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10 **and all others similarly situated**

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

LEOPOLDO RODRIGUEZ, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

GOLDEN LEAF LANDSCAPE CARE, INC.,
a California Corporation; and DOES 1 through
100, inclusive,

Defendants.

CASE NO.: 20STCV05547

Assigned for All Purposes to
Hon. Daniel J. Buckley, Dept. 1

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT

Date: July 19, 2021
Time: 10:30 a.m.
Location: Department 1

Complaint filed: February 13, 2020
Trial Date: None Set

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Leopoldo Rodriguez (hereinafter “Plaintiff”) seeks preliminary approval of the
4 Stipulation of Class Action Settlement (hereinafter “Settlement,” “Agreement,” or “Settlement
5 Stipulation”) entered into by and between Plaintiff, individually and on behalf of all others similarly
6 situated, on the one hand, and Defendant Golden Leaf Landscape Care, Inc. (hereinafter “Defendant”
7 or “Defendant Golden Leaf”), on the other hand (collectively, Plaintiff and Defendant are referred to
8 as “Parties”).

9 Defendant Golden Leaf was, and is, a California Corporation engaged in the landscaping
10 industry that performs landscaping and maintenance services for clients throughout Los Angeles
11 County, including Malibu, Beverly Hills and the San Fernando Valley. Plaintiff worked for Defendant
12 during the Class Period as a non-exempt employee. Depending on Defendant’s needs, Plaintiff
13 worked as a landscaper, gardener, and/or driver. Regardless of his position, Defendant maintained
14 certain standard policies and practices that dictated Plaintiff’s working hours and payment of wages.
15 *See* Declaration of Gregory P. Wong (hereinafter “Wong Decl.”) at ¶4.

16 Plaintiff filed this action on February 13, 2020, asserting causes of action for: (1) Failure to
17 Pay All Wages Earned; (2) Failure to Pay Minimum Wages; (3) Failure to Pay Overtime Wages; (4)
18 Failure to Provide Meal Periods; (5) Failure to Provide Rest Breaks; (6) Failure to Provide Accurate,
19 Itemized Wage Statements; (7) Failure to Maintain Records (California Labor Code Section 1174(d));
20 (8) Waiting Time Penalties; and (9) Unfair Business Practice (California Business & Professions
21 Code Section 17200, et seq.). *See* Wong Decl. at ¶5.

22 Defendant denies all substantive allegations and denies that class certification is warranted in
23 this Action.

24 In order to resolve this dispute and subject to court approval, Plaintiff and Defendant have
25 agreed to settle this lawsuit for a Maximum Settlement Amount of \$100,000.00. *See* Joint Stipulation
26 of Class Action Settlement and Release (hereinafter “Settlement Stipulation”) at ¶24 (The Settlement
27 Stipulation is attached as Exhibit D to the Wong Decl.). The Gross Settlement Amount includes the
28 following: (1) Settlement Administration Costs of no more than Twelve-Thousand Five Hundred

1 Dollars (\$12,500) *See* Settlement Stipulation at ¶37; (2) attorneys’ fees, subject to Court approval,
2 not to exceed \$33,333.33 (one third of the Maximum Settlement Amount) *See* Settlement Stipulation
3 at ¶12;; (3) costs, subject to Court approval, not to exceed Nine Thousand Five Hundred Dollars
4 (\$9,500.00) *See* Settlement Stipulation at ¶12; (4) Class Representative Enhancement Payment to
5 Plaintiff not to exceed a total of Five Thousand Dollars (\$5,000.00) *See* Settlement Stipulation at ¶17;
6 (5) Private Attorney General Action (hereinafter “PAGA”) payment of Ten Thousand Dollars
7 (\$10,000.00) from which \$7,500.00 will be paid to the California Labor Workforce Development
8 Agency and \$2,500.00 to Settlement Class members by having that 25% amount flow through to the
9 Net Settlement *See* Settlement Stipulation at ¶23; and (6) a remaining Net Settlement Fund of at least
10 Thirty Thousand One Hundred Sixty Six Dollars and Sixty Seven Cents (\$30,166.67).

11 Plaintiff also seeks to provisionally certify the following Settlement class, as set forth in
12 Paragraph 15 of the Settlement Stipulation, for settlement purposes only, which Defendant does not
13 oppose:

14 **[A]ll hourly non-exempt gardeners, clerical office employees,**
15 **and field managers and supervisors who work or formerly**
16 **worked for Defendant within the State of California during**
17 **the Class Period.**
18

19 Class Members who do not timely opt out of the Settlement (hereinafter “Participating Class
20 Members”) will receive an “Individual Settlement Payment” calculated by the Claims Administrator
21 using the following formula: Individual Settlement Payment = (Net Settlement Amount ÷ Class
22 Workweeks) x Individual Workweeks. *See* Settlement Stipulation at ¶51(c). The Net Settlement
23 Amount means the portion of the Maximum Settlement Amount remaining after deduction of the
24 approved Class Representative Enhancement Payments, Settlement Administration Costs, PAGA
25 Settlement Amount, and Attorneys’ Fees and Costs, and the employer’s share of payroll taxes for the
26 portion of the Net Settlement Amount allocated to wages. *See* Settlement Stipulation at ¶25. This
27 proposed Settlement resolves the Released Claims of Plaintiff and the Settlement Class Members.
28 *See* Settlement Stipulation at ¶¶71-72.

1 Plaintiff submits that the proposed settlement, arrived at after substantial investigation and
2 analysis of the claims and through arms' length bargaining, provides a substantial benefit to a class.
3 As set forth below, Plaintiff submits that the settlement terms are fair and warrant preliminary
4 approval.

5 II. FACTS AND PROCEDURE

6 Plaintiff filed this Action on February 13, 2020. Plaintiff's Complaint alleges claims for: (1)
7 Failure to Pay All Wages Earned; (2) Failure to Pay Minimum Wages; (3) Failure to Pay Overtime
8 Wages; (4) Failure to Provide Meal Periods; (5) Failure to Provide Rest Breaks; (6) Failure to Provide
9 Accurate, Itemized Wage Statements; (7) Failure to Maintain Records (California Labor Code
10 Section 1174(d)); (8) Waiting Time Penalties; and (9) Unfair Business Practice (California Business
11 & Professions Code Section 17200, et seq.). *See* Wong Decl. at ¶5.

12 Immediately prior to filing his Complaint, Plaintiff submitted a PAGA Notice Pursuant to
13 California Labor Code section 2699.3, et seq. to the California Labor and Workforce Development
14 Agency via its online portal. *See* Wong Decl. at ¶6. Having received no response from the CLWDA,
15 the Parties submitted a stipulation on March 18, 2021, requesting leave from the Court for Plaintiff
16 to file a First Amended Complaint adding a cause of action under the California Private Attorneys
17 General Act to this action. *See* Wong Decl. at ¶6.

18 In the course of litigating the Action, Class Counsel has conducted an in-depth investigation
19 of the claims, including the analysis of timekeeping data, payroll data, policy memorandums, and
20 various other documents related to the Plaintiff's claims. *See* Wong Decl. at ¶¶8-10. This analysis
21 included review and quantitative analysis of thirty electronic files of timekeeping and payroll data.
22 After Class Counsel's extensive review and analysis of the timekeeping and payroll data and after
23 completion of a full risk analysis, the Parties participated in a full-day mediation on December 4,
24 2020 utilizing the services of the Todd Smith, a respected mediator with extensive experience and
25 knowledge in the area of wage and hour class action mediation. *See* Wong Decl. at ¶7. At mediation,
26 the Parties engaged in arms' length negotiations to try to come to a resolution of this dispute. *See*
27 Wong Decl. at ¶7. Despite the Parties' good-faith efforts, they were not able to reach agreement on a
28 proposed settlement during the December 4th mediation. *Id.* A significant issue that arose during the

1 course of mediation was Defendant's assertion of an ability to pay issue. *Id.* After the conclusion of
2 the December 4th mediation, Defendant provided Plaintiff's counsel with an expansive production of
3 confidential financial information produced pursuant to the mediation/settlement privilege and
4 designated Attorneys' Eyes Only under the terms of the protective order governing this action. The
5 financial information included three years of tax returns as well as profit/loss statements and financial
6 records. *Id.* Based on a thorough review of these records, Plaintiff's counsel determined that
7 Defendant's ability to pay issue was legitimate and reasonably impacted counsel's assessment of the
8 risks of continuing with this action through judgment as well as the acceptable range of settlement.
9 *Id.* Subsequently, the parties resumed settlement discussions through arms-length negotiations
10 conducted with the assistance of mediator Todd Smith. Each Party, represented by their respective
11 counsel, recognized the substantial risk of an adverse result in the Action and agreed to settle the
12 Action and all other matters covered by this Settlement. *Id.* The Parties reached agreement on
13 principal terms of the settlement and subsequently drafted and executed the Settlement Stipulation.
14 *Id.*

15 III. SUMMARY OF SETTLEMENT TERMS

16 Under the terms of the proposed Settlement, Defendant will pay a Maximum Settlement
17 Amount of \$100,000.00. *See* Settlement Stipulation at ¶24. The Net Settlement Fund will be
18 calculated by deducting the following amounts from the Gross Settlement Fund: (1) Settlement
19 Administration Costs of no more than Twelve-Thousand Five Hundred Dollars (\$12,500) *See*
20 Settlement Stipulation at ¶37; (2) attorneys' fees, subject to Court approval, not to exceed \$33,333.33
21 (one third of the Maximum Settlement Amount) *See* Settlement Stipulation at ¶12,; (3) costs, subject
22 to Court approval, not to exceed Nine Thousand Five Hundred Dollars (\$9,500.00) *See* Settlement
23 Stipulation at ¶12; (4) Class Representative Enhancement Payment to Plaintiff not to exceed a total
24 of Five Thousand Dollars (\$5,000.00) *See* Settlement Stipulation at ¶17; (5) Private Attorney General
25 Action (hereinafter "PAGA") payment of Ten Thousand Dollars (\$10,000.00) from which \$7,500.00
26 will be paid to the California Labor Workforce Development Agency and \$2,500.00 to Settlement
27 Class members by having that 25% amount flow through to the Net Settlement *See* Settlement
28 Stipulation at ¶23.

1 The Parties have agreed to retain CPT Group (hereinafter, “CPT” or “Settlement
2 Administrator”) to handle the notice and settlement administration process. *See* Settlement
3 Stipulation at ¶36.

4 The Parties have agreed that the Settlement Administrator will calculate the Individual
5 Settlement Payment based on the Workweeks a Participating Class Member worked during the Class
6 Period. *See* Settlement Stipulation at ¶51. The Individual Settlement Shares paid to Class Members
7 shall be allocated twenty percent to settlement of wages claims, forty percent to settlement of claims
8 for interest, and forty percent to alleged unpaid civil penalties. *See* Settlement Stipulation at ¶66. The
9 portion allocated to wages shall be reported on an IRS Form W-2 and the portions allocated to interest
10 and penalties shall be reported on an IRS form 1099 by the Claims Administrator. *Id.*

11 All Settlement Award checks issued to the settlement class members will remain valid and
12 negotiable for one hundred and eighty (180) days from the date of issuance (hereinafter the “Response
13 Deadline”). *See* Settlement Stipulation at ¶63. If the check remains uncashed by the Response
14 Deadline, the amount of such Settlement Payment shall be sent to Family Promise
15 (familypromise.org) a 501(c)(3) non-profit organization with a mission to help families experiencing
16 homelessness achieve sustained independence, pursuant to California Code of Civil Procedure
17 Section 384. *See* Settlement Stipulation at ¶63. In the event the Court does not accept Family Promise
18 as **cy pres**, the parties agree that uncashed checks shall be distributed to the Equal Access Fund of
19 the State Bar of California. *Id.*

20 Any Class Member who wishes to “opt-out” of and be excluded from the Settlement may do
21 so by submitting a timely and valid written Request for Exclusion to the Settlement Administrator,
22 however this does not exclude the class member from the PAGA payment. *See* Settlement Stipulation
23 at ¶59. To be timely, any such request for exclusion must bear a post-mark date that is no later than
24 the Response Deadline. *See* Settlement Stipulation at ¶59.

25 Class Members who do not submit a timely and valid request for exclusion (i.e., Settlement
26 Class Members) may object to the Settlement. *See* Settlement Stipulation at ¶61. To object, a
27 Settlement Class Member must send a written objection to the Claims Administrator. *See* Settlement
28 Stipulation at ¶61.

IV. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS

The settlement of a class action requires court approval. *Dunk v. Ford Motor Co.* 48 Cal.App.4th 1794, 1800 (1996); Code Civ. Proc. § 1781(f). California courts look to federal authority for guidance with class action settlements. *Dunk, supra*, 48 Cal.App.4th at p. 1801, n.7 (citing *Vasquez v. Superior Court* 4 Cal.3d 800, 821 (1971)). The decision to approve or reject a proposed settlement is within the court’s discretion. *Wershba v. Apple Computer, Inc.* 91 Cal.App.4th 224, 234-35 (2001) (“In general, questions whether a settlement was fair and reasonable, whether certification of the class was proper, and whether the attorney fee award was proper are matters addressed to the trial court’s broad discretion.”). Accordingly, a court’s decision to approve a class action settlement may be reversed only upon a strong showing of “clear abuse of discretion.” *Hanlon v. Chrysler Corp.* 150 F.3d 1011, 1026 (9th Cir. 1998); *Class Plaintiffs v. City of Seattle* 955 F.2d 1268, 1276 (9th Cir. 1982).

Courts review class action settlements in a two-step process: (1) an earlier conditional review by the court; and (2) a later detailed review after the period during which notice is distributed to class members for their comment or objections. Conte & Newberg, *Newberg on Class Actions* § 11.24 (4th ed. 2002). Both federal and state courts commonly utilize this procedure, which assures class members of the protection of procedural due process safeguards and enables the court to fulfill its role as the guardian of the interest of the class.

Accordingly, preliminary approval does not require a court to make a final determination that the settlement is fair, reasonable, and adequate. Rather, that decision is made only at the final approval stage, after notice of the settlement has been given to the class members and they have had an opportunity to voice their views of the settlement or to exclude themselves from the settlement. See Cal. R. Ct. 3.769(g). In considering a potential class settlement, the court need not reach any ultimate conclusions on the issues of fact and law that underlie the merits of the dispute (see *City of Detroit v. Grinnell Corporation* 495 F.2d 448, 456 (2d Cir. 1974)), and need not engage in a trial on the merits. See *Officers for Justice v. Civil Service Commission of City and County of San Francisco* 688 F.2d 615, 625 (9th Cir. 1982). Neither formal notice nor a hearing is required for the trial court

1 to grant provisional class certification and preliminary approval; the court may grant such relief upon
2 an informal application by the settling parties and may conduct any necessary hearing in court or in
3 chambers, at the court's discretion. *Newberg*, § 11.25.

4 **V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT**

5 To grant preliminary approval of a class action settlement, the trial court must determine
6 whether the settlement is fundamentally fair, adequate, and reasonable. *Dunk, supra*, 48 Cal.App.4th
7 at p. 1800. The trial court has broad powers to determine whether a proposed settlement is fair under
8 the circumstances of the case. *Id.* at p. 1801. To make this fairness determination, courts must
9 consider several relevant factors, including “the strength of the plaintiff’s case, the risk, expense,
10 complexity and likely duration of further litigation, the risk of maintaining class action status through
11 trial, the amount offered in settlement, the extent of discovery completed by plaintiff, the experience
12 and view of counsel, the presence of a governmental participant, and the reaction of the class members
13 to the proposed settlement.” *Dunk, supra*, 48 Cal.App.4th at p. 1801. “The list of factors is not
14 exclusive and the court is free to engage in a balancing and weighing of the factors depending on the
15 circumstances of each case.” *Wershba, supra*, 91 Cal.App.4th at p. 245. Furthermore, courts give
16 “proper deference to the private consensual decision of the parties.” *Hanlon, supra*, 150 F.3d at p.
17 1027 (citation omitted).

18 The proponent of the settlement has the burden to show that it is fair and reasonable. *Wershba,*
19 *supra*, 91 Cal.App.4th at p. 245. “A presumption of fairness exists where: (1) the settlement is
20 reached through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow
21 counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the
22 percentage of objectors is small.” *Id.*; *Dunk, supra*, 48 Cal.App.4th at p. 1802; *7-Eleven Owners for*
23 *Fair Franchising v. Southland Corp.* 85 Cal.App.4th 1135, 1151 (2000).

24 **A. The Proposed Settlement Resulted from Arm’s-Length Negotiations Based Upon**
25 **Extensive Investigation.**

26 Throughout the litigation of this case and in preparation for mediation, Class Counsel
27 conducted a thorough investigation of both the factual and legal issues affecting the strengths and
28 weaknesses of Plaintiff’s claims, the potential class recovery, and the strategic and practical

1 considerations arising from Defendant's ability to pay issues. Class Counsel thoroughly reviewed
2 and analyzed the relevant employer policies and handbooks. *See* Wong Decl. at ¶9. Defendant
3 provided Class Counsel with time and payroll data in advance of mediation. *See* Wong Decl. at ¶¶8-
4 28. This allowed Class Counsel to develop a useful exposure model for evaluating the range of
5 potential outcomes should this matter have been litigated through trial. *See* Wong Decl. at ¶¶8-28.
6 It also allowed Class Counsel to analyze class certification issues such as the distribution and
7 character of the potential violations and variances in the hours and pay record by class members
8 during the class period. *See* Wong Decl. at ¶¶8-28. Class Counsel's extensive factual investigation
9 gave invaluable insight into the nature and extent of the class claims and the reasonable range of
10 settlement. *See* Wong Decl. at ¶¶8-28. Due to Defendant's broad production of payroll and
11 timekeeping data in advance of mediation, Class Counsel was able to undertake a thorough
12 investigation and analysis of the core claims in this litigation.

13 Arriving at a settlement that was acceptable to both Parties was not easy. Defendant and its
14 counsel felt strongly about their ability to prevail on the merits and at certification, and Plaintiff and
15 Class Counsel believed that they would be able to obtain class certification and prevail at trial. In
16 particular, among other defenses, Defendant's position is that Plaintiff would be unable to obtain
17 class certification due to the individualized nature of how non-exempt employees recorded their
18 hours. Defendant also strongly contested Plaintiff's principal meal and rest break argument that non-
19 exempt employees remained under Defendant's control during breaks. Finally, Defendant asserted
20 ability to pay issues and substantiated its claims with an extensive production of confidential financial
21 information. After conducting investigations, as well as informal discovery efforts and settlement
22 negotiations, the Parties have agreed that this case is well-suited for settlement given the legal issues
23 relating to Plaintiffs' principal claims, as well as the costs and risks to both sides that would attend
24 further litigation.

25 The proposed Settlement takes into account the strengths and weaknesses of each side's
26 position and the uncertainty of how the case might have concluded at certification and/or trial. The
27 parties reached the proposed Settlement based on this large volume of facts, evidence, and
28

1 investigation. In addition, Class Counsel has extensive experience in employment class actions,
2 including significant experience in California wage-and-hour litigation. *See* Wong Decl. at ¶¶ 29-33.

3 **B. The Proposed Settlement Is Fair, Reasonable, and Adequate.**

4 The Gross Settlement Fund of \$100,000.00 represents a fair, adequate, and reasonable
5 resolution of this case. The proposed Settlement was calculated using the information and data
6 uncovered during the litigation, informal and confirmatory discovery, case investigation, as well as
7 the exchange of information in the context of settlement negotiations. The proposed Settlement
8 considers the potential risks and rewards inherent in any case and, in particular, with this case.
9 Moreover, considering all of the facts and circumstances of this case, the proposed Settlement
10 represents a substantial global recovery for the Class.

11 Assuming that all of the fees, costs, and payments are approved and awarded in the full
12 amounts provided for by the proposed Settlement, the Net Settlement Fund is currently estimated to
13 be approximately \$30,166.67. Settlement Class Members who do not opt out will receive a
14 Settlement Award that is calculated on a *pro rata* basis, based upon their respective number of shifts
15 worked during the Settlement Period. There is no reason to doubt the fairness of the proposed plan
16 of allocation of the settlement funds for purposes of preliminary approval. Even at the final approval
17 stage, “[a]n allocation formula need only have a reasonable, rational basis [to warrant approval],
18 particularly if recommended by experienced and competent class counsel.” *In re American Bank*
19 *Note Holographics, Inc., Securities Litigation* 127 F.Supp.2d 418, 429-430 (S.D.N.Y. 2001).

20 In light of the above considerations, Class Counsel believe that the proposed Settlement as a
21 whole is fair, reasonable, and adequate, and is in the best interest of the Class. Although the
22 recommendations of Class Counsel are not conclusive, the Court can properly take the
23 recommendations into account, particularly if Class Counsel appears to be competent, has experience
24 with this type of litigation, and significant discovery and investigation have been completed.
25 *Newberg*, §11.47.

26 **C. The Settlement Is of Significant Value.**

27 Pursuant to *Kullar v. Foot Locker Retail, Inc.* 168 Cal.App.4th 116 (2008), Class Counsel
28 conducted significant informal discovery, including extensive review and analysis of a volume of

documents and data, including, but not limited to the relevant time and pay records. The class data and information obtained in this case allowed Class Counsel to develop a damages/valuation model and complete evaluation of the claims and Defendant's defenses thereto. As outlined in the Declaration of Gregory P. Wong, prior to entering into the proposed Settlement, Class Counsel performed an extensive analysis of each claim pursuant to *Kullar*, based on a volume of documents and data produced by Defendant and obtained through other sources, including Plaintiff. *See* Wong Decl. at ¶ 12-19. The results of the Kullar analysis returned a "Risk-Adjusted" Range of Recovery of \$65,198.40 to \$175,185.60. The total settlement value achieved in this case of \$100,000 is firmly within this range. *See* Wong Decl. at ¶¶ 15-29.

VI. CERTIFICATION OF THE PROPOSED CLASS IS APPROPRIATE

For settlement purposes, the requisites for establishing class certification are met, and the Parties have stipulated to certification of the Class for settlement purposes only. California Code of Civil Procedure section 382 "authorizes class actions when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court." Cal. Code Civ. Proc. § 382; *Sav-On Drug Stores, Inc. v. Superior Court* 34 Cal.4th 319, 326 (2004). California courts certify class actions where the plaintiff identifies "both [1] an ascertainable class and [2] a well-defined community of interest among class members." *Id.*

The Class is ascertainable and numerous as to make it impracticable to join all Class Members, and there are common questions of law and fact that predominate over any questions affecting any individual Class Member. Further, Plaintiff's claims are typical of the claims of the Class Members, and Class Counsel will fairly and adequately protect the interests of the Class. Finally, prosecution of separate actions by individual Class Members would create the risk of inconsistent or varying adjudications, and a class action is superior to other available means for the fair and efficient adjudication of the case. The Class is amenable to class certification for settlement purposes, as discussed below.

A. The Proposed Class Is Ascertainable and Sufficiently Numerous.

"Ascertainability is required in order to give notice to putative class members as to whom the judgment in the action will be res judicata." *Hicks v. Kaufman & Broad Home Corp.* (2001) 89

1 Cal.App.4th 908, 914. “A class is ascertainable if it identifies a group of unnamed plaintiffs by
2 describing a set of common characteristics sufficient to allow a member of that group to identify
3 himself or herself as having a right to recover based on the description.” *Bartold v. Glendale Federal*
4 *Bank* 81 Cal.App.4th 816, 828 (2000). The proposed class must also be sufficiently numerous.
5 *Linder v. Thrifty Oil Co.* 23 Cal.4th 429, 435 (2000).

6 This action involves no fewer than 177 Class Members. *See* Wong Decl. at ¶9. While
7 established case law provides that there is no prescribed minimum number of aggrieved persons
8 required to meet the numerosity requirement, Plaintiff submits that the proposed class is sufficiently
9 numerous to merit class treatment. *See Hebbard v. Colgrove*, 28 Cal.App.3d 1017, 1030 (1972)
10 (“there is no set number required as a matter of law for the maintenance of a class action”). All Class
11 Members can and will be identified by Defendant to the Settlement Administrator through a review
12 of Defendant’s employment records regarding its non-exempt employees employed in the State of
13 California during the Settlement Class Period. As such, the proposed Class is ascertainable and
14 sufficiently numerous.

15 **B. The Class Members Share a Well-Defined Community of Interest.**

16 The community of interest requirement “embodies three factors: (1) predominant common
17 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3)
18 class representatives who can adequately represent the class.” *Sav-On*, supra, 34 Cal.4th at p. 326.
19 “[T]he community of interest requirement for certification does not mandate that class members have
20 uniform or identical claims.” *Capitol People First v. Department of Developmental Services* 155
21 Cal.App.4th 676, 692 (2007) (emphasis in original). Rather, courts focus on the defendant’s internal
22 policies and “pattern and practice . . . in order to assess whether that common behavior toward
23 similarly situated plaintiffs renders class certification appropriate.” *Id.* (citing *Sav-On*, supra, 34
24 Cal.4th at p. 333).

25 The “common issues” requirement “involves analysis of whether the proponent’s ‘theory of
26 recovery’ is likely to prove compatible with class treatment.” *Id.* at p. 690 (citing *Sav-On*, supra, 34
27 Cal.4th at p. 327). Furthermore, the commonality inquiry centers on the “reasonableness” of the
28 defendant’s labor policies as applied to the potential class. *Ghazaryan v. Diva Limousine, Ltd.*, 169

1 Cal.App.4th 1524, 1534 (2008).

2 Here, Plaintiff maintains that common issues of fact and law predominate as to each of the
3 claims alleged by Plaintiff, for settlement purposes. Plaintiff seeks to represent a class comprised
4 entirely of non-exempt employees who were subjected to the same unlawful practices regarding
5 payment of no more than eight hours of work in a day or forty (40) hours of work in a workweek.
6 Plaintiff alleges in this Action that Defendant maintained several policies and practices that resulted
7 in uniform and consistent violations of California's wage and hour laws. These violations, which
8 Defendant denies, fall into several broad categories as follows:

9 **Failure to Pay Overtime Wages:** Plaintiff alleges that, throughout the relevant time
10 period, Defendants implemented a system of paying no more than eight (8) hours in a day or forty
11 hours (40) in a workweek. As a result, Defendant failed to pay for all wages including the proper
12 overtime rate and minimum wage.

13 **Failure to Provide Meal and Rest Breaks:** Plaintiff alleges that he and other Class
14 Members did not receive all of their meal and rest break as required by the Labor Code either because
15 no break time was afforded by Defendant, Defendant cut breaks short, or because Defendant did not
16 relieve Plaintiff and the other Class Members of all duty during breaks. .

17 **Derivative Penalties:** In addition to the principal claims advanced by Plaintiff on
18 behalf of the class, the operative Complaint seeks recovery for derivative waiting time penalties, wage
19 statement penalties, PAGA penalties, and penalties for failure to maintain business records.

20 Plaintiff also asserts that Defendant's recordkeeping practices with respect to Plaintiff and the
21 Class Members were substantially the same during the Class Period. Thus, Plaintiff maintains that
22 the outcome of this litigation would be determined by Defendant's uniform operations and
23 employment policies, practices, and procedures that applied across its non-exempt employees within
24 the State of California during the Class Period. Accordingly, the Court should certify the Class for
25 settlement purposes only.

26 **VII. ALLOCATION FOR ATTORNEYS' FEES AND COSTS**

27 Class Counsel's application for attorneys' fees in light of the facts and circumstances
28 surrounding this lawsuit is well within the range of reasonableness. The proposed Settlement

1 establishes a Gross Settlement Fund of \$100,000.00 and provides for Class Counsel to apply to the
2 Court for an award of attorneys' fees in an amount of up to one-third of the Gross Settlement Fund
3 (\$33,333.33) plus reimbursement of litigation costs and expenses in an amount of up to \$9,000.00.
4 The attorneys' fees requested are commensurate with (1) the risk the Class Counsel took in bringing
5 and litigating this case, (2) the time, effort, and expense dedicated to the case, (3) the skill and
6 determination Class Counsel has shown, (4) the results Class Counsel has achieved throughout the
7 litigation, (5) the value of the Settlement that Class Counsel has achieved for the Settlement Class,
8 and (6) the other cases Class Counsel had to turn down in order to devote their time and efforts to
9 this matter. The proposed Class Notice provides the Class Members with information about the
10 amount allocated toward attorneys' fees and litigation costs and expenses, and that an attorneys' fee
11 award will be sought, as provided for by the Settlement.

12 Trial courts have "wide latitude" in assessing the value of attorneys' fees and their decisions
13 will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v. Beneficial Cal.,*
14 *Inc.* 82 Cal.App.4th 19, 41 (2000). Indeed, it is long settled that the "experienced trial judge is the
15 best judge of the value of professional services rendered in his court." *Ketchum v. Moses* 24 Cal. 4th
16 1122, 1132 (2001). California law provides that attorney fee awards should be equivalent to fees
17 paid in the legal marketplace to compensate for the result achieved and risk incurred. *Laffitte v.*
18 *Robert Half Int'l, Inc.* 1 Cal.5th 480, 503 (2016) (citing *Lealao, supra*, 82 Cal.App.4th at p. 48-49).
19 In *Lealao*, the court held that when an action leads to a recovery that can be "monetized" with a
20 reasonable degree of certainty, the trial court should "ensure that the fee awarded is within the range
21 of fees freely negotiated in the legal marketplace in comparable litigation." *Leolao, supra*, 82
22 Cal.App.4th at p. 50.

23 The propriety of calculating and awarding attorneys' fees as a percentage of a monetary fund
24 that has, by litigation, been preserved or recovered for the benefit of others, has recently been
25 confirmed by the California Supreme Court. *Laffitte, supra*, 1 Cal.5th 480 at pp. 486 & 506. The
26 California Supreme Court has taken the position that "[t]rial courts have discretion to conduct a
27 lodestar cross-check on a percentage fee," "they also retain the discretion to forgo a lodestar cross-
28

1 check and use other means to evaluate the reasonableness of a requested percentage fee[.]” and “[t]he
2 percentage of fund method survives in California.” *Id.* (internal quotation marks omitted).

3 Historically, courts have awarded fees as high as fifty percent (50%) of the common fund,
4 depending on the circumstances of the case. *Newberg*, § 14.03; *see also In re Ampicillin Antitrust*
5 *Litig.* 526 F.Supp.494 (D.D.C. 1981) (awarding attorneys’ fees in the amount of 45% of the \$7.3
6 million settlement fund); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* 480 F.Supp. 1195
7 (S.D.N.Y. 1979) (awarding approximately 53% of the settlement fund as attorney fees). California
8 Courts routinely approve class action attorneys’ fee awards “averag[ing] around one-third of the
9 recovery.” *Chavez v. Netflix, Inc.* 162 Cal.App.4th 43, 66 n.11 (2008) (lower court found 20 to 40
10 percent range of contingency fee in marketplace was appropriate in class actions); *see also Estrada*
11 *v. Dr. Pepper/Seven-Up*, Los Angeles County Superior Court Case No. BC262247 (May 2005) (wage
12 and hour); *Moore v. IKEA*, Los Angeles Superior Court Case No. BC263646 (Sept. 2006) (wage and
13 hour).

14 Class Counsel has litigated this case aggressively since its inception and have conducted
15 significant investigation and analysis of the facts and issues. The ongoing work has been extensive,
16 demanding, and ultimately successful in achieving a substantial settlement resolution. Class Counsel
17 conducted informal discovery¹ and investigation into the facts of the case. Class Counsel engaged in
18 multiple interviews and strategy sessions with Plaintiff, met and conferred with defense counsel,
19 reviewed, and analyzed all data and documents provided by Defendant and prepared a
20 valuation/damages model for settlement negotiations, among other tasks.

21 Class Counsel is well-experienced in wage-and-hour class action litigation and used that
22 experience to obtain a great result for the Class. Class Counsel has borne all of the risks and costs of
23 litigation and will not receive any compensation until recovery is obtained. Class Counsel will
24 provide extensive evidence as to the time worked, litigation efforts, and further argument at the time
25

26 ¹ Although discovery in this matter was on an informal basis, the breadth of information obtained
27 through informal efforts actually exceeded the amount normally produced in pre-certification
28 discovery as Defendant turned over spreadsheets of timekeeping and payroll data for a
representative sample set of class members.

1 of filing Plaintiffs’ motion for final approval of the proposed Settlement and the requests for an award
2 of attorneys’ fees and reimbursement of litigation costs and expenses, enhancement awards, and the
3 settlement administration fees to be heard at the Final Approval Hearing. The fees and costs provided
4 for by the Settlement are reasonable, considering the amounts at issue, the work performed, the risks
5 incurred, and the results achieved, and as such, should be awarded.

6 **VIII. THE PROPOSED NOTICE IS ADEQUATE**

7 California statutory and case law vests the Court with broad discretion in fashioning
8 appropriate class notice. *See* Code Civ. Proc. § 1781; *Cartt v. Superior Court* 50 Cal.App.3d 960,
9 973-74 (1975). A class notice is adequate if it “present[s] a fair recital of the subject matter and
10 proposed terms” of the Settlement. *Mendoza v. United States* 623 F.2d 1338, 1351 (9th Cir. 1980)
11 (quoting *Marshall v. Holiday Magic* (9th Cir. 1977) 550 F.2d 1173, 1177).

12 The proposed Notice provides information on, among other things, the meaning and nature of
13 the proposed Class; the terms and provisions of the proposed Settlement; the relief that the proposed
14 Settlement will provide to the Settlement Class Members; the allocations for an award of attorneys’
15 fees, reimbursement of litigation costs and expenses, service enhancement award, the PAGA
16 payment, and settlement administration fees; and the date, time, and place of the Final Approval
17 Hearing. The proposed Notice also set forth the procedures and deadlines for submitting a Request
18 for Exclusion to the Settlement Administrator and filing a written objection with the Court and
19 serving it upon counsel for the parties. The proposed Notice will be mailed to the Class Members at
20 the addresses that Defendant will provide to the Settlement Administrator. *See* Settlement Stipulation
21 at Section VII.

22 The notice procedure provided by the proposed Settlement fulfills the requirement of
23 neutrality in class notices. “Sufficient information about the case should be provided to enable class
24 members to make an informed decision about their participation.” *Manual for Complex Litigation*
25 (4th ed. 2004) § 21.311. Here, the proposed Notice recognizes that the Court has not yet granted final
26 approval and states the parties’ respective positions with respect to the Settlement. The proposed
27 Notice also apprises the Class Members of, *inter alia*, how to object to the proposed Settlement, how
28 to request exclusion from the proposed Settlement, how Class Members’ Settlement Awards are

1 calculated, what their estimated monetary recovery will be, and how to dispute the information
2 provided on the Class Notice.

3 The Notice complies with the standards of fairness, completeness, and neutrality. Fed. R.
4 Civ. P. 23 (c)(2) & (e); *Newberg*, §§ 8.21, 8.39; *Manual*, §§ 21.311, 21.312; see *Cartt*, *supra*, 50
5 Cal.App.3d at p. 960 (“The essentials of due process of law in class suits would appear to be afforded
6 by fair representation in the assertion of claims of class members against the opposing parties in any
7 lawsuit, and notice of the pending suit.”). The proposed notice procedure satisfies all due process
8 requirements and is consistent with notice procedures approved by numerous state and federal courts.
9 Accordingly, the Court should approve the proposed Notice.

10 **IX. APPOINTMENT OF CPT GROUP AS THE SETTLEMENT ADMINISTRATOR**

11 The Parties have selected CPT Group as the Settlement Administrator to administer the
12 proposed Settlement. The parties estimate that the proposed Class is comprised of one hundred
13 seventy-seven (177) individuals.

14 The Settlement Administrator will mail the Notice to each Class Member by regular First-
15 Class U.S. Mail and re-mail any returned Notices after conducting a skip-trace if no forwarding
16 address is provided. See Settlement Stipulation at ¶55. The Settlement Administrator will receive,
17 review, and process Requests for Exclusion, and any written disputes and supporting documentation
18 as to the validity of the information regarding the number of workweeks. See Settlement Stipulation
19 at ¶59. The Settlement Administrator will maintain the Gross Settlement Fund and handle inquiries
20 regarding the proposed Settlement; calculate the Class Members’ estimated Settlement Awards;
21 withhold applicable employment and payroll taxes; transmit the payments provided by the
22 Settlement; provide necessary declarations; and perform other usual and customary duties for
23 administering a class action settlement. See Settlement Stipulation at ¶¶ 44, 47, 64, 67.

24 Under the Settlement Agreement, the settlement administration fees, in an amount of up to
25 \$12,500.00 shall be paid out of the Gross Settlement Fund to the Settlement Administrator. See
26 Settlement Stipulation at ¶47. Accordingly, the Court is respectfully requested to appoint CPT Group
27 as the Settlement Administrator and direct the mailing of the Notice Packet, as well as the distribution
28 of any cure letters and a reminder postcard to Class Members, in the manner outlined and based on

the proposed deadlines as described herein and set forth in the Settlement Agreement.

X. PROPOSED DEADLINES FOR THE NOTICE AND SETTLEMENT ADMINISTRATION PROCESS

At this preliminary approval stage, Plaintiff also seeks approval of the proposed deadlines for the notice process. *Newberg*, at § 11.26. The notice process entails mailing of the Notice Packet, in the form approved by the Court, to all known and reasonably ascertainable Class Members based on Defendant's records. The Settlement Administrator will perform an address search using the National Change of Address Database to update the Class Data with more current addresses for the Class Members, if any.

Within thirty (30) calendar days of the Court’s Preliminary Approval order, Defendant will provide the Settlement Administrator with a list of the last known addresses, social security numbers or taxpayer IDs, and dates of employment for each Class Member in a Covered Position during the Settlement Period. *See* Settlement Stipulation at ¶54. Within forty calendar days of receipt of the class data, the Settlement Administrator will mail the Notice Packet to all Class Members via First-Class U.S. Mail. *See* Settlement Stipulation at ¶55. Class Members will have sixty (60) calendar days from the date of mailing of the Notice Packet (the “Notice Period”) to return Requests for Exclusion and written objections. *See* Settlement Stipulation at ¶59. Class Members have until the end of the Notice Period to dispute the amounts contained on their Notice Form and present documentation showing that Defendant’s records are incorrect. *See* Settlement Stipulation at ¶58.

If any Notice Packet is returned to the Settlement Administrator as undeliverable, the Settlement Administrator will promptly perform a single re-mailing of the Notice Packet to a forwarding address, if available, or to any newly identified address obtained by way of skip-tracing. *See Settlement Stipulation at ¶56.*

Defendant shall fund in an initial installment of the Maximum Settlement Amount totaling \$53,166.67 within fourteen (14) calendar days after the Effective Date of the Settlement (the “Initial Deposit”). Settlement Stipulation at ¶44. Two months after the initial deposit or by December 31, 2021, whichever is earlier, Defendant will deposit the remainder of the Maximum Settlement Fund (\$47,833.33) with the Settlement Administrator. Settlement Stipulation at ¶44. This funding schedule

1 was negotiated by the Parties as a way to balance the competing factors of Defendant's financial
2 restrictions and Plaintiff's desire to secure payment of the Maximum Settlement Amount within a
3 reasonable time period.

4 Within ten (10) calendars days following receipt of the Initial Deposit from Defendant, the
5 Settlement Administrator will issue payments to (a) Participating Class Members; (b) the Labor
6 Workforce Development agency; and (c) the Settlement Administrator for Court-approved services
7 performed in connection with the settlement. Settlement Stipulation at ¶44. Within ten (10) business
8 days of the second deposit funding of the Settlement Agreement, the Settlement Administrator will
9 issue payments to Plaintiff and Class Counsel. Settlement Stipulation at ¶44.

10 Settlement class members shall have one hundred and eighty (180) days from the date their
11 Individual Settlement Payment checks are dated to cash their checks. See Settlement Stipulation at
12 ¶63. Those funds represented by uncashed checks which remain outstanding one hundred and eighty
13 (180) calendar days after the mailing of the settlement checks by the Claims Administrator shall be
14 sent to Family Promise (familypromise.org) a 501(c)(3) non-profit organization with a mission to
15 help families experiencing homelessness achieve sustained independence, pursuant to California
16 Code of Civil Procedure Section 384. See Settlement Stipulation at ¶63. In the event the Court does
17 not accept Family Promise as *cy pres*, the parties agree that uncashed checks shall be distributed to
18 the Equal Access Fund of the State Bar of California. *Id.*

19 **XI. APPOINTMENT OF CLASS REPRESENTATIVE AND APPROVAL OF THE**
20 **ENHANCEMENT AWARDS**

21 Plaintiff respectfully request that the Court appoint her as the Class Representatives and
22 approve an enhancement awards in the amount of up to \$5,000.00 to Plaintiff as provided for by the
23 Settlement. It is within the Court's discretion to award payment to the Class Representative for his
24 efforts and work. *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299
25 (approving \$50,000 participation award to a single class representative). The factors that courts may
26 consider in determining whether to make an incentive award include: (1) the risk to the class
27 representatives in commencing suit, both financial and otherwise; (2) the notoriety and personal
28 difficulties encountered by the class representatives; (3) the amount of time and effort spent by the

1 class representatives; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof)
2 enjoyed by the class representatives as a result of the litigation. *Id.*

3 The enhancement awards provided for by the Settlement is fair and appropriate. Plaintiff has
4 spent considerable time and effort to produce relevant documents and past employment records, and
5 to provide the facts and evidence necessary to prove the allegations. Plaintiff was available whenever
6 Class Counsel needed him and actively tried to obtain information that would benefit the Class.
7 Accordingly, it is appropriate and just for Plaintiff to receive a reasonable enhancement award as an
8 incentive payment, in addition to her Settlement Awards, for her services on behalf of the Class.

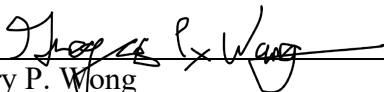
9 XII. CONCLUSION

10 For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary
11 approval of the proposed Settlement; certify the proposed Class for settlement purposes; appoint and
12 designate the Barkhordarian Law Firm, PLC as Class Counsel; appoint and designate Plaintiff
13 Leopoldo Rodriguez as the Class Representative; appoint CPT Group as the Settlement
14 Administrator; preliminarily approve the allocations for attorneys' fees and reimbursement of
15 litigation costs and expenses to Class Counsel, enhancement award to Plaintiff, the PAGA payment,
16 settlement administration fees; approve the proposed Notice Packet; direct the Settlement
17 Administrator to undertake the notice and settlement administration process in conformity with the
18 deadlines provided by the Settlement Agreement; and schedule a Settlement Fairness Final Approval
19 Hearing.

20
21 DATED: March 26, 2021

BARKHORDARIAN LAW FIRM, PLC

22
23 By:

24 
Gregory P. Wong
25 Attorneys for Plaintiff Leopoldo Rodriguez, on
behalf of himself and all others similarly situated

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