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Superior Court of California  
County of Los Angeles

NOV 14 2018

Sherri R. Carter, Executive Officer/Clerk  
By: Nancy Navarro, Deputy

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

MARCO CARRILLO, on behalf  
of himself and all others similarly situated,

Plaintiff,

v.

LOS ANGELES PARTYWORKS, INC., and  
DOES 1-50, inclusive,

Defendants.

Case No.: BC657864

ORDER GRANTING  
MOTION FOR FINAL APPROVAL  
OF CLASS ACTION SETTLEMENT

Date: November 14, 2018  
Time: 9:00 a.m.  
Dept.: SSC-17

**I. BACKGROUND**

In this wage and hour class action lawsuit, Plaintiff Marco Carrillo sues his former employer, Defendant Los Angeles Partyworks, Inc., a special events company.

The operative First Amended Complaint, filed on April 24, 2017, asserts the following causes of action: (1) Willful Misclassification of Employee as Independent Contractor; (2)

1 Failure to Provide Meal and Rest Periods; (3) Failure to Pay Minimum Wage; (4) Failure to Pay  
2 Overtime Wages; (5) Failure to Provide Accurate, Itemized Wage Statements; (6) Waiting Time  
3 Penalties; (7) Failure to Reimburse for Necessary Business Expenses; (8) Unfair Competition;  
4 (9) Penalties Pursuant to §2699(a) of PAGA; and (10) Penalties Pursuant to §2699(f) of PAGA.

5 The parties engaged in informal discovery and completed the *Belaire-West* notice  
6 process. On November 22, 2017, the parties mediated the case with Jeffrey Krivis, a lawyer. At  
7 the mediation, Defendant produced documents indicating that its financial situation would be a  
8 factor in determining an appropriate settlement. The Parties were able to reach agreement  
9 regarding the terms of settlement at mediation. They subsequently executed a long-form  
10 *Stipulation of Settlement and Release* (“Settlement Agreement”), a signed copy of which is  
11 attached to the Supplemental Declaration of Carolyn Hunt Cottrell as Exhibit A.

12 Prior to the initial hearing on this motion, the Court issued a checklist of items in need of  
13 further briefing and continued the hearing. On May 11, 2018, Class Counsel filed a supplemental  
14 briefing, including an Amended Settlement Agreement.

15 Following supplemental briefing and revisions to the Settlement Agreement, the Court  
16 granted preliminary approval on May 25, 2018.

17 On July 19, 2018 pursuant to the Parties' stipulation, the Court approved the use of  
18 averaging to determine the number of Individual Shifts Worked for Settlement Class Members  
19 for whom Defendant does not have records. The deadline for the Settlement Administrator to  
20 send the Notice Packet to Settlement Class Members is ten days after the Settlement  
21 Administrator completes the calculation of Individual Shifts Worked for all Settlement Class  
22 Members.

23 Now before the Court is Plaintiff's motion for final approval of the settlement.

24 All citations to the Settlement Agreement below are to the Amended version filed on  
25 May 11, 2018.

1           **II. DISCUSSION**

2           **A.     SETTLEMENT CLASS DEFINITION**

3           Under the terms of the Settlement Agreement "Settlement Class" means all current and  
4 former hourly, non-exempt employees that worked for Los Angeles Partyworks, Inc. during the  
5 Class Period. This definition also encompasses any persons working for Defendant as an  
6 independent contractor that would otherwise be within the scope of this definition. Members of  
7 the Class are referred to herein as "Class Members" or "Employees." (Settlement Agreement,  
8 ¶38, as amended.) The Parties agree to stipulate to class action certification only for purposes of  
9 the Settlement. (¶45, as amended.)

- 10           • The Parties agree to stipulate to class action certification only for purposes of the  
11 Settlement. (¶45, as amended.)
- 12           • The Class Period is from April 24, 2013 through the date of entry of an order  
13 granting preliminary approval. (¶8, as amended.)
- 14           • There are 166 Class Members. (Declaration of Will Henry ("Henry Decl."), ¶11.)

15  
16           **B. TERMS OF SETTLEMENT AGREEMENT**

17           The essential terms are as follows:

- 18           • The Maximum Settlement Amount ("MSA") is **\$300,000**. (¶23, as amended)
- 19           • The Net Settlement Proceeds ("NSP") (**\$161,750**) is the MSA minus:
  - 20           ○ Up to **\$100,000** (33-1/3%) for attorney fees (¶16, as amended);
  - 21           ○ Up to **\$16,000** for attorney costs (*Ibid.*);
  - 22           ○ Up to **\$5,000** for a service award to the class representative (¶35, as amended);
  - 23           ○ Estimated **\$13,500** for claims administration costs (¶3, as amended); and
  - 24           ○ **\$3,750** (75% of \$5,000 PAGA penalty) payable to the LWDA (¶29, as amended).

1                   ▪ The proposed Settlement Agreement was submitted to the LWDA on May  
2                                   11, 2018 (Supplemental Declaration of Carolyn Hunt Cottrell ISO  
3                                   Preliminary Approval at Exhibits E and F.)

4                   • Defendants will pay employer taxes separate from the MSA. (§31, as amended)

5                   • **Payment Plan.** Defendant will pay the gross settlement on the following schedule: (1)  
6                                   the 2018 Payment, in the amount of \$150,000.00, will be made to the Settlement  
7                                   Administrator during the Fourth Financial Quarter of 2018, and (2) the 2019 Payment, in  
8                                   the amount of \$150,000, will be made to the Settlement Administrator during the Fourth  
9                                   Financial Quarter of 2019. (§61, as amended.) Defendant agrees to make the 2018  
10                                  Payment to the Settlement Administrator within 5 days after the Effective Date, or no  
11                                  later than the last day of the Fourth Financial Quarter of 2018 (December 31, 2018),  
12                                  whichever is later. Defendant agrees to make the 2019 Payment to the Settlement  
13                                  Administrator within one year of the date that the 2018 Payment is made. (§62, as  
14                                  amended.)

15                   ○ The 2018 Payment is to be distributed in the following order: (1) 100% of costs of  
16                                  settlement administration to Administrator; (2) 100% of PAGA amount owed to  
17                                  LWDA (\$3,750); (3) 100% of service award to Named Plaintiff; (4) Class  
18                                  Counsel is paid for 50% of its fees due under the Settlement (i.e., \$50,000.00),  
19                                  and 100% of its costs incurred in litigating the Lawsuit; and (5) the remainder is  
20                                  distributed to the Claimants. (§63, as amended.)

21                   ○ The 2019 Payment is to be distributed in the following order: (1) Any unpaid  
22                                  amount owed to Administrator; (2) any unpaid amount owed to the LWDA; (3)  
23                                  any unpaid amount owed to Named Plaintiff; (4) Remaining 50% of attorneys' fee  
24                                  award to Class Counsel, and any additional costs incurred in litigating the lawsuit  
25                                  after the 2018 payment. (§64, as amended.) At oral argument during Preliminary

1 Approval, Counsel represented that this term did not expand the total amount  
2 Class Counsel may claim as costs (\$16,000) and indicated they would submit a  
3 written stipulation to that effect. However, no such stipulation was filed. The  
4 Court therefore orders that in no event may Class Counsel be paid in excess of  
5 \$16,000 for costs.

- 6 • There is no claims process. Class members will receive a settlement payment unless they  
7 opt-out. (Declaration of Carolyn Hunt Cottrell ISO Preliminary Approval, ¶50.)
- 8 • The Objection/Exclusion Deadline is the date 45 days following the date on which the  
9 Settlement Administrator first mails the Notice Packets to Class Members. (¶26) Class  
10 Members who receive re-mailed notices must submit opt-outs or objections no later than  
11 7 days after the date of re-mailing, or by the Objection/Exclusion Deadline, whichever is  
12 later. (¶¶ 28, 60-61, as amended.)
- 13 • Individual Settlement Payments will be calculated as follows: Each Claimant's Individual  
14 Shifts Worked will be divided by the Claimant Total Shifts to obtain the Percentage  
15 Share. The Individual Settlement Payments for the Claimants will be calculated by  
16 multiplying 100% of the Net Settlement Proceeds by each Claimant's Percentage Share.  
17 (¶46.b, as amended.)
  - 18 ○ "Claimants" are those Class Members who do not submit an Exclusion Letter.  
19 (¶5, as amended.)
  - 20 ○ "Individual Shifts Worked" means the number of employment shifts each Class  
21 Member worked for LA Partyworks during the Class Period, as reflected by  
22 Defendant's corporate and business records. (¶21, as amended)
  - 23 ○ "Claimant Total Shifts" means the sum of all Individual Shifts Worked for all  
24 Claimants. (¶4, as amended.)

- 1 • Individual Settlement Payments will be allocated as follows: 25% wages and 75%  
2 interest and penalties. (§46.b, as amended.)
- 3 • The Settlement Administrator will mail or wire all required payments to the Claimants no  
4 later than 14 calendar days after the Defendant tenders the 2018 payment and 14 days  
5 after the 2019 payment. (§65, as amended.) If a Claimant's check is returned to the  
6 Settlement Administrator, the Settlement Administrator will make all reasonable efforts  
7 to re-mail it to the Claimant at his or her correct address. (§68, as amended.)
- 8 • It is expressly understood and agreed that the checks for the Individual Settlement  
9 Payments will become void and no longer available if not cashed within 180 days after  
10 mailing. Any funds from uncashed checks for Claimants shall be paid to the California  
11 Department of Industrial Relations Unclaimed Wages Fund in the name of the Claimant  
12 so that the Claimant may take possession of the money at a later date. (§69, as amended.).  
13 The Court finds that this provision complies with Cal. Code of Civ. Pro. § 384.
- 14 • **Voiding the Settlement.** In the event of any of the following: (i) the Court does not  
15 approve the scope of the Class Released Claims, or (ii) the Court finds the Maximum  
16 Settlement Amount is insufficient, or (iii) the Released Party does not fund the  
17 Settlement, the Parties may elect to reject this Settlement and the Amended Stipulation of  
18 Settlement shall be null and void ab initio and any order or judgment entered by the Court  
19 in furtherance of this Settlement shall be treated as withdrawn or vacated by stipulation of  
20 the Parties. In such case, Plaintiff, the Settlement Class Members and Defendant shall be  
21 returned to their respective statuses as of the date immediately prior to the execution of  
22 this Amended Stipulation of Settlement. (§75, as amended.)
- 23 • The settlement administrator is CPT Group, Inc. (§3, as amended.)
- 24 • Scope of the Release: Upon the Effective Date, Claimants will fully release the Class  
25 Released Claims and agree not to sue or otherwise make a claim against the Released

1 Party for the Class Released Claims. The Individual Settlement Payments shall be paid  
2 to Class Claimants specifically in exchange for the release of the Released Party from the  
3 Class Released Claims and the covenant not to sue concerning the Class Released  
4 Claims. (¶42) Defendant will only get a release of all Fair Labor Standards Act claims for  
5 those Claimants who cash their settlement checks. (¶48, as amended.)

6 ○ Settlement Checks shall contain, on the back of the check, an endorsement stating  
7 that, by endorsing and cashing the check, the Settlement Class Member consents  
8 to join the action and release Defendant from the Released Claims, including  
9 claims under federal law. (¶67, as amended.)

10 ○ "Class Released Claims" means all causes of action that were alleged or that  
11 could have been alleged based on the facts contained in the operative Complaint  
12 (or First Amended Complaint) through preliminary approval of the Settlement,  
13 including causes of action for failure to pay regular, minimum, and overtime  
14 wages, willful misclassification of employees as independent contractors, failure  
15 to pay all wages earned at the time of separation (Labor Code section 203), failure  
16 to properly calculate overtime wages, failure to provide meal periods, failure to  
17 provide rest periods, unfair competition, and failure to furnish itemized wage  
18 statements in violation of Labor Code section 226, that arose or will arise from  
19 employment by LA Partyworks during the Class Period, and all damages,  
20 penalties, PAGA penalties, interest and other amounts recoverable under said  
21 causes of action under any state or federal statutory or common law. (¶9, as  
22 amended)

23 ○ The release of claims provided by the Stipulation of Settlement includes  
24 Claimants' Released Claims, which a Class Member does not know or suspect to  
25 exist in his or her favor against the Released Party as of the date of Preliminary

1 Approval, that were alleged or could have been alleged based on the facts  
2 contained in Plaintiff's operative Complaint (or First Amended Complaint). Each  
3 Claimant, including Named Plaintiff, waives all rights and benefits afforded by  
4 section 1542 of the California Civil Code as to their Class Released Claims, and  
5 does so understanding, the significance of that waiver. The release of all rights  
6 and benefits afforded by §1542 is limited to the claims that were alleged or that  
7 could have been alleged based on the facts contained in Plaintiff's operative  
8 complaint. (¶49, as amended)

- 9 ○ Class Representatives will also provide a general release and §1542 waiver.  
10 (¶¶50-51, as amended.)

11 The releases appear to be proper. The class release is appropriately tethered to the  
12 pleading and limited to the relevant time period. At Preliminary Approval, Counsel confirmed  
13 at oral argument that the release is not intended to release claims for discrimination, personal  
14 injury, or the like, and is intended only to release those claims that arise from the facts pled in  
15 the operative complaint. Plaintiff's broader release is acceptable as he was represented by  
16 counsel when these terms were negotiated.

## 17 C. ANALYSIS OF SETTLEMENT AGREEMENT

### 18 1. Standards for Final Fairness Determination

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



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

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

1 offered in settlement, the extent of discovery completed and stage of the proceedings, the  
2 experience and views of counsel, the presence of a governmental participant, and the reaction of  
3 the class members to the proposed settlement.” (*Id.* at 128.) “Th[is] list of factors is not  
4 exclusive and the court is free to engage in a balancing and weighing of factors depending on the  
5 circumstances of each case.” (*Wershba supra*, 91 Cal.App.4th at pg. 245.)

6 Nevertheless, “[a] settlement need not obtain 100 percent of the damages sought in order  
7 to be fair and reasonable. Compromise is inherent and necessary in the settlement process.  
8 Thus, even if ‘the relief afforded by the proposed settlement is substantially narrower than it  
9 would be if the suits were to be successfully litigated,’ this is no bar to a class settlement  
10 because ‘the public interest may indeed be served by a voluntary settlement in which each side  
11 gives ground in the interest of avoiding litigation.’” (*Wershba, supra*, 91 Cal.App.4th at pg.  
12 250.)

13 **2. Does a presumption of fairness exist?**

- 14 a. Was the settlement reached through arm’s-length bargaining? Yes. On  
15 November 22, 2017, the Parties agreed to mediate the case with Jeff Krivis, a  
16 mediator with experience in wage and hour class actions. In advance, the Parties  
17 completed the *Belaire-West* notice process with a third-party notice administrator  
18 and completed informal discovery. (Cottrell Decl. ISO Preliminary Approval,  
19 ¶21.) The mediation was successful and the Parties reached agreement on a  
20 proposed Settlement. (*Id.* at ¶23.)
- 21 b. Were investigation and discovery sufficient to allow counsel and the court to act  
22 intelligently? Yes. Counsel represent that Defendant provided informal  
23 discovery showing the shifts worked by the Class Members, including the date of  
24 each shift, the location, the number of hours in the shift, and the total  
25 compensation earned for the shift. Defendant also provided a Class List, which

1 enabled Class Counsel to perform outreach with Class Members. Plaintiff used  
2 this information to perform an analysis of the effects of Defendant's  
3 compensation policies and practices on Class Members' pay. (*Id.* at ¶24.) Class  
4 Counsel completed multiple telephone interviews with Class Members regarding  
5 their employment relationship with Defendant, hours of service, work history,  
6 work duties, usage of equipment and tools, compensation, overtime,  
7 reimbursements, meal and rest breaks, and other topics. (*Ibid.*)

8 c. Is counsel experienced in similar litigation? Yes. Class Counsel is experienced  
9 in class action litigation, including wage and hour class actions. (*Id.* at ¶¶ 5-7.)

10 d. What percentage of the class has objected? Zero objectors. (Henry Decl., ¶12.)

11 CONCLUSION: The settlement is entitled to a presumption of fairness.

12 **2. Is the settlement fair, adequate, and reasonable?**

13 a. Strength of Plaintiff's case. "The most important factor is the strength of the  
14 case for plaintiff on the merits, balanced against the amount offered in  
15 settlement." (*Kullar, supra*, 168 Cal.App.4th at pg. 130.)

16 In the instant case, it is alleged Plaintiff and the Class Members regularly  
17 worked over 8 hours a day, even over 18 hours straight a day, up to seven days a  
18 week. They typically worked at Defendant's warehouse during the week  
19 preparing for large party-style events. Class Members reported working over 70  
20 hours per week. (Cottrell Decl. ISO Preliminary Approval, ¶11.)

21 Plaintiff alleges that Defendant did not pay Plaintiff and the Class  
22 Members overtime for hours that they worked, and required them to work long  
23 hours without meal or rest breaks. Additionally, Defendant required them to  
24 purchase their own uniforms, including black clothes and polo shirts in colors  
25 specified by Defendant, to be used at specific events. Defendant also required

1 them to use their personal cell phones to perform work duties. Defendant did not  
2 reimburse Plaintiff and the Class Members for these additional costs. (*Id.* at ¶12.)

3 Accordingly, Plaintiff alleges that Defendant has willfully misclassified  
4 Plaintiff and the Class Members in violation of California Labor Code ("Labor  
5 Code") § 226.8 and Wage Order 10-2001. Labor Code § 226.8 states that it is  
6 unlawful for any employer to willfully misclassify an individual as an  
7 independent contractor. (*Id.* at ¶13.)

8 Class Counsel has provided the following estimated maximum valuations  
9 for the asserted class claims:

| <b>Claim</b>                            | <b>Maximum Exposure</b> |
|---|-------------------------|
| Willful Misclassification               | \$630,000.00            |
| Failure to Pay Minimum Wage             | \$155,232.00            |
| Failure to Pay Overtime                 | \$777,924.00            |
| Failure to Provide Meal and Rest Breaks | \$148,176.00            |
| Wage Statement Claim                    | \$504,000.00            |
| Failure to Reimburse Business Expenses  | \$158,760.00            |
| Waiting Time Penalties                  | \$378,378.00            |
| PAGA Penalties                          | \$1,398,600.00          |
| <b>Total</b>                            | <b>\$4,151,070.00</b>   |

16 (*Id.* at ¶¶15-22.)

17 In total, Class Counsel estimated Defendant's maximum exposure to be  
18 approximately \$4,151,070.00. Class Counsel obtained a gross settlement valued  
19 at \$300,000. This is 7% of Defendant's maximum potential exposure, which  
20 given Defendant's represented financial condition, is within the "ballpark of  
21 reasonableness." (*Id.* at ¶22.)

- 22 b. Risk, expense, complexity and likely duration of further litigation. Given the  
23 nature of the class claims, the case is likely to be expensive and lengthy to try.  
24 Procedural hurdles (e.g., motion practice and appeals) are also likely to prolong  
25 the litigation as well as any recovery by the class members.

- 1 c. Risk of maintaining class action status through trial. Even if a class is certified,  
2 there is always a risk of decertification. (*Weinstat v. Dentsply Intern., Inc.*  
3 (2010) 180 Cal.App.4th 1213, 1226 [“Our Supreme Court has recognized that  
4 trial courts should retain some flexibility in conducting class actions, which  
5 means, under suitable circumstances, entertaining successive motions on  
6 certification if the court subsequently discovers that the propriety of a class  
7 action is not appropriate.”].)
- 8 d. Amount offered in settlement. As indicated above, the Maximum Settlement  
9 Amount is \$300,000. Assuming that the Court approves all of the maximum  
10 requested deductions, approximately \$162,540.07 will be available for automatic  
11 distribution to participating class members. Assuming full participation, the  
12 average settlement share will be approximately \$979.16. [ $\$162,540.07 \text{ Net} \div$   
13  $166 \text{ class members} = \$979.16$ ]
- 14 e. Extent of discovery completed and stage of the proceedings. As discussed  
15 above, at the time of the settlement, the parties had conducted discovery  
16 sufficient to value the settlement.
- 17 f. Experience and views of counsel. The settlement was negotiated and endorsed  
18 by Class Counsel who, as indicated above, is experienced in class action  
19 litigation, including wage and hour cases. Class Counsel believes that the  
20 settlement is fair, reasonable and adequate for each participating Class Member.  
21 (Settlement Agreement, ¶43, as amended.)
- 22 g. Presence of a governmental participant. This factor is not applicable here.
- 23 h. Reaction of the class members to the proposed settlement.

24 Number of class members: 166

25 Number of notices mailed: 166

1                   Number of undeliverable notices:                   1  
2                   Number of opt-outs:   0  
3                   Number of objections:   0  
4                   Number of participating class members:                   **166**

5 (Henry Decl., ¶¶5-12.)

6                   CONCLUSION: The settlement can be deemed “fair, adequate, and reasonable.” The  
7 Court finds that the notice was adequate and conforms to due process requirements.

8 **D.           ATTORNEY FEES AND COSTS**

9                   Class Counsel Schneider Wallace Cottrell Konecky Wotkyns, LLP (“SWCKW”)  
10 requests **\$100,000** (33 1/3%) for attorney fees and **\$15,209.93** for costs. (Motion ISO Final  
11 Approval, 12:20-24; Cottrell Decl. ISO Final Approval ¶¶111-113; 118.)

12                   In determining the appropriate amount of a fee award, courts may use the lodestar  
13 method, applying a multiplier where appropriate. (*PLCM Group, Inc. v. Drexler* (2000) 22  
14 Cal.4th 1084, 1095-96.) A percentage calculation is permitted in common fund cases. (*Laffitte v.*  
15 *Robert Half Int’l, Inc.* (2016) 1 Cal.5th 480, 503.) Despite any agreement by the parties to the  
16 contrary, courts have an independent responsibility to review an attorney fee provision and  
17 award only what it determines is reasonable. (*Garabedian v. Los Angeles Cellular Telephone*  
18 *Company* (2004) 118 Cal.App.4th 123, 128.)

19                   In the instant case, fees are sought pursuant to the percentage method. (Motion ISO Final  
20 Approval, 13:12-14; Cottrell Decl. ISO Final Approval ¶112.)

21                   The \$100,000 fee request is 33 1/3% of the Maximum Settlement Amount, which is  
22 average. (*In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 558, fn. 13 [“Empirical  
23 studies show that, regardless whether the percentage method or the lodestar method is used, fee  
24 awards in class actions average around one-third of the recovery.”].)

1 Here, the \$100,000 fee request represents a reasonable percentage of the total funds paid  
2 by Defendant. Further, the notice expressly advised class members of the fee request, and no  
3 one objected. (Henry Decl. ¶12 and Exhibit 1 thereto.) Accordingly, the Court awards fees in  
4 the amount of **\$100,000**.

5 As for costs, Class Counsel requests **\$15,209.93**. (Cottrell Decl. ISO Final Approval  
6 ¶118.)

7 This is less than the \$16,000 cap provided in the settlement agreement (¶16, as  
8 amended). This amount was disclosed to Class Members in the Notice, and no objections were  
9 received. (Henry Decl. ¶12 and Exhibit 1 thereto.) Class Counsel incurred actual costs in the  
10 amount of \$15,209.93. (Cottrell Decl. ISO Final Approval ¶119 and Exhibit C thereto.)

11 The costs include Mediation (\$6,000), Dahl Administration (\$899), Filing fees  
12 (\$3,162.03), Travel costs (\$1,975.46), Copying fees (\$476.50), and Legal Research (\$2,330.65.)  
13 (*Id.* at Exhibit C).

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

16 For all of the foregoing reasons, costs of **\$15,209.93** are approved.

17 **E. INCENTIVE AWARD TO CLASS REPRESENTATIVE**

18 An incentive fee award to a named class representative must be supported by evidence  
19 that quantifies time and effort expended by the individual and a reasoned explanation of  
20 financial or other risks undertaken by the class representative. (See *Clark v. American*  
21 *Residential Services LLC* (2009) 175 Cal.App.4th 785, 806-807; see also *Cellphone*  
22 *Termination Cases* (2010) 186 Cal.App.4th 1380, 1394-1395 [“Criteria courts may consider in  
23 determining whether to make an incentive award include: (1) the risk to the class representative  
24 in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties  
25 encountered by the class representative; (3) the amount of time and effort spent by the class

1 representative; (4) the duration of the litigation and; (5) the personal benefit (or lack thereof)  
2 enjoyed by the class representative as a result of the litigation. (Citations.)”].)

3 Here, the Class Representative requests an enhancement award of **\$5,000** (Cottrell Decl.  
4 ISO Final Approval ¶110.)

5 Plaintiff Marco Carrillo worked for Defendant from approximately July 2015 through  
6 March 2016. (Declaration of Marco Carrillo ¶4.) Mr. Carrillo estimates that he has devoted  
7 approximately 30 hours to the performance of his duties as class representative. (*Id.* at ¶19.)  
8 Plaintiff describes his participation in this action as follows: multiple calls with counsel to  
9 discuss various aspects of the case, working with counsel to prepare the PAGA notice and  
10 Complaint, gathering and reviewing documents, mediation discussions with counsel, preparing  
11 for mediation, remaining on-call during the mediation, and reviewing and evaluating the terms  
12 of settlement. (*Id.* at ¶¶8, 10-13, 16-17.)

13 In light of the above, as well as the benefits obtained on behalf of the class, a **\$5,000**  
14 award for Mr. Carrillo appears to be reasonable inducement for Plaintiff’s participation in the  
15 case. Accordingly, an enhancement in the amount requested is approved.

16 **F. CLAIMS ADMINISTRATION COSTS**

17 Claims administrator, CPT Group, Inc., requests **\$13,500** in compensation for its work in  
18 administering this case. (Henry Decl. ¶16.) At the time of preliminary approval, costs of  
19 settlement administration were estimated at \$13,500. (Settlement Agreement ¶3, as amended.)  
20 Class Members were provided with notice of this amount and did not object. (Henry Decl. ¶12  
21 and Exhibit 1 thereto.)

22 Accordingly, claims administration costs are approved in the amount of **13,500**.

23 **III. CONCLUSION AND ORDER**

24 The Court hereby:


- 25 (1) Grants class certification for purposes of settlement;



- 1 (2) Grants final approval of the settlement as fair, adequate, and reasonable;
- 2 (3) Awards \$100,000 in attorney fees to Class Counsel, Schneider Wallace Cottrell
- 3 Konecky Wotkyns, LLP ("SWCKW");
- 4 (4) Awards \$15,209.93 in litigation costs to Class Counsel;
- 5 (5) Approves payment of \$3,750 (75% of \$5,000 PAGA penalty) to the LWDA;
- 6 (6) Awards \$5,000 as a Class Representative Service Award to Plaintiff Marco Carrillo;
- 7 (7) Awards \$13,500 in claims administration costs to CPT Group, Inc.;
- 8 (8) Orders class counsel to lodge a proposed Judgment, consistent with this ruling and
- 9 containing the class definition and the full release language by
- 10 \_\_\_\_\_, 4/21, 2018;
- 11 (9) Orders class counsel to provide notice to the class members pursuant to California
- 12 Rules of Court, rule 3.771(b); and
- 13 (10) A Non-Appearance Case Review re: Final Report re: Distribution of Settlement Funds
- 14 is set for \_\_\_\_\_, at 8:30 AM.
- 15 Final Report is to be filed by \_\_\_\_\_.

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17 Dated: 11/14/18



18 MAREN E. NELSON

19 Judge of the Superior Court

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