* at 128. This “list of factors is not exclusive and
6 the court is free to engage in a balancing and weighing of factors depending on the
7 circumstances of each case.” *Wershba, supra*, 91 Cal.App.4th at pg. 245.)

8 **A. A PRESUMPTION OF FAIRNESS EXISTS**

9 The Court preliminarily found in its Order of July 7, 2023 that the presumption of
10 fairness should be applied. No facts have come to the Court’s attention that would alter
11 that preliminary conclusion. Accordingly, the settlement is entitled to a presumption of
12 fairness as set forth in the preliminary approval order.

13 **B. THE SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE**

14 The settlement was preliminarily found to be fair, adequate and reasonable.
15 Notice has now been given to the Class and the LWDA. The notice process resulted in
16 the following:

17 Number of class members: 498

18 Number of notices mailed: 498

19 Number of undeliverable notices: 10

20 Number of opt-outs: 0

21 Number of objections: 0

22 Number of participating class members: **498**

23 (O’Connor Decl. ¶¶5-13.)

24 The Court finds that the notice was given as directed and conforms to due process
25 requirements. Given the reactions of the Class Members and the LWDA to the proposed

1 settlement and for the reasons set for in the Preliminary Approval order, the settlement is
2 found to be fair, adequate, and reasonable.

3 **C. CLASS CERTIFICATION IS PROPER**

4 For the reasons set forth in the preliminary approval order, certification of the
5 Class for purposes of settlement is appropriate.

6 **D. ATTORNEY FEES AND COSTS**

7 Class Counsel requests **\$210,000** (35%) for attorney fees and **\$19,798.59** for costs.
8 (MFA at 14:10-11, 18:27-19:1.)

9 Courts have an independent responsibility to review an attorney fee provision and
10 award only what it determines is reasonable. (*Garabedian v. Los Angeles Cellular*
11 *Telephone Company* (2004) 118 Cal.App.4th 123, 128.) A percentage calculation is
12 permitted in common fund cases. (*Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480,
13 503.)

14 In the instant case, fees are sought pursuant to the percentage method, as cross-
15 checked by lodestar. (MFA at pp. 13-18.) The \$210,000 fee request is 35% of the
16 Settlement Amount, which is a higher percentage than the average fee award in class
17 actions. (*In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 558, fn. 13
18 [noting that whether the percentage method or the lodestar method is used, fee awards
19 average around one-third of the recovery, and that 25% is the benchmark].) The notice
20 expressly advised class members of the fee request, and no one objected. (O'Connor
21 Decl. ¶11, Exhibit A thereto.)

22 A lodestar is calculated by multiplying the number of hours reasonably expended
23 by the reasonably hourly rate. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084,
24 1095-1096 (*PLCM*)). “Generally, ‘[t]he lodestar is calculated using the reasonable rate
25 for comparable legal services in *the local community* for noncontingent litigation of the

1 same type, multiplied by the reasonable number of hours spent on the case.’ ”

2 (*Environmental Protection Information Center v. Dept. of Forestry & Fire Protection*
3 (2010) 190 Cal.App.4th 217, 248, quoting *Nichols v. City of Taft* (2007) 155
4 Cal.App.4th 1233, 1242-1243.)

5 As to the reasonableness of the rate and hours charged, trial courts consider
6 factors such as “the nature of the litigation, its difficulty, the amount involved, the skill
7 required in its handling, the skill employed, the attention given, the success or failure,
8 and other circumstances.” (*PLCM, supra*, 22 Cal.4th at p. 1096.) “The evidence should
9 allow the court to consider whether the case was overstaffed, how much time the
10 attorneys spent on particular claims, and whether the hours were reasonably expended.”
11 (*Christian Research Institute v. Alnor* (2008) 165 Cal.App.4th 1315, 1320.)

12 Attorney Hacopian represents that he incurred a lodestar of \$40,126.50, based on
13 89.17 hours of work at an hourly rate of \$450. (Declaration of Haik Hacopian ISO Final
14 ¶16, Exhibit 2 thereto.) Attorney Mooradian represents that he incurred a lodestar of
15 \$91,585, based on 140.9 hours of work at an hourly rate of \$650. (Declaration of Zorik
16 Mooradian ISO Final ¶14, Exhibit 1 thereto.) Their firm’s total lodestar of \$131,711.50
17 implies a multiplier of 1.59 to reach the requested fees of \$210,000. Neither attorney
18 indicates whether their hourly rates have been approved by other courts.

19 In support of the 35% fee request, attorney Mooradian states: “In this matter, the
20 Parties agreed that Class Counsel may request up to 35% and Defendant would not
21 oppose the same.” (Mooradian Decl. ISO Final ¶10; see also Settlement Agreement
22 ¶3.6.) Mooradian then asserts that “[i]t is beyond any reasonable dispute that, if class
23 counsel had been able to negotiate directly with the class members, the class would have
24 found that a thirty-five percent fee arrangement was eminently reasonable.” (Mooradian
25 Decl. ISO Final ¶12.) He does not provide a factual basis for this assertion.

1 In addition, Mooradian contends: “While it’s generally true that the greater the
2 attorney fees, the less funds there will be for distribution to class members as damages,
3 nevertheless, a balance must be achieved.” (Mooradian Decl. ISO Final ¶15.) He
4 continues by arguing that “[i]n light of the favorable settlement, giving more money to
5 the class after an excellent settlement had been achieved punishes the attorneys without
6 whom such a settlement would not have been attained but for the efforts of good
7 lawyering. Punishing lawyers when they do well is potentially sending the wrong
8 message and serves as a disincentive and unjustly enriches the class that has already
9 received a fair and adequate amount of benefits.” (*Ibid.*)

10 While the settlement in this case is fair there is nothing to suggest it is
11 extraordinary. The parties reached a settlement in July 2022. No approvable settlement
12 was tendered until May 2023. The settlement amount in total is modest compared to the
13 maximum exposure but is appropriate given the facts.

14 Mooradian’s argument implies that if this Court were to reduce the requested fee
15 award below the parties’ agreed-upon 35%, it would act as “punishing” counsel. Why
16 any fee award granted by the court would be considered a form of “punishment” toward
17 counsel is unclear. The court has a duty to assure that the amount and mode of payment
18 of attorneys’ fees are fair and proper, and may not simply act as a rubber stamp for the
19 parties’ agreement. (*In re Consumer Privacy Cases* (2009) 175 Cal. App. 4th 545, 555.)
20 Furthermore, Mooradian’s assertion that a lower attorney fee award which results in more
21 money being distributed to the class would “unjustly enrich” them creates the implication
22 that he is prioritizing his interests over those of the class, a factor that courts have
23 examined when assessing the fairness, reasonableness and adequacy of settlements
24 reaching final approval. See *Allen v. Bedolla* (9th Cir. 2015) 787 F.3d 1218, 1224.

1 No facts are presented suggesting a fee award at 35% is appropriate. There is
2 nothing to suggest this case involved novel legal issues, or particularly difficult facts.
3 Plaintiff's counsel is experienced in wage and hour cases (see Hacopian Decl. ISO Final
4 ¶3, Mooradian Decl. ISO Final ¶4) and do not show they took any risk in excess of that
5 normally taken in any other contingent fee case of this type.

6 A 33 1/3% award adequately rewards counsel for any risk they took in this case.
7 Accordingly, the Court awards fees at 33 1/3% of the Settlement Amount, or **\$200,000**, a
8 number still well in excess of the lodestar.

9 Class Counsel requests **\$19,798.59** in costs. This is less than the \$25,000 cap
10 provided in the settlement agreement (¶3.6). The amount was disclosed to Class
11 Members in the Notice, and no objections were received. (O'Connor Decl. ¶11, Exhibit
12 A thereto.) Costs include: Berger Consulting (\$8,600), Mediation (\$7,000), and Case
13 Anywhere (\$1,863.60). (Hacopian Decl. ISO Final ¶16, Exhibit 2; Mooradian Decl. ISO
14 Final ¶14, Exhibit 1.)

15 The costs appear to be reasonable and necessary to the litigation, are reasonable
16 in amount, and were not objected to by the class.

17 For all of the foregoing reasons, costs of **\$19,798.59** are approved.

18 **E. SERVICE AWARD TO CLASS REPRESENTATIVE**

19 Service awards are established in California and the Ninth Circuit in class
20 actions. See *Cellphone Termination Fee Case* (2010), 186 Cal.App.4th 1380, 1393-
21 1394 (noting the "scholarly debate about the propriety of individual awards to named
22 plaintiffs" and the "surprising dearth of California authority directly addressing this
23 question"); *In re Apple Device Litigation* (9th Cir. 2022) 50 F. 4th 769, 785; *Roes, 1-2 v.*
24 *SFBSC Mgmt., LLC* (9th Cir. 2019) 944 F.3d 1035, 1057 (reasonable incentive
25

1 awards are permitted to compensate class representatives for work on behalf of the class
2 and financial or reputational risk undertaken in bringing the action).

3 Their apparent purpose is to reimburse actual expenses or to compensate a plaintiff
4 where the market would not otherwise produce a plaintiff. *In Re Continental Securities*
5 *Litigation* (7th Cir. 1992) 962 F. 2d 566, 571-572. Under existing California and Ninth
6 Circuit authority they are permitted where there is a showing of the time and effort
7 expended by the individual and a reasoned explanation of financial or other risks
8 undertaken by the class representative. See *Clark v. American Residential Services LLC*
9 (2009) 175 Cal.App.4th 785, 806-807; see also *Cellphone Termination Cases* (2010) 186
10 Cal.App.4th 1380, 1394-1395 [“Criteria courts may consider in determining whether to
11 make an incentive award include: (1) the risk to the class representative in commencing
12 suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered
13 by the class representative; (3) the amount of time and effort spent by the class
14 representative; (4) the duration of the litigation and; (5) the personal benefit (or lack
15 thereof) enjoyed by the class representative as a result of the litigation.
16 (Citations.)”]. Although no amount is set, in the Ninth Circuit many courts have found
17 \$5,000 presumptively reasonable. See *Morrison v. Am. Nat'l Red Cross* (N.D.Cal. Jan. 8,
18 2021, No. 19-cv-02855-HSG) 2021 U.S.Dist.LEXIS 4043, at *24 (citing cases).

19 In determining the reasonableness of a requested incentive award, some courts
20 have considered, among other factors, the proportionality between the incentive award
21 requested and the average class member's recovery. *Id.* See also *Munoz v. BCI Coca-*
22 *Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 412-413. (Service award
23 that was approximately twice what was paid to class members was appropriate exercise
24 of Court’s discretion). In addition, a service award is not additional consideration for a
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1 release of additional claims. See *Grady v. RCM Techs., Inc.* (C.D.Cal. May 2, 2023, No.
2 5:22-cv-00842 JLS-SHK) 2023 U.S.Dist.LEXIS 84145, at *24-32 and cases cited therein.

3 The Class Representative Edwin Enriquez requests an enhancement award of
4 **\$10,000**. (MFA at 19:13-14.) Plaintiff represents that his contributions to this action
5 include: assisting his attorneys, participating in telephonic conferences with his
6 attorneys, looking for documents, answering calls from other employees about the
7 lawsuit, and reviewing the settlement agreement and his declaration. (Declaration of
8 Edwin Enriquez ¶6.) He estimates spending approximately 23 hours on the case. (*Id.* at
9 ¶7.) His request is more than ten times that of the average class member award of
10 \$663.05.

11 In light of the above-described contributions to this action, and in
12 acknowledgment of the benefits obtained on behalf of the class, a **\$5,000** service award
13 to Plaintiff is reasonable and approved.

14 **F. SETTLEMENT ADMINISTRATION COSTS**

15 The Settlement Administrator, CPT Group, Inc., requests **\$10,000** in
16 compensation for its work in administrating this case. (O'Connor Decl. ¶17.) At the
17 time of preliminary approval, costs of settlement administration were capped in the
18 settlement agreement at \$13,000 (¶3.7). Class Members were instead provided with
19 notice of the estimate of \$10,000 and did not object. (O'Connor Decl. ¶11, Exhibit A
20 thereto.)

21 Accordingly, settlement administration costs are approved in the amount of
22 **\$10,000**.

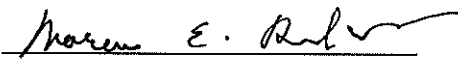
24 **IV. CONCLUSION AND ORDER**

25 The Court hereby:

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- (1) Grants class certification for purposes of settlement;
- (2) Grants final approval of the settlement as fair, adequate, and reasonable;
- (3) Awards **\$200,000** in attorney fees to Class Counsel, Mooradian Law, APC;
- (4) Awards **\$19,798.59** in litigation costs to Class Counsel;
- (5) Approves payment of **\$15,000** (75% of \$20,000 PAGA penalty) to the LWDA;
- (6) Awards **\$5,000** as a Class Representative Service Award to Edwin Enriquez;
- (7) Awards **\$10,000** in settlement administration costs to CPT Group, Inc.;
- (8) Orders class counsel to lodge a proposed Judgment, consistent with this ruling and containing the class definition, full release language, and a statement that no class members opted out by 11/22/23;
- (9) Orders class counsel to provide notice to the class members pursuant to California Rules of Court, rule 3.771(b) and to the LWDA pursuant to Labor Code §2699 (1)(3); and
- (10) Sets a Non-Appearance Case Review re: Final Report re: Distribution of Settlement Funds for 11/8/24, at 8:30 am.
Final Report is to be filed by 11/11/24.

Dated: 11/16/2023



MAREN E. NELSON
Judge of the Superior Court