

1 Galen T. Shimoda (Cal. State Bar No. 226752)
2 Justin P. Rodriguez (Cal. State Bar No. 278275)
3 Renald Konini (Cal. State Bar No. 312080)
4 **Shimoda & Rodriguez Law, PC**
5 9401 East Stockton Blvd., Suite 200
6 Elk Grove, CA 95624
7 Telephone: (916) 525-0716
8 Facsimile: (916) 760-3733
9 Email: attorney@shimodalaw.com
10 jrodriguez@shimodalaw.com
11 rkonini@shimodalaw.com

12 Attorneys for Plaintiff JANICE INSIXIENGMAY

13 **UNITED STATES DISTRICT COURT**
14 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

15 JANICE INSIXIENGMAY, individually and)
16 on behalf of all other similarly situated)
17 employees,)

18 Plaintiff,)

19 vs.)

20 HYATT CORPORATION DBA HYATT)
21 REGENCY SACRAMENTO, a Delaware)
22 Corporation; and DOES 1 to 100, inclusive,)

23 Defendants.)

24 **Case No. 2:18-cv-02993-TLN-DB**

25 **CLASS ACTION**

26 **PLAINTIFF’S MEMORANDUM OF POINTS**
27 **AND AUTHORITIES IN SUPPORT OF**
28 **MOTION FOR ATTORNEY’S FEES AND**
COSTS, REPRESENTATIVE
ENHANCEMENT, AND SETTLEMENT
ADMINISTRATOR COSTS

Date: September 19, 2024
Time: 2:00 p.m.
Courtroom: 2, 15th Floor
Judge: Hon. Troy L. Nunley

Filed: October 4, 2018
FAC Filed: April 7, 2020
SAC Filed: April 6, 2023
Trial Date: None Set

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Janice Insixiengmay (“Plaintiff”) hereby submits this Motion for an award of
4 attorney’s fees of 35% of the \$295,000.00 Gross Settlement Amount (\$103,250.00), reimbursement of
5 \$29,051.07 in advanced litigation expenses, an Enhancement Payment of \$10,000 for Plaintiff, and
6 Settlement Administrator Costs in the Amount of \$13,500.

7 The litigation history and background facts supporting the settlement are set forth in Plaintiff’s
8 motion for preliminary approval, which was granted by the Court on March 12, 2024, and will be set
9 forth in further detail in Plaintiff’s motion for final approval of class action settlement, which is to be
10 filed by August 15, 2024.¹ Complete and detailed billing entries documenting the work performed by
11 Plaintiff’s Counsel is submitted as Exhibit A to the Declaration of Justin P. Rodriguez (“Decl.
12 Rodriguez”). Through their time, effort, and skill, Plaintiff and her counsel have been able to secure a
13 substantial settlement on behalf of approximately 1,078 Class Members. The non-reversionary, non-
14 claims made settlement will be paid out to Class Members automatically if the Joint Stipulation
15 Regarding Class Action and PAGA Settlement and Release (“Agreement”) is given final approval by
16 the Court. Defendant Hyatt Corporation DBA Hyatt Regency Sacramento (“Defendant”) does not
17 oppose this Motion.

18 The reaction by Class Members to the Settlement thus far demonstrates clear support for its
19 terms. To date, there have been zero objections and zero opt outs. See Declaration of Kaylie O’Connor
20 (“Decl. O’Connor”), ¶¶ 6-7. Additionally, there have been no objections to the settlement by any State
21 Attorneys General or by the U.S. Attorney General. See *id.* This provides substantial support for the
22 fairness of the requested awards as the notice provided to the class and the Attorneys General explicitly
23 stated the amounts to be sought for attorney’s fees, costs up to \$31,500, an Enhancement Payment of
24 \$10,000, and Settlement Administrator Costs up to \$20,000.00. See Exh. A to Decl. O’Connor at pg. 7
25 (section II.A of the Notice of Settlement); 28 U.S.C. § 1715(3)-(4). Under the settlement, class
26 members will receive an average of \$119.85 and there will be a maximum distribution of \$538.54. See
27 Decl. O’Connor at ¶ 11.

28 _____
¹ As a result, Plaintiff does not re-state those facts here.

1 Plaintiff and her counsel were able to achieve these results despite Defendant being represented
2 by knowledgeable counsel, the clear risks associated with class actions, and the risks associated with
3 the merits of Plaintiff's claims. Plaintiff's Counsel shouldered the risk of contingent representation in
4 complex litigation and was able to deliver a beneficial result for the class.

5 For these reasons, Plaintiff requests that the Court 1) award Plaintiff's Counsel's reasonable
6 attorney's fees of \$103,250.00, plus reimbursement of out-of-pocket litigation costs of \$29,051.07; 2)
7 award the Enhancement Payment of \$10,000.00 to Plaintiff; and 3) award CPT Group, Inc., \$13,500 for
8 the Settlement Administrator Costs.

9 II. ARGUMENT

10 A. Authority And Methodology For Awarding Attorneys' Fees, Expenses, and Costs

11 Pursuant to Federal Rules of Civil Procedure, Rule 23(h), Plaintiff's Counsel is entitled to
12 reasonable attorney's fees and costs. Because California law governs Plaintiff's claims, it will also
13 govern the award of fees. *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002). A
14 Court may award attorney's fees in a class settlement as a percentage of the fund and utilize a lodestar
15 crosscheck, in its discretion, in order to determine whether the percentage awarded is appropriate. *See*
16 *Laffitte v. Robert Half Internat., Inc.*, 1 Cal.5th 480, 503-506 (2016). An award of attorney's fees
17 should include compensation for all hours reasonably spent. *See Ketchum v. Moses*, 24 Cal.4th 1122,
18 1133 (2001); *see also Hensley v. Eckerhart*, 461 U.S. 424, 431 (1983) (finding hours are reasonably
19 spent if they are the kind normally billed to a fee-paying client). California has not adopted any
20 "benchmark" percentage utilized by several federal courts. *See Emmons v. Quest Diagnostics Clinical*
21 *Lab'ys, Inc.*, 2017 WL 749018, at *7 (E.D. Cal. 2017) ("Notably, while the California Supreme Court
22 recognized the Ninth Circuit's 25 percent benchmark for percentage awards in common fund cases, it
23 did not adopt such a benchmark for California cases"). Instead, "[t]he benchmark in determining
24 attorney fees is reasonableness." *Karton v. Ari Design & Constr., Inc.*, 61 Cal.App.5th 734, 744 (2021)

25 A common fund approach to calculating fees may be used in the present case because Plaintiff
26 and her counsel have secured an all-in (*i.e.* non-claims made), non-reversionary settlement to be paid to
27 all Class Members who do not opt out. *See Laffitte*, 1 Cal.5th at 503. This creates a sufficiently
28 identifiable class of beneficiaries (*e.g.* the settlement class), the benefits received can be accurately

1 traced to the settlement Plaintiff and her counsel were able to negotiate on behalf of the class, and the
2 fee can be shifted with exactitude to those benefiting as the fee request is a specific, lump-sum
3 percentage of the common fund. *See Paul, Johnson, Alston & Hunt v. Graftly*, 886 F.2d 268, 271 (9th
4 Cir. 1989). Plaintiff's request for an attorney's fee award of 35% of the Gross Settlement Amount
5 (\$103,250.00) is a reasonable award as it is within ranges approved by other Courts in similar cases,
6 **zero** class members have objected to the requested fee, a beneficial result was obtained on behalf of the
7 class, and a lodestar crosscheck demonstrates the percentage chosen is reasonable.

8 **B. Plaintiff's Counsel's Request For A Fee Award Of 35% Of The Common Fund Is**
9 **Reasonable In Light Of The Circumstances And Results Achieved In This Case And**
10 **Validated By A Lodestar Cross Check**

11 *i. A Fee Of 35% Of The Common Fund Is Reasonable Because It Is Within the Ranges*
12 *Historically Approved By Courts In Class Settlement And There Have Been Zero*
13 *Objections to the Requested Fees*

14 Rather than acting as a cap on any fee, the percentages applied in cases are a tool to cross check
15 the reasonableness of the fee just as the lodestar method is a tool to cross check the reasonableness of a
16 requested percentage. *See Karton*, 61 Cal.App.5th at 744; *Vizcaino*, 290 F.3d at 1048 (“courts cannot
17 rationally apply any particular percentage—whether 13.6 percent, 25 percent or any other number—in
18 the abstract, without reference to all the circumstances of the case”). Historically, attorney's fee awards
19 in common fund cases in general range from 20% to 50% of the fund, depending on the circumstances
20 of the case. *See Newberg on Class Actions*, (3rd Ed.), 1992, §14.03. The requested fee for Plaintiff's
21 Counsel, 35% of the common fund, is within these ranges and on par with fee awards in similar cases.
22 *See Martin v. Ameripride Servs.*, 2011 U.S. Dist. LEXIS 61796, *22-23 (S.D. Cal. 2011) (collecting
23 cases); *Yanez v. HL Welding, Inc.*, 2022 WL 788703, at *12 (S.D. Cal. 2022) (collecting California
24 District Court wage and hour class action cases awarding 1/3 of the gross settlement for attorney's
25 fees); *Birch v. Office Depot, Inc.*, USDC Southern District, Case No. 06cv1690 DMS (WMC)
26 (awarding 40% fee on a \$16 million wage and hour class action settlement); *Rippee v. Boston Mkt.*
27 *Corp.*, USDC Southern District, Case No. 05cv1359 BTM (JMA) (awarding a 40% fee on a \$3.75
28 million wage and hour class action settlement).

29 The Notice of Settlement sent to Class Members specifically identified the allocations for
30 attorney's fees and costs, the Class Representative Enhancement Payment, and Settlement

1 Administrator Costs. *See* Exh. A to Decl. O'Connor. The reaction of Class Members to these
2 requested amounts provides useful evidence of whether they are reasonable. *See In re Heritage Bond*
3 *Litig.*, 2005 WL 1594403, *21 (E.D. N.Y. 2017) (“The absence of objections or disapproval by class
4 members to Class Counsel’s fee request further supports finding the fee request reasonable”). As noted
5 above, there have been no objections raised to the Agreement or any term or allocation therein
6 whatsoever. *See* Decl. O'Connor, ¶¶ 7-8. Similarly, of the Attorneys General that have been notified
7 of this settlement pursuant to 28 U.S.C. § 1715(3)-(4), none have objected to it or the requested
8 attorneys’ fees. *See* Decl. Rodriguez, ¶ 22.

9 The fact that the requested fee percentage is squarely within the range percentages awarded in
10 other similar cases and the lack of any objections to the requested fee demonstrate the percentage being
11 requested in this case is reasonable and should be approved.

12 *ii. A Lodestar Cross Check Validates The Proposed Fee*

13 In common fund cases, district courts have discretion to use a lodestar cross check (plus a
14 multiplier to account for risk of non-payment) to determine whether the percentage chosen is
15 reasonable. *See Laffitte*, 1 Cal.5th at 503-506; *Fischel v. Equitable Life Assurance Society of the*
16 *United States*, 307 F.3d 997, 1006 (9th Cir. 2002). If the lodestar method is used, “[i]t is an abuse of
17 discretion to fail to apply a risk multiplier, however, when (1) attorneys take a case with the expectation
18 that they will receive a risk enhancement if they prevail, (2) their hourly rate does not reflect that risk,
19 and (3) there is evidence that the case was risky.” *Id.* at 1008.

20 In the present case, Plaintiff’s Counsel will have spent a combined 674.3 hours litigating this
21 action. *See* Exh. A to Decl. Rodriguez. At their customary and reasonable hourly rates, the lodestar is
22 \$396,947.50. *See id.* The requested fee of \$103,250.00 represents a negative multiplier of .26x to their
23 lodestar as of May 8, 2024. *See* Decl. Rodriguez, ¶ 2. Any fee award and expense reimbursement to
24 Plaintiff’s Counsel has always been at risk and wholly contingent on the result achieved, supporting the
25 requested fee. *See id.* at ¶ 4.

26 *a. Plaintiff’s Counsel’s Time Was Reasonably Spent*

27 The lodestar method requires the Court to determine a “touchstone” or lodestar figure based on
28 a compilation of time spent and reasonable hourly compensation for each attorney. *See, e.g., Graham v.*

1 *DaimlerChrysler Corp.*, 34 Cal.4th 553, 579 (2004); *Vo v. Los Virgenes Mun. Water Dist.*, 79
 2 Cal.App.4th 440, 445 (2000). Generally, hours are reasonable if they were “reasonably expended in
 3 pursuit of the ultimate result achieved in the same manner that an attorney traditionally is compensated
 4 by a fee-paying client.” *See Hensley*, 461 U.S. at 431.

5 Counsel undertook significant work to prosecute this case over the past five and a half (5 ½)
 6 years. This included investigations, filing, drafting of pleadings, legal research on numerous complex
 7 issues, numerous interviews of Plaintiff, pursuing declarations from class members, discovery and
 8 depositions, informal discovery and document exchanges, public records requests and review, extensive
 9 document review and analysis, and settlement negotiations. *See generally* Exh. A to Decl. Rodriguez.
 10 A breakdown summary of the hours worked and corresponding lodestars on a timekeeper-by-
 11 timekeeper basis is as follows:

<u>Timekeeper</u>	<u>Hours</u>	<u>Lodestar</u>
Galen T. Shimoda	109.5	\$79,387.50
Justin P. Rodriguez	397.2	\$246,330
Renald Konini	15.3	\$6,502.50
Brittany Berzin	152.3	\$64,727.50
Total:	674.3	\$396,947.50

18
 19 *See* Decl. Rodriguez at ¶ 19. As the time entries make clear, the time reported in the chart above was
 20 devoted to necessary and worthwhile tasks, and was calculated at reasonable billing rates. *See* Exh. A
 21 to Decl. Rodriguez; Decl. Rodriguez at ¶¶ 19-21.

22 The number of hours that Plaintiff’s Counsel devoted to this case is reasonable. *See, e.g.*,
 23 *Ketchum*, 24 Cal.4th at 1133 (fee award should be “fully compensatory [and] absent circumstances
 24 rendering the award unjust, an attorney fee award should ordinarily include compensation for *all* the
 25 hours reasonably spent.”) (emphasis in original); *Serrano v. Priest*, 20 Cal.3d 25, 49 (1977) (counsel
 26 are entitled to compensation for all hours reasonably expended); *Hensley*, 461 U.S. at 435-36; *Caudle*
 27 *v. Bristow Optical Co.*, 224 F.3d 1014, 1028 (9th Cir. 2000); *Cabrales v. County of Los Angeles*, 935
 28 F.2d 1050, 1052-53 (9th Cir. 1991). As discussed above, Plaintiff’s Counsel were required to expend

1 considerable time and resources to investigate, litigate, and successfully settle these claims for the
2 benefit of the class.

3 *b. Plaintiff's Counsel's Hourly Rates Are Reasonable As They Have Been*
4 *Judicially Approved In Prior Cases*

5 The second step is determining the reasonable market value of the attorneys' services at an
6 hourly rate. *See Ketchum*, 24 Cal.4th at 1134; *Blum v. Stenson*, 465 U.S. 886, 895 n.11 (1984);
7 *Children's Hosp. and Med. Ctr. v. Bonta*, 97 Cal.App.4th 740, 746 (2002) (noting rates were
8 reasonable where they were "within the range of reasonable rates charged by and judicially awarded
9 comparable attorneys for comparable work"); *United Steelworkers of Am. v. Phelps Dodge Corp.*, 896
10 F.2d 403, 407 (9th Cir. 1990) ("rate determinations in other cases, particularly those setting a rate for
11 the plaintiffs' attorney, are satisfactory evidence of the prevailing market rate"). This rule applies even
12 when, as here, the attorneys representing the named plaintiff performed the work on a contingent fee
13 basis. *See, e.g., Robertson v. Fleetwood Travel Trailers*, 144 Cal.App.4th 785, 818 (2006); *Blanchard*
14 *v. Bergeron*, 489 U.S. 87, 96 (1989). Additionally, awarding fees at the hourly rate in effect at the time
15 of the fee request is an appropriate and judicially approved method. *See Missouri v. Jenkins by Agyei*,
16 491 U.S. 274, 283 (1989).

17 Here, Plaintiff's Counsel's hourly rates are reasonable as they have been judicially approved by
18 the Sacramento County Superior Court since November 2022, which is the same county where this
19 litigation is pending. *See Decl. Rodriguez*, ¶ 21. Given that Plaintiff's Counsel have substantial
20 experience litigating complex wage and hour class and representative cases and their requested rates
21 have already received judicial approval in the relevant legal community, they should be deemed
22 reasonable in this case as well. *See Decl. Rodriguez*, ¶¶ 10-17, 21.

23 *c. A Multiplier Of The Lodestar Would Be Appropriate In This Case*

24 If the Court were to employ a lodestar approach instead of the percentage of the fund approach,
25 applying a multiplier would be reasonable and acceptable. Multipliers are typically awarded in
26 contingent fee litigation to compensate counsel for the risk of non-payment:

27 It is an established practice in the private legal market to reward attorneys
28 for taking the risk of non-payment by paying them a premium over their
normal hourly rates for winning contingency cases. *See Richard Posner*,

1 *Economic Analysis of Law* § 21.9, at 534-35 (3d ed. 1986). Contingent
2 fees that may far exceed the market value of the services if rendered on a
3 non-contingent basis are accepted in the legal profession as a legitimate
way of assuring competent representation for plaintiffs who could not
afford to pay on an hourly basis regardless whether they win or lose.

4 *Chem. Bank v. City of Seattle (In re Wash. Pub. Power Supply Sys. Sec. Litig.)*, 19 F.3d 1291, 1299 (9th
5 Cir. 1994). Moreover, “in the common fund context, attorneys whose compensation depends on their
6 winning the case, must make up in compensation in the cases they win for the lack of compensation in
7 the cases they lose.” *Id.* at 1300-01; *see also Ketchum*, 24 Cal.4th at 1138 (“The adjustment to the
8 lodestar figure, *e.g.*, to provide a fee enhancement reflecting the risk that the attorney will not receive
9 payment if the suit does not succeed, constitutes earned compensation; unlike a windfall, it is neither
10 unexpected nor fortuitous”); *Wershba*, 91 Cal.App.4th at 255 (“Multipliers can range from 2 to 4 or
11 even higher”). Even though applying a positive multiplier would be appropriate in this case, the fact
12 that the requested 35% fee will still result in a negative multiplier gives evidence that the requested
13 percentage is reasonable and should be awarded.

14 *d. The Result Achieved In Light Of The Case’s Risks And Difficulty*

15 The result achieved is a major factor to be considered in making a fee award. *Hensley*, 461 U.S.
16 at 436 (“most critical factor is the degree of success obtained”). The Gross Settlement Amount here is
17 \$295,000 for a class of 1,097 individuals. This exceeds the substantive wage loss experienced by Class
18 Members. *See* Decl. Rodriguez, ¶ 7. After payment of the requested attorneys’ fees and costs, the
19 Enhancement Payment, the PAGA Payment, and Settlement Administrator Costs, approximately
20 \$129,198.93 remains for distribution to the class. *See* Decl. O’Connor at ¶ 10. If the settlement is
21 finally approved, Class Members will be mailed checks averaging \$119.85, with a maximum
22 distribution of \$538.54. *See id.* at ¶ 11. As noted in Plaintiff’s motion for preliminary approval, the
23 settlement represents a gross recovery of 10.8% to 24.9% and a net recovery of approximately 4.4% to
24 10.1% of the claims’ maximum value. *See* Doc. No. 73-2, ¶¶ 9-10 (Declaration of Justin P. Rodriguez
25 In Support of Plaintiff’s Motion For Preliminary Approval of Class Action and PAGA Settlement).
26 These are significant payments for highly disputed and challenging claims, especially when considering
27 the average net award is approximately 470% higher than the average net recovery in a related case
28 against Defendant. *See* Decl. Rodriguez, ¶¶ 7-8; *see also Schiller v. David’s Bridal, Inc.*, 2012 U.S.

1 Dist. LEXIS 80776 at *48 (E.D. Cal. 2012) (“Class Members will receive an average of approximately
2 \$198.70, with the highest payment to a Class Member being \$695.78 . . . Overall, the Court finds that
3 the results achieved are good, which is highlighted by the fact that there was no objection to the
4 settlement amount or the attorneys’ fees requested.”); *Gardner v. GC Servs., LP*, 2012 U.S. Dist.
5 LEXIS 47043, 18 (S.D. Cal. 2012) (“the results achieved in this case were very favorable. Class
6 members are provided with immediate monetary relief, with an average award of around several
7 hundred dollars and a minimum award of \$50”). In light of the difficult legal issues presented and the
8 recovery obtained, the parties’ settlement is very favorable for Class Members.

9 *e. The Time And Labor Involved*

10 Plaintiff’s Counsel expended substantial professional and financial resources. The time and
11 energy of multiple lawyers as well as professional staff were necessary to properly and adequately
12 investigate the facts and legal issues of the action, and to prosecute the case to this favorable settlement.
13 As of May 8, 2024, Plaintiff’s Counsel have contributed over 674.3 hours prosecuting this litigation to
14 its successful resolution. *See* Exh. A to Decl. Rodriguez. This time includes the pre-filing
15 investigation, discovery, document review, communications with Plaintiff and other class members,
16 mediation and post-mediation negotiations, and the time and resource-consuming post-settlement
17 process inherent in employment class action procedure. *See id.* Plaintiff’s Counsel will continue to
18 dedicate substantial amounts of time working with class members to answer questions and to ensure a
19 smooth settlement administration process. *See* Decl. Rodriguez at ¶ 2.

20 *f. The Quality And Efficiency Of Counsel’s Work*

21 The quality and efficiency of Plaintiff’s Counsel’s work is reflected in the result, which has an
22 average recovery of 470% more than the average net recovery in a related case. *See id.* at ¶¶ 8-9. In
23 addition, the recovery for this case is in addition to any payments Class Members received in the
24 related case. While the claims of this case were carved out, individuals falling within the definition of
25 “class member” in that case were still able to recover payment from the settlement. *See id.* at ¶ 9. The
26 favorable recovery for the class is a direct result of the legal acumen and diligence of Plaintiff’s
27 Counsel.
28

1 g. *The Complexity Of This Action's Factual And Legal Questions*

2 A factor supporting the attorney fees sought is the complexity of the case. *See In re Pac.*
3 *Enterprises Sec. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995). Class actions are inherently complex, and
4 Plaintiff's Counsel have extensive experience handling such matters. *See Decl. Rodriguez*, ¶¶ 10-17.
5 When litigating against an employer that employs a large number of individuals across a wide
6 geographic area the complexity of the litigation increases exponentially. Continually monitoring
7 whether other class and/or PAGA cases have been filed in State or Federal Court is required because
8 there can be factual and/or legal determinations that create claim preclusion and/or res judicata issues,
9 or simply eliminate a case entirely because a settlement covers the claims or class members in the
10 present case. *See, e.g. id.* at ¶ 8. Diligence is required to ensure the asserted claims are given proper
11 weight in any case and not improperly infringed upon in other related litigation. *See id.* Additionally,
12 reconstructing the pay practices and implementation of policies across several departments with several
13 different pay systems was an extremely difficult task in this case. *See id.* at ¶ 7.

14 h. *The Contingent Nature Of The Case And The Financial Burden Carried By*
15 *Plaintiff's Counsel*

16 Over the past five and a half (5 ½) years Plaintiff's Counsel have received no compensation for
17 their work and have accumulated nearly \$30,000 in advanced costs. *See Decl. Rodriguez*, ¶¶ 2-6. Any
18 award of fees and expenses to Plaintiff's Counsel have always been contingent on the result achieved
19 and in this Court's discretion. The Court should also consider that Plaintiff's Counsel were faced with
20 very competent opposing counsel. *See In re Charter Commc'ns, Inc., Sec. Litig.*, 2005 WL 4045741, at
21 *17 (E.D. Mo. 2005) ("the quality and vigor of opposing counsel is important in evaluating the services
22 rendered by" Plaintiff's Counsel). Defense counsel's fee was not contingent on the outcome of the
23 litigation.

24 Plaintiff respectfully that the Court award the 35% fee to fairly compensate counsel for the
25 substantial risks they assumed in representing Class Members over the past five and a half (5 ½) years
26 and for the favorable outcome they achieved.

C. Plaintiff's Counsel's Costs Were Necessarily Incurred To Achieve the Benefit Obtained

1
2 Plaintiff's Counsel seeks reimbursement of \$29,051.07 for the expenses they have and will
3 incur while prosecuting this litigation on behalf of the class. This is less than the \$31,500 provided for
4 in the Agreement and Notice of Settlement. Plaintiff's Counsel is submitting the receipts and/or
5 invoices for the amounts charged, with financial account information redacted. See Exhs. B & C to
6 Decl. Rodriguez. These expenses include postage, photocopying and printing expenses, travel
7 expenses, deposition fees, mediation expenses, and research and filing expenses, among other expenses
8 necessarily incurred to properly litigate this case. See *id.* Costs are compensable if they are of the type
9 typically billed by attorneys to paying clients in the marketplace. See *Harris v. Marhoefer*, 24 F.3d 16,
10 19 (9th Cir. 1994) ("Harris may recover as part of the award of attorney's fees those out-of pocket
11 expenses that 'would normally be charged to a fee paying client.'"); *Abrams v. Lightolier, Inc.*, 50 F.3d
12 1204, 1225 (3d Cir. 1995) (expenses recoverable if customary to bill clients for them); *Bratcher v.*
13 *Bray-Doyle Indep. Sch. Dist. No. 42*, 8 F.3d 722, 725-26 (10th Cir. 1993) (expenses reimbursable if
14 normally billed to client). The categories of expenses for which Plaintiff' counsel seek reimbursement
15 here are categories normally charged to hourly clients and, therefore, should be reimbursed out of the
16 common fund. See Decl. Rodriguez at ¶ 3. As such, the award of \$29,051.07 in expenses from the
17 Gross Settlement Amount is appropriate and should be approved.

D. Plaintiff's Request For An Enhancement Payment Is Justified In Light Of The Results Achieved And The Effort Expended For The Benefit Of Class Members

18
19 Plaintiff seeks an Enhancement Payment of \$10,000.00. "Courts routinely approve incentive
20 awards to compensate named Plaintiff for the services they provide and the risks they incurred during
21 the course of the class action litigation." See *Ingram v. The Coca-Cola Company*, 200 F.R.D. 685, 694
22 (N.D. Ga. 2001) (internal quotations and citations omitted); *Van Vranken v. Atlantic Richfield Co.*, 901
23 F.Supp. 294, 299 (N.D. Cal 1995). In *Ingram*, the Court approved service awards of \$300,000 to each
24 named plaintiff in recognition of the services they provided to the class by responding to discovery,
25 participating in the mediation process, and taking the risk of stepping forward on behalf of the class.
26 *Ingram*, 200 F.R.D. at 694; see also, e.g., *Van Vranken*, 901 F. Supp. at 299-300 (approving \$50,000
27 participation award to Plaintiff); *Glass v. UBS Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476, *17 (N.D. Cal.
28

1 Jan. 26, 2007) (approving \$25,000 enhancement to each named plaintiff). This payment is intended to
2 compensate Plaintiff for the time and effort that she contributed on behalf of the class and the risk she
3 undertook in bringing this lawsuit. When determining whether incentive awards are appropriate, courts
4 consider a variety of non-exclusive factors:

5 the actions the plaintiff has taken to protect the interests of the class, the
6 degree to which the class has benefited from those actions, and the amount
7 of time and effort the plaintiff expended in pursuing the litigation . . . the
8 risk to the class representative in commencing suit, both financial and
9 otherwise, the notoriety and personal difficulties encountered by the class
representative, the duration of the litigation, and the personal benefit (or
lack thereof) enjoyed by the class representative as a result of the
litigation.

10 *Clark v. American Residential Services LLC*, 175 Cal.App.4th 785, 804 (2009) (internal quotations
11 omitted) (citing *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir.1998), and *Van Vranken*, 901 F.Supp. at
12 299).

13 Plaintiff has spent approximately 200-230 hours over the past five and a half (5 ½) years
14 working with Plaintiff's Counsel to litigate these claims for the benefit of Class Members. *See*
15 Declaration of Janice Insixiengmay ("Decl. Insixiengmay"), ¶ 8. Plaintiff has assisted in investigating
16 and substantiating the claims alleged in this action, including assisting in the analysis of documents
17 necessary to demonstrate the alleged systematic practices, assisted in the preparation of the complaints,
18 discovery, and mediation briefs, actively participated in the discovery and settlement process by having
19 her deposition taken and participating in mediation. Additionally, to avoid any potential standing
20 issues that could have arisen if she did not opt out of a being a member of a settlement class in a related
21 case, Plaintiff opted out and was not able to collect any such funds while Class Members were able to
22 do so while still being able to recover in this case. *See id.* at ¶¶ 3-7; Decl. Rodriguez, ¶ 9.
23 Furthermore, Plaintiff is waiving all her individual claims, including a 1542 waiver, which is broader
24 than the release Class Members are subject to under the Agreement. *See* Decl. Insixiengmay, ¶ 7; *see*
25 *also Rodriguez v. W. Mesquite Mines, Inc.*, 2012 U.S. Dist. LEXIS 49046, at *6 (S.D. Cal. 2012)
26 (noting that a broader release for class representative is frequently cited as part of the analysis in
27 determining whether an enhancement is justified and collecting cases). Additionally, Plaintiff
28 undertook the financial risk that, in the event of a judgment in favor of Defendant, they could have been

1 personally responsible for any attorneys' fees and costs awarded to them. *See* Decl. Insixiengmay, ¶ 7.
2 This significant risk faced by Plaintiff deserves recognition and compensation. An Enhancement
3 Payment of \$10,000 is appropriate in this case. *See Cellphone Termination Fee Cases*, 186
4 Cal.App.4th 1380, 1393 (2010) (approving \$10,000 awards to each of the four (4) named plaintiffs);
5 *Chu v. Wells Fargo Invs., LLC*, 2011 WL 672645, at *5 (N.D. Cal. 2011) (awarding a \$10,000
6 incentive award to two named plaintiffs); *West v. Circle K Stores, Inc.*, 2006 U.S. Dist. LEXIS 76558,
7 at *7-*8, *12, *27 (E.D. Cal. Oct. 19, 2006) (awarding a \$15,000 representative enhancement where
8 10,000 class members were to receive a gross award of approximately \$500 each from the \$5,000,000
9 settlement); *Dent v. ITC Serv. Group*, 2013 U.S. Dist. LEXIS 139359, at *9-*10, *15-*16 (D. Nev.
10 Aug. 6, 2013) (awarding a \$15,000 representative enhancement out of a \$150,000 settlement for
11 approximately 530 class members).

12 **E. The Court Should Award The Requested Settlement Administrator Costs**

13 Under the Agreement, CPT Group, Inc., was allocated a maximum of \$20,000.00 to complete
14 the administration tasks, with any unused funds being re-distributed to the class on a pro rata basis.
15 The Notice of Settlement disclosed the potential amount to Class Members. *See* Exh. A to Decl.
16 O'Connor. CPT Group, Inc.'s, total fees through the conclusion of this matter will be \$13,500.00, less
17 than the total allocated under the Agreement. *See* Decl. O'Connor, ¶ 12; Decl. Rodriguez, ¶ 23. The
18 \$13,500 in Settlement Administrator Costs is also within ranges approved by Courts and should be
19 approved in this case. *See Patel v. Nike Retail Servs., Inc.*, 2019 WL 2029061, at *2 (N.D. Cal. 2019)
20 (\$5,261 for settlement administrator's fees was not excessive where PAGA group consisted of 40
21 employees). Plaintiff requests that the Court approve the payment of \$13,500 in Settlement
22 Administrator Costs.

23 **VI. CONCLUSION**

24 For the foregoing reasons, Plaintiff request that the Court (1) approve Plaintiff' counsels'
25 request for \$103,250.00 as an award of attorney's fees and \$29,051.07 in costs; (2) approve the request
26 for a \$10,000.00 Enhancement Payment for Plaintiff; and (3) approve the payment of \$13,500.00 to
27 CPT Group, Inc. for costs of administration. The beneficial results achieved for the class and the fact
28

1 that there have been zero objections and zero opt outs in any respect whatsoever to the payment of
2 these amounts demonstrate their reasonableness and that they should be awarded by the Court.

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4 Dated: May 9, 2024

Shimoda & Rodriguez Law, PC

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6 By: /s/ Justin P. Rodriguez

Galen T. Shimoda

7 Justin P. Rodriguez

8 Renald Konini

9 Attorneys for Plaintiff
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