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others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF YUBA**

VERONICA SANCHEZ, individually and on
behalf of others similarly situated,

Plaintiff,

vs.

LAKEVIEW CENTER, a California
Corporation, RHONDA HOWE, an
individual; and DOES 1-20, inclusive;

Defendants.

CASE NO. CVCV20-00425

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

*[Filed Concurrently With Supporting
Declaration and [Proposed] Order]*

Date: June 10, 2024

Time: 10:00 a.m.

Department: 4

Complaint Filed: May 20, 2020

1 **PLEASE TAKE NOTICE** that on June 10, 2024 or as soon thereafter as the matter may
2 be heard in Department 4 of the above-entitled court located at 215 Fifth Street, Marysville, CA
3 95901, Plaintiff Veronica Sanchez (“Plaintiff”) will and hereby does move this Court for an order:

4 1. Granting Preliminary approval of the proposed class settlement of this lawsuit as
5 reflected in the Joint Stipulation of Settlement and Release of Class Action (“Settlement
6 Agreement”), a true and correct copy of which is attached to the Declaration of Daniel J. Bass as
7 Exhibit “A”.

8 2. Pursuant to Section 382 of California Code of Civil Procedure, provisional
9 certification of the Settlement Class defined as follows:

10 [A]ll current and former non-exempt hourly employees employed by
11 Defendant Lakeview Center, Inc. in California at any time from May
12 20, 2015 to October 2, 2022.

13 3. Preliminary appointment of Plaintiff Veronica Sanchez as Class Representative;

14 4. Preliminary appointment of Ronald W. Makarem and Daniel J. Bass of Makarem &
15 Associates, APLC. (“Plaintiff’s Counsel or Class Counsel”) as Class Counsel;

16 5. Appointment of CPT Group, Inc. as the third-party settlement administrator for
17 mailing notices;

18 6. Approving as to form the Class Notice and Request for Exclusion Form (“Notice
19 Packet”) and ordering that such Notice Packet be given to the Settlement Class, true and correct
20 copies of which is attached as Exhibit “1” and Exhibit “2” to the Settlement Agreement;

21 7. Setting this matter for hearing on the issues of final approval, approval of the Class
22 Representative’s Incentive Award, and approval of Class Counsel’s application for attorney’s fees
23 and expenses; and,

24 8. Granting such other and further relief as the Court deems just and proper.

25 This Motion is brought pursuant to California *Rules of Court*, Rule 3.769, on the grounds
26 that the settlement reached with the Defendants Lakeview Center, Inc. and Rhonda Howe, is fair,
27 reasonable, and adequate, and achieved as a result of informed, arms-length negotiations, and
28 deserving of approval for the benefit of the for the benefit of the Settlement Class members to

1 whom it pertains.

2 This Motion is based on this Notice of Motion, the attached Memorandum of Points and
3 Authorities, the supportive declaration along with the exhibits attached thereto, including the
4 declaration of Daniel J. Bass, the pleadings and other papers filed in this action, and on any further
5 oral or documentary evidence or argument presented at the time of hearing.

6
7 Dated: May 20, 2024

MAKAREM & ASSOCIATES, APLC

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9 By: Daniel Bass
10 Daniel J. Bass
11 Attorneys for Plaintiff
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11	4 Rubenstein, et al., <i>Newberg on Class Actions</i> (5 th Ed. 2016) §11.41 at p. 90	11
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1 **I. INTRODUCTION**

2 By this Motion, Plaintiff Veronica Sanchez (“Class Representatives” or “Plaintiff”) and
3 Defendants Lakeview Center, Inc. and Rhonda Howe (together with the Plaintiff, jointly hereafter
4 the “Parties”) seek an Order from this Court granting preliminary approval of the settlement
5 reached in this matter which settles the claims of the class for a sum of \$250,000.00 in a non-
6 reversionary settlement. The settlement before the Court is a fair recovery for an estimated 146
7 members of the Settlement Class working approximately 2,290 workweeks. Indeed, the proposed
8 settlement affords Class Members tangible monetary relief without the expense, delay, and
9 uncertainty of class certification and trial. Absent settlement, the Parties would be required to
10 move for class certification and try these claims, which would be costly, time consuming, and
11 would present substantial risk as to both sides of the case.

12 As shown in this Motion, the proposed settlement is fair, reasonable and adequate, and
13 more than satisfies the criteria for preliminary approval. Accordingly, Plaintiff requests that the
14 Court grant preliminary approval of the proposed settlement, preliminarily approve the attorneys’
15 fees, costs, and enhancement award sought herein, direct distribution of the Class Notice in the
16 manner provided in the Parties’ agreement, and set a hearing for final approval of the settlement.

17 **II. SUMMARY OF LITIGATION**

18 **A. Factual and Procedural History**

19 This case is a putative class action alleging violations of California state law. Defendants
20 operate a Circle K Convenience Store and Chevron Service stations. (Declaration of Daniel J. Bass
21 (“Bass Decl.”), ¶ 2). Plaintiff was employed by Defendants, during the class period, as a cashier
22 and team lead. During the time that she was employed, Plaintiff was subject to the same policies
23 and procedures as all other hourly employees including Defendants’ meal and rest break practices.
24 (*Id.*, at ¶ 3).

25 **B. Commencement of the Action and Pleadings**

26 This action was initially filed on May 20, 2020, asserting a wage and hour class action filed
27 by Plaintiff on behalf of herself and all nonexempt employees employed by Defendants in the State
28 of California within the statutory period, and was amended on August 11, 2020 to also include an

1 action for civil penalties under the Labor Code Private Attorneys General Act, Cal. Labor Code §
2 2698, et seq. The First Amended Class Action Complaint sets forth claims for (i) failure to pay
3 overtime wages; (ii) failure to provide meal periods; (iii) failure to provide rest periods; (iv) failure
4 to furnish accurate wage statements; (v) failure to pay all wages earned; (vi) failure to maintain
5 required records; (vii) failure to pay earned wages upon termination or discharge; (viii) failure to
6 indemnify necessary business expenses; (ix) unfair competition in violation of Business &
7 Professions Code Section 17200; and (x) violation of Labor Code section 2698, et. seq. Plaintiff
8 alleged these claims on behalf of all of Defendants' non-exempt employees in California. (Bass
9 Decl., ¶ 4). Plaintiff alleged that Defendants, throughout the class period, across the Defendants'
10 locations, lacked written policies. Plaintiff further alleges that Defendants, as a practice, required
11 employees to skip or take non-compliant meal and rest periods in order to complete additional work,
12 resulting in meal periods that were regularly less than thirty minutes in length and were frequently
13 taken after the fifth hour of work. As a result of these violations, Plaintiff sought to recover meal
14 and rest period premiums, unpaid minimum wages, penalties for unpaid wages upon termination,
15 penalties for non-compliant wage statements, prejudgment interest, costs of suit, and attorneys' fees.
16 (*Id.* at ¶ 5)

17 Defendants contend that at all times they complied with California law. Defendants assert
18 that they properly paid employees for all time worked. Defendants further contend that they
19 provided Plaintiff and other putative class members with compliant meal and rest periods, and that
20 to the extent any employee did not take a compliant meal or rest period, the reason for the non-
21 compliant meal or rest period would be an individualized issue that would preclude class
22 certification. (*Id.* at ¶ 6).

23 C. Investigation

24 Before filing the lawsuit, Class Counsel investigated and researched the facts and
25 circumstances underlying the pertinent issues and the laws applicable thereto. This required
26 thorough discussions between Class Counsel and the Plaintiff, as well as preliminary research into
27 the various legal issues and employment practices involved in the case. After conducting their initial
28 investigation, Class Counsel determined that Plaintiff's claims were well-suited for class action

1 adjudication owing to what appeared to be a common set of policies and procedures that impacted
2 Plaintiff and other putative class members in a similar fashion. (*Id.* at ¶ 7).

3 After filing the lawsuit, Class Counsel conducted an extensive investigation of the facts and
4 claims giving rise to the action, including: (1) reviewing and analyzing time and payroll records and
5 Defendants’ written policies and procedures;(2) researching the applicable law and evaluating
6 potential defenses; (3) evaluating the damages based on countervailing interpretations of California
7 law; (4) Conducting formal discovery; and (5) reviewing other documentation provided in litigation,
8 including information relating to Defendants’ operations, policies and procedures, meal and rest
9 breaks, premium pay for non-compliant meal and rest breaks, timekeeping records, and recording
10 of hours worked. (*Id.* at ¶ 8).

11 Defendants, for their part, vigorously contested liability, the amount of claimed damages,
12 and the propriety of class certification. After Class Counsel analyzed the relevant documentary and
13 testamentary evidence, reviewed Defendants’ policies and procedures, and prepared for mediation,
14 Class Counsel determined that this case was appropriate for resolution via settlement. (*Id.* at ¶ 9).

15 **D. Mediation and Settlement**

16 The parties agreed to participate in settlement discussions over the course of the litigation,
17 including mediation. Specifically, the Parties conducted a private mediation with experienced
18 employment law mediator David Perrault on April 28, 2022. A settlement in principle was
19 eventually reached and the Parties thereafter negotiated the details of a long form settlement
20 agreement, which was then renegotiated following the discovery that the class was larger than
21 originally believed. As a result, the Parties eventually negotiated the details of the settlement
22 agreement which cut-off the settlement class at a specific date to not increase the negotiated class
23 size and which Plaintiff now seeks the Court’s approval thereof. (*Id.* at ¶ 10, Ex. A)

24 **III. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS**

25 **A. Settlement Class**

26 “Settlement Class” or “Settlement Class Members” means ***all current and former non-***
27 ***exempt hourly employees employed by Defendant Lakeview Center, Inc. in California at any time***
28 ***from May 20, 2015 to October 2, 2022.*** Defendant represents that the Class consists of 146 Class

Members that worked a total of approximately 2,290 workweeks during the Class Period through October 2, 2022. (*Id.* at ¶ 12, Ex. A).

B. Settlement Consideration

Under the terms of the proposed Settlement, participating Class Members will release any and all claims, obligations, demands, actions, rights, causes of action, and liabilities against Released Parties, of whatever kind and nature, character, and description, whether in law or equity, whether sounding in tort, contract, federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law, whether known or unknown, and whether anticipated or unanticipated that were asserted in the Complaint or could have been asserted in the Action that accrued during the Class Period and arising from the facts, allegations, or legal theories set forth in the Complaint, including but not limited to the alleged denial of meal periods and rest breaks; the alleged failure to pay overtime wages, including for miscalculation of the regular rate of pay; the alleged failure to pay all minimum wages; the alleged failure to pay minimum or overtime wages for all hours worked; the alleged failure to properly paid piece rate wages; the alleged failure to provide separate compensation for rest periods; the alleged failure to provide accurate itemized wage statements; the alleged failure to timely pay all wages due during employment; the alleged failure to maintain required records; and the alleged failure to timely and fully pay all wages due upon separation from employment. (*Id.* ¶ 24, Ex. A). Two Hundred and Fifty Thousand Dollars and No Cents (\$250,000.00) is non-reversionary, and no portion of the Settlement Amount will be returned to Defendants (“Gross Settlement Amount”). (*Id.*, ¶13, Ex. A).

The following amounts will be deducted from the Gross Settlement Amount, with the amount remaining after these deductions constituting the Net Settlement Amount:

- **Class Counsel’s Attorneys’ Fees:** Up to 33%, estimated at Eighty-Two Thousand Five Hundred Dollars (\$82,500), in attorneys’ fees and up to fifteen thousand dollars (\$15,000) in litigation costs (including any expert costs);
- **Class Representative Incentive Award:** Up to Ten Thousand Dollars (\$10,000) to the named Plaintiff for her services as the class representative;
- **PAGA Allocation:** 75% of the Seven Thousand Five Hundred Dollars (\$7,500) PAGA Allocation to the LWDA for the release of the PAGA claim;
- **Settlement Administration Costs:** The Settlement Administrator will be paid for the reasonable costs of administration of the Settlement and calculation and distribution of payments, up to a maximum of Ten Thousand Dollars (\$10,000).

(*Id.*, ¶¶ 13-18, Ex. A). Thus, the Net Settlement Amount is estimated at about \$140,000, plus \$1,875 representing the 25% of the PAGA Allocation not paid to the LWDA. (*Id.*, ¶ 19). The Settlement Administrator shall divide the Net Settlement Amount by the aggregate Individual Workweeks for all Settlement Class Members during the Class Period, in order to determine the amount each Settlement Class Member is entitled to for each workweek s/he was employed by Defendants (the “Weekly Amount”). The Settlement Administrator will multiply the Weekly Amount by the total number of workweeks that each Settlement Class Member was employed and deduct all Employee’s Taxes and Required Withholding from the portion attributable to wages to arrive at the Individual Settlement Amount for each Class Member. Defendants will provide the Settlement Administrator with any information reasonably necessary to perform the calculation of Individual Workweeks for each Settlement Class Member, and any other reasonably required information the Settlement Administrator requests to perform the calculations required under this Settlement Agreement. (*Id.*, ¶ 20, Ex. A). The individual settlement payments will be apportioned as ten percent (10%) wages; ninety percent (90%) penalties and interest. (*Id.*, ¶ 21, Exh. A).

There are estimated to be 146 Class Members. The estimated 146 Class Members worked approximately 2,290 workweeks between May 20, 2015 to October 2, 2022 meaning participating class members will receive approximately \$61.95 per week ($\$141,875 / 2,290$ workweeks) they worked with the Defendants. Assuming this Court makes no modification, Class Members would recover approximately \$971.75 on average ($\$141,875 / 146$ Class Members). (*Id.*, ¶ 22).

The Parties agree that Seven Thousand Five Hundred Dollars (\$7,500) of the Gross Settlement Amount will be allocated to resolving Plaintiff’s claims brought pursuant to PAGA, with seventy-five percent (75%) of this amount, or Five Thousand Six Hundred and Twenty-Five Dollars (\$5,625) to the LWDA for the release of the PAGA claim, and twenty-five percent (25%), or One Thousand Eight Hundred and Seventy-Five Dollars (\$1,875) to be paid to Class Members employed during the PAGA Period. (*Id.*, ¶ 23, Exh. A). A true and correct copy of this motion, the supportive declaration and the settlement agreement will be uploaded to the LWDA’s website concurrently with the filing of this motion. (*Id.*)

C. Release By Class Members

1 Plaintiff and all Class Members who do not submit a valid and timely Request for
2 Exclusion, will release any and all claims, obligations, demands, actions, rights, causes of action,
3 and liabilities against Released Parties, of whatever kind and nature, character, and description,
4 whether in law or equity, whether sounding in tort, contract, federal, state and/or local law, statute,
5 ordinance, regulation, common law, or other source of law, whether known or unknown, and
6 whether anticipated or unanticipated that were asserted in the Complaint or could have been asserted
7 in the Action that accrued during the Class Period and arising from the facts, allegations, or legal
8 theories set forth in the Complaint, including but not limited to the alleged denial of meal periods
9 and rest breaks; the alleged failure to pay overtime wages, including for miscalculation of the regular
10 rate of pay; the alleged failure to pay all minimum wages; the alleged failure to pay minimum or
11 overtime wages for all hours worked; the alleged failure to properly paid piece rate wages; the
12 alleged failure to provide separate compensation for rest periods; the alleged failure to provide
13 accurate itemized wage statements; the alleged failure to timely pay all wages due during
14 employment; the alleged failure to maintain required records; and the alleged failure to timely and
15 fully pay all wages due upon separation from employment. (*Id.*, ¶ 24, Ex. A). All “PAGA Group
16 Members” which are all non-exempt California employees who worked for Lakeview Center, Inc.,
17 from February 15, 2020 through October 2, 2022 shall also release any and all demands, rights,
18 liabilities, claims, and/or causes of action under PAGA including but not limited to any claims
19 alleged by Plaintiff in the PAGA letter or that could have been alleged based on the facts or
20 underlying claims in the PAGA letter, including all claims that are based on or related to: the
21 purported payment or nonpayment of compensation (including, but not limited to, wages, minimum
22 wage, rate of pay, straight time, overtime, and/or premium pay); failure to pay meal or rest period
23 premiums or penalties; failure to pay for all hours worked, failure to timely pay all wages earned,
24 including final wages; failure to provide compliant meal and rest periods, failure to reimburse for
25 business expenses, failure to provide timely and compliant wage statements, maintain records,
26 violations of California Labor Code sections 200-204, 210, 218, 2186, 221-223, 226, 226(a), 226(e),
27 226.3, 226.7, 510, 512, 551, 552, 558, 558.1, 1174, 1174.5, 1175, 1194, 1194.2, 1197, 1197.1, 2802,
28 2810, 2699, 2699.1, and any applicable IWC Wage Orders.(*Id.*, ¶ 25, Ex. A)

1 **D. Notice Procedure**

2 The Parties selected CPT Group, Inc. to serve as the Administrator. The Parties have agreed
3 on the form of notice to be mailed to the Class and the method of notice to the class specifically the
4 Notice of Proposed Class Action Settlement, and Hearing Date for Final Court Approval of
5 Settlement [Exhibit 1 to the Settlement Agreement] (“Notice” herein). (*Id.*, ¶ 26, Ex. A).

6 **1. Settlement Notice Timeline**

Timeframe	Event
Within ten (10) calendar days of entry of Preliminary Approval	Defendants shall provide the Settlement Administrator with the Settlement Class Information for purposes of mailing the Notice to Settlement Class Members.
Within fifteen (15) calendar days of entry of Preliminary Approval	Settlement Administrator will mail copies of the Notice to all Settlement Class Members via regular First Class U.S. Mail.
Forty-five (45) calendar days after the Settlement Administrator mails the Notice to Settlement Class Members	The last date on which Settlement Class Members may postmark written requests for exclusion or a Notice of Objection to the Settlement.
No later than ten (10) calendar days after the Response Deadline	Settlement Administrator shall provide counsel with a complete list of all Settlement Class Members who have timely submitted written requests for exclusion.

14 **2. Details Regarding Dissemination of Notice**

15 The Notice, in materially the form attached to the Bass Declaration as Exhibit “1” and as
16 approved by the Court, shall be sent by the Claims Administrator to the Settlement Class Members,
17 by first class mail to those addresses provided by Defendants. Each Settlement Class Member will
18 have forty-five (45) days from the date the Notice is initially mailed to postmark any Requests for
19 Exclusion or Objections to the Settlement. (*Id.*, ¶ 27, Ex. A).

20 The Settlement Administrator will make reasonable efforts to ensure that the Class Notice
21 and Request for Exclusion Form are sent to all Class Members. It will conclusively be presumed
22 that if an envelope has not been returned within thirty (30) days of the mailing that the Class
23 Member received the Class Notice. In the event of returned or non-deliverable notices, the
24 Settlement Administrator will make reasonable efforts to locate Class Members and re-send the
25 notices. (*Id.*, ¶ 28, Ex. A).

26 Any funds associated with checks that have not been cashed within 90 days, will become
27 void and the Individual Settlement Amount associated with the un-cashed check will be distributed
28

1 pursuant to Code of Civil Procedure section 384 to the “Hands of Hope” or other *cy pres* beneficiary
2 to be selected by the Parties and approved by the Court. (*Id.*, ¶ 29, Ex. A).

3 **E. The Claims, Dispute, Opt-Out and Objection Process**

4 All Class Members who do not submit a Request for Exclusion Form will be eligible to
5 receive an Individual Payment Amount, which shall be mailed to them if and when the Court enters
6 an order granting final approval to this Settlement. In order to elect not to participate in the
7 Settlement, a Class Member must sign a Request for Exclusion Form and mail the form to the
8 Settlement Administrator no later than forty-five (45) calendar days after the initial mailing of the
9 Class Notice and Request for Exclusion Form to Class Members. The timeliness of submitted
10 Request for Exclusion Forms will be determined by valid postmark. (*Id.*, ¶ 30, Ex. A).

11 Any Settlement Class Member who wishes to object to the Class Settlement must mail a
12 written objection to the Settlement Administrator no later than forty-five (45) calendar days after
13 the mailing of the Class Notice and Request for Exclusion Form to Class Members, and must file
14 with the Court and serve on all parties a written statement of objection. Only Settlement Class
15 Members who do not opt out of the Settlement may object to the Settlement. The objection must
16 include the case name and number and must set forth, in clear and concise terms, a statement of the
17 reasons why the objector believes that the Court should find that the proposed Class Settlement is
18 not in the best interest of the Settlement Class and the reasons why the Class Settlement should not
19 be approved, including the legal and factual arguments supporting the objection. If an objector also
20 wishes to appear at the Final Approval and Fairness Hearing, in person or through an attorney, he
21 or she must also file a notice of intention to appear at least fourteen (14) days prior to the Final
22 Approval and Fairness Hearing date, either with the Settlement Administrator or directly with the
23 court. The Settlement Administrator will promptly serve copies of any objection or notice of
24 intention to appear on Class Counsel and Defense Counsel. Unless otherwise ordered by the Court,
25 Settlement Class Members shall not be entitled to appear and or object at the Final Approval
26 Hearing in person unless they have submitted a timely written objection and notice of intention to
27 appear pursuant to this Section. Settlement Class Members who have properly and timely submitted
28 objections may appear at the Final Approval Hearing, either in person or through a lawyer retained

1 at their own expense. (*Id.*, ¶ 31, Ex. A).

2 Settlement Class Member Individual Workweeks and Weekly Amount and corresponding
3 Individual Settlement Amount shall be calculated using the employment and payroll records of
4 Defendants, which presumptively shall be deemed to be full, complete and accurate for purposes
5 of this Settlement. To overcome that presumption, any Settlement Class member objecting to the
6 accuracy of the Individual Workweeks, Weekly Amount or amount of the Individual Settlement
7 Amount must submit documentary evidence, such as pay stubs or other written employment
8 records, to the Settlement Administrator. Each Settlement Class Member may dispute the
9 Individual Workweeks, Weekly Amount or estimated Individual Settlement Amount contained on
10 his or her Class Notice (“Workweeks Dispute”). Any such disputes must be mailed or faxed to the
11 Settlement Administrator by the Settlement Class Member, postmarked or fax-stamped on or before
12 the Response Deadline. The Settlement Administrator shall immediately provide copies of all
13 disputes to counsel for Defendant, shall inform Class Counsel of the dispute without disclosing the
14 identity of the Settlement Class Member making the dispute, and shall immediately attempt to
15 resolve all such disputes directly with relevant Settlement Class Member(s) with the assistance of
16 Defendants and Class Counsel. If the dispute cannot be resolved, it shall be submitted to the
17 Administrator for its final, non-appealable decision. The Administrator shall use its best efforts to
18 resolve all such disputes prior to the Final Effective Date. However, if a dispute arises or is not
19 resolved until after all of the Settlement Amount has been distributed, the initial calculation shall
20 stand (as Defendant shall be under no obligation to pay any amounts in excess of the Settlement
21 Amount under this Agreement) (*Id.*, ¶ 32, Ex. A).

22 **IV. PRELIMINARY SETTLEMENT APPROVAL**

23 California courts favor settlement, particularly in class actions and other complex cases
24 where substantial resources can be conserved by avoiding the time, cost, and rigors of protracted
25 formal litigation. *See 7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85
26 Cal.App.4th 1135, 1151. In determining whether to approve or reject a proposed settlement, courts
27 have broad discretion. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-235;
28 *Mallick v. Super. Ct.* (1979) 89 Cal.App.3d 434, 438. Court approval of class action settlements is

generally a two-step process: preliminary approval and final approval. *See Manual for Complex Litigation*, 4th Ed., Federal Judicial Center, 2004, § 21.632. At the preliminary approval stage, the Court's review is "limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable, and adequate to all concerned." *Officers for Justice v. Civil Serv. Comm'n* (9th Cir. 1982) 688 F.2d 615, 625. A classwide settlement is presumed to be fair where "(1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." *Dunk v. Ford Motor. Co.* (1996) 48 Cal.App.4th 1794, 1801- 02 (citing Newberg on Class Actions (3d ed. 1992) §11.41). As courts have explained, "The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved had plaintiffs prevailed at trial." *Wershba*, 91 Cal. App. 4th at 246.

Compromise is inherent and necessary in the settlement process. Thus, even if "the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated," this is no bar to a class settlement because "the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation.

Id. at 250 (quoting *Air Line Stewards, Loc. 550 v. American Airlines, Inc.*, (7th Cir.1972) 455 F.2d 101, 109.

For the reasons set forth below, the Court should grant Plaintiff's Motion for Preliminary Approval of this Class Action Settlement.

A. The Settlement Agreement Resulted from Arm's-Length Negotiations

The presumption is that a proposed settlement is fair and reasonable when it is the result of arm's-length negotiations. *See Williams v. Vukovich* (6th Cir.1983) 720 F.2d 909, 922-923 ("The court should defer to the judgment of experienced counsel who has competently evaluated the strength of his proofs"); *In re Excess Value Ins. Coverage Litig.* (S.D.N.Y. July 30, 2004, No. M-21-84RMB) No. M-21-84 (RMB) 2004 U.S. Dist. LEXIS 14822, at *34 ("Where 'the Court finds that the settlement is the product of arm's length negotiations conducted by experienced counsel knowledgeable in complex class litigation, the Settlement will enjoy a presumption of fairness'");

1 *In re Inter-Op Hip Prosthesis Liab. Litig.* (N.D. Ohio 2001) 204 F.R.D. 359, 380 (granting
2 preliminary settlement approval) ("when a settlement is the result of extensive negotiations by
3 experienced counsel, the Court should presume it is fair"); 4 Rubenstein, et al., *Newberg on Class*
4 *Actions* (5th Ed. 2016) §11.41 at p. 90; *Manual For Complex Litig.* (4th Ed. 2004), §21.612.

5 The proposed settlement here is the product of arm's-length negotiations for which the
6 Parties prepared by engaging in formal and informal discovery, preparing for class certification and
7 mediation. Counsel for the Parties have investigated the applicable law, as applied to the facts
8 discovered, regarding the alleged claims of the Class and potential defenses thereto, as well as the
9 damages claimed thereon. Armed with this extensive body of knowledge, the Parties engaged in
10 full, complete, and ultimately successful settlement discussions. At all times, the negotiations
11 leading to the Settlement have been adversarial, non-collusive and at arm's length. (Bass Decl., ¶
12 33).

13 **B. The Strength of Plaintiff's Case and Complexities of Further Litigation**

14 Plaintiff believes that the Settlement Class claims in this action are legally meritorious and
15 present a reasonable probability of a favorable determination on behalf of the Class. At the same
16 time, there is undeniably significant litigation risk avoided by the proposed Settlement, moving for
17 class certification, at trial, and in the appellate courts. (*Id.* ¶ 34) Liability remains highly contested
18 by Defendants, who deny that they engaged in any violations of the law, and further deny any
19 liability or engagement in wrongdoing of any kind associated with the claims alleged in the Action.
20 Defendants contend that, at all times, they complied with all wage-and-hour laws in connection
21 with the employment of the Class Members. (*Id.* ¶ 35)

22 Plaintiff's counsel understood and appreciated the defenses and position of Defendants but
23 believed that Plaintiff would ultimately succeed in the action. In light of the strongly divergent
24 views, the parties were able to negotiate a fair settlement, considering the costs and risks of
25 continued litigation, class certification and trial. The negotiations were at all times conducted
26 professionally and at arm's length and have produced a result that the Parties believe to be in their
27 respective best interests. (*Id.* ¶ 36)

28 The Parties have also considered the uncertainty and risk of the outcome of further
litigation, and the difficulties and delays inherent in such litigation. Plaintiff is also aware of the

1 burdens of proof necessary to establish liability for the claims asserted in the action, the defenses
2 thereto, and the difficulties in establishing damages. (*Id.* ¶ 37) In evaluating the settlement, the
3 Court will seek a reasonable estimate of the nature and amount of recovery that each class member
4 could have obtained if the Plaintiff had prevailed in the litigation. Numerous decisions summarize
5 a trial court's task when considering whether to approve the settlement of a putative class action.

6 As Division Five of this Court stated:

7 The trial court has broad discretion to determine whether the settlement is fair.
8 [Citation.] It should consider relevant factors, such as the strength of plaintiffs' case,
9 the risk, expense, complexity and likely duration of further litigation, the risk of
10 maintaining class action status through trial, the amount offered in settlement, the
11 extent of discovery completed and the stage of the proceedings, the experience and
12 views of counsel, the presence of a governmental participant, and the reaction of the
13 class members to the proposed settlement.

14 *Cellphone Fee Termination Cases* (2009) 180 Cal.App.4th 1110, 1117-18, quoting *Dunk*, 48
15 Cal.App.4th at 1801.

16 The court's consideration of relevant factors, however, does not transform the settlement
17 approval “into a trial or rehearsal for trial on the merits.” *7-Eleven Owners for Fair Franchising*,
18 85 Cal.App.4th at 1145 (internal citation omitted). The record need only provide the trial court
19 with an understanding of the amount that is in controversy and the realistic range of outcomes of
20 the litigation. Because settlements are inherently a compromise, once the parties have provided it
21 with the requisite “basic information,” the trial court must only “satisfy itself that the class
22 settlement is within the ‘ballpark’ of reasonableness.” *Tech-Bilt, Inc. v. Woodward-Clyde & Assoc.*
23 (1985) 38 Cal.3d 488, 499-500.

24 Here, in preparation for settlement discussions, Plaintiff calculated Defendants’ liability to
25 Class Members to be in excess of the settlement amount. Plaintiff’s valuation assumed that
26 Plaintiff: (1) prevailed in certifying the class; (2) prevailed in establishing liability on the merits;
27 and (3) was awarded the full amount of all discretionary penalties. (Bass Decl., ¶ 38).

28 The realistic range of outcomes for this litigation took into account the present state of the
law regarding meal and rest break claims and the other claims brought in the Action, Defendant’s
defenses for each claim, and the likelihood of prevailing on a class certification motion as well as
trial and any appeals. Moreover, Plaintiff had to consider the significant difficulties in adding class
claims against the Defendant and thus factor in how much they could realistically consider for

1 settlement. Where both sides face significant uncertainty, the attendant risks favor settlement.
2 *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011,1026.

3 ***Kullar v. Footlocker Analysis.***

4 To allow this Court to make an informed assessment pursuant to *Kullar v. Foot Locker*
5 *Retail, Inc.* (2008) 18 Cal.App.4th 116, Plaintiff's Counsel provides the following assessment of
6 the case and settlement. Plaintiff's Counsel believes that the settlement is a good one for the class
7 members in light of the money available to fund a settlement. In this case, Plaintiff sought unpaid
8 wages and statutory penalties as well as the equitable remedies of declaratory relief, disgorgement,
9 accounting, and restitution. As explained further below, Plaintiff estimated Defendants' total
10 exposure unpaid wages and penalties pursuant to Labor Code section 203 approximately
11 \$609,523.79. (Bass Decl., ¶ 41). Of that exposure approximately \$223,032.59 is due to unpaid
12 wages, and the remaining \$386,491.20 represents potential penalties pursuant to Labor Code
13 section 203. As such, the \$250,000 settlement represents over 100% of the estimated unpaid wages
14 due in this case and approximately 41% of the \$609,523.79 for Defendants' non-penalty exposure
15 plus derivative 203 penalties in Plaintiff's analysis. This is a reasonable recovery, particularly
16 given the number of class members at issue and the size of Defendants' operations. (*Id.*).

17 Courts have determined that settlements are, of course, reasonable even where plaintiffs
18 recover only a portion of their actual losses. See *Behrens v. Wometco Enters., Inc.* (S.D. Fla. 1988)
19 118 F.R.D. 534, 542, *aff'd*, (11th Cir. 1990) 899 F.2d 21 ("[T]he fact that a proposed settlement
20 amounts to only a fraction of the potential recovery does not mean the settlement is unfair or
21 inadequate."). Indeed, "[a] settlement can be satisfying even if it amounts to a hundredth or even -
22 a thousandth of a single percent of the potential recovery." *Id.*; see also *City of Detroit v. Grinnell*
23 *Corp.* (S.D.N.Y. 1972) 356 F.Supp. 1380, 1386 [a recovery of 3.2% to 3.7% of the amount sought
24 is "well within the ball park"], *aff'd* in part, *rev'd* on other grounds, (2d Cir. 1974) 495 F.2d 448;
25 *Martel v. Valderamma* (C.D. Cal. 2015) 2015 U.S. Dist. LEXIS 49830 * 17 (approving a settlement
26 of \$75,000 when potential damages were \$1.2 million); *In re Toys R US FACTA Litig.* (C.D. Cal.
27 2014) 295 F.R.D. 438, 453 (approving settlement with vouchers (not cash) potentially worth a
28 maximum of three percent (3%) if all possible claims were actually made, or \$391.5 million

1 aggregate voucher potential where the class could have recovered \$13.05 billion); 4 William B.
2 Rubenstein et al., *Newberg on Class Actions* (5th ed. 2016) § 13:15 (the range of reasonableness
3 percentage could be as low as 1/100th or 1/1000th of 1%); *Ma v. Covidien Holding, Inc.*, (C.D. Cal.
4 Jan. 31, 2014, No. SACV 12-02161-DOC) 2014 WL 360196, at *5 (finding a settlement worth
5 9.1% of the total value of the action “within the range of reasonableness”); *Balderas v. Massage*
6 *Envy Franchising, LLC*, (N.D. Cal. July 21, 2014, No. 12-CV-06327 NC) 2014 WL 3610945, at
7 *5 (granting preliminary approval of a net settlement amount representing 5% of the projected
8 maximum recovery at trial); *Glass v. UBS Fin. Servs., Inc.* (N.D. Cal. Jan. 26, 2007, No. C-06-4068
9 MMC) 2007 WL 221862, at *9, *aff’d*, 331 Fed. Appx. 452 (9th Cir. 2009) (approving a settlement
10 of an action claiming unpaid overtime wages where the settlement amount constituted
11 approximately 25% to 35% of the estimated actual loss to the class).

12 The Parties have capped this settlement at 146 class members working approximately 2,290
13 workweeks during the class period. (Bass Decl., ¶ 42). Below, Plaintiff details the issues that
14 necessitated deductions from the maximum potential value of this case to arrive at the reasonable
15 settlement of this action:

16 **Rest Periods**

17 Plaintiff calculated Defendant’s maximum liability to be 4.3 violations per employee per
18 workweek at the average hourly rate of \$11.03 per violation. As such, with 2,290 workweeks
19 during the class period, Plaintiff estimated that Defendant’s exposure could be as high as
20 \$108,612.41. Plaintiff did not discount this number or the calculations that follow in order to arrive
21 at the settlement; rather, Plaintiff discounted the number in order to reach a settlement that
22 understood the risks of continued litigation and difficulties in showing a 100% violation rate for
23 rest breaks during employee shifts. Here the realities of case supported settlement. (*Id.*) Though
24 Plaintiff was confident in certifying such a claim given the Defendants’ policy lacked the required
25 “major fraction thereof” language regarding the number of rest breaks an employee was afforded
26 each day, often the necessary testimony at trial to actually prove such a claim will raise
27 manageability concerns for the court. (*Id.*) Moreover, as Defendants need only authorize such
28 breaks an employee’s individual choice on when to or whether to take a break can be a

determinative factor for liability and damages. (*Id.*) With these issues in mind, maintaining the cause of action's viability could even be in question, so Plaintiff's counsel believed settlement an appropriate path. (*Id.*)

Meal Periods

Plaintiff calculated Defendants' potential liability based on the records reviewed in advance of mediation. Those time records showed a 66.7% violation rate in meal periods based on Defendants' time records, most of which were meal break eligible shifts that simply did not show a meal break was taken. A 66.7% violation rate at 4.3 shifts per week at the average hourly rate of \$11.03 per violation over 2,290 workweeks, Plaintiff estimated that Defendant's exposure could be as high as \$ 72,444.48. Plaintiff did not discount this number or the calculations that follow in order to arrive at the settlement; rather, Plaintiff discounted the number in order to reach a settlement that understood the risks of continued litigation and difficulties in showing high violation rate for meal breaks during employee shifts based on a lack of records.

Unpaid Off-the-Clock

Based on Plaintiff's experiences and personal observations at work, Plaintiff estimated that approximately 1 hour (60 minutes) of work was performed off-the-clock by employees on a weekly basis with about 40.5% of that unpaid time being overtime, resulting in an approximately \$18.33 (11.03 x .595 = 11.625; 11.03 x .405 x 1.5 = 6.70; 11.625+6.70 = 18.325) underpayment per workweek. Thus, Plaintiff calculated Defendant's potential exposure as \$18.33 x x 2,290 Workweeks = \$41,975.7 in underpayments for off-the-clock work. However, the majority of this claim dealt with unrecorded time, which again would require significant testimony to even certify, much less prove at trial, and the resulting manageability issues in doing so. As such, Plaintiff's counsel believed a significant discount of this claim was warranted and settlement appropriate resolution. (*Id.*)

Unfair Competition

Plaintiff did not maintain a standalone claim for unfair competition, but rather as detailed in Plaintiff's operative Complaint "Pursuant to Business & Professions Code Section 17203, Plaintiff and other members of the Class are entitled to restitution of the wages and other monies

1 withheld, deducted and/or retained by Defendants during a period that commences four years prior
2 to the filing of this action.” Plaintiff’s claims pursuant to the Business & Professions Code are not
3 separately analyzed, but rather extended period for recovering from three years before filing to four
4 years before filing for Plaintiff’s Meal Period, Rest Period and Unpaid Wage claims.

5 **Penalties: Waiting Time, Wage Statement and PAGA**

6 Although the Class arguably could have seen a payout of approximately \$386,491.20 for
7 waiting time penalties (for 146 employees x 30 days x 8 hours/day x \$11.03/hour) and additional
8 penalties for wage statement penalties and PAGA penalties, Plaintiff’s Counsel had to weigh the
9 likelihood of recovery against probable defenses and the wide discretion Courts have exercised in
10 awarding Labor code penalties. Along these lines, Plaintiff considered that Defendant would argue
11 that Plaintiff could not prove the “willful” prong needed to obtain waiting time penalties under Cal.
12 Lab. Code § 203 and would further argue that Plaintiff could not show that Class Members suffered
13 an “injury” as a result of wage statement violations, as required by Cal. Lab. Code § 226. Further,
14 Plaintiff arguably could not recover any waiting time penalties for meal and rest claims. Moreover,
15 Plaintiff would not recover any derivative penalties if he failed to prove the underlying claims.
16 (Bass Decl. ¶ 46).

17 In addition, given Defendants’ operations, Plaintiff considered the likelihood of the Court
18 using its discretion to reduce the substantial PAGA penalties as unjust, arbitrary, oppressive, or
19 confiscatory. *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157. These reductions can be
20 quite substantial, reducing the proven PAGA penalties down to a few percentage points of what
21 they were initially, even after being successfully proven. (*Id.*)

22 Plaintiff, in agreeing to the settlement had to take into account the difficulties in certifying
23 a class and maintaining any such certification. What’s more, Plaintiff had to take into account the
24 uncertainties, including business uncertainties facing Defendants and similar employers during the
25 COVID 19 pandemic. Each of these concerns weighed into Plaintiff’s analysis to eventually agree
26 to a settlement that is less than Defendant’s total projected liability even if Plaintiff eventually won
27 every aspect of this case including potential appeal. A settlement now guarantees that class
28 members will 1) obtain a recovery and 2) that they will get the recovery in a time period that is

1 shorter than one if the case went through a full trial and appeal process. (Bass Decl., ¶ 47).

2 **Certification in General**

3 The great discretion afforded trial courts in electing to grant or deny class certification, and
4 the resultant possibility that this Court would deny certification of any of the claims, resulting in
5 no recovery whatsoever for those unnamed class members further weighed in favor of settlement.
6 Indeed, going into mediation and during the course of constructing the settlement, Class Counsel
7 bore in mind similar meal and rest break cases wherein class certification was denied. *See e.g. In*
8 *re Lamps Plus Overtime Cases* (2012) 209 Cal.App.4th 35; *Washington v. Joe's Crab Shack* (N.D.
9 Cal. 2010) 271 F.R.D. 629 (“individualized inquiry will be required to determine whether any
10 single employee failed to take a meal break because he/she was too busy, and also to determine
11 whether a particular employee signed a waiver based on a decision not to take meal breaks”);
12 *Hernandez v. Chipotle Mexican Grill, Inc.* (2012) 146 Cal.Rptr.3d 424, 2012 WL 3579567, *10.

13 **Trial and Manageability Issues**

14 While Plaintiff was confident in the strength of her claims, as is always the case with a trial,
15 Plaintiff needed to accept that there was a possibility that he would not prevail at trial. Compromise
16 is inherent and necessary in the settlement process. Thus, even if “the relief afforded by the
17 proposed settlement is substantially narrower than it would be if the suits were to be successfully
18 litigated,” this is no bar to a class settlement because “the public interest may indeed be served by
19 a voluntary settlement in which each side gives ground in the interest of avoiding litigation.” *Id.* at
20 250 (quoting *Air Line Stewards, Loc. 550 v. American Airlines, Inc.*, (7th Cir.1972) 455 F.2d 101,
21 109. The Ninth Circuit observed “the very essence of a settlement is compromise, ‘a yielding of
22 absolutes and an abandoning of highest hopes.’” *Officers for Justice v. Civil Serv. Commission* (9th
23 Cir.1982) 688 F.2d 615, 624 (citation omitted). Thus, when analyzing the amount offered in
24 settlement, the Court should examine “the complete package taken as a whole,” and the amount is
25 “not to be judged against a hypothetical or speculative measure of what might have been achieved
26 by the negotiators.” *Id.* at 625, 628.

27 Given the difficulties Plaintiff and the Settlement Class faced, both in terms of certification
28 and in adjudicating their claims on the merits, the litigation discounts afforded by Plaintiff are

1 appropriate and the settlement is fair, reasonable, and adequate. In the present case, it is clear that
2 the settlement before this Court is the best course of action as it ensures a fair and adequate recovery
3 for the members of the class. Thus, it was clearly reasonable for Plaintiff to negotiate a smaller
4 certain award rather than seek the full recovery but risk recovering nothing. (Bass Decl., ¶¶ 36-37).

5 **C. The Settlement Has No Obvious Deficiencies**

6 This proposed settlement has no obvious deficiencies. The settlement provides no
7 preferential treatment for the Plaintiff or other Class Members. The Plaintiff will receive a
8 distribution from the settlement proceeds calculated in the same manner as the distributions to all
9 Settlement Class Members, plus any Class Representative Incentive Award approved by the Court.

10 The proposed Settlement does not place the named Plaintiff's interests ahead of the
11 Settlement Class as a whole. Apart from a reasonable incentive payment for his efforts on behalf
12 of the Settlement Class, typical in class action litigation, the named Plaintiff's personal recovery in
13 this action and settlement will be the same as those with whom he shares a common set of facts
14 amongst the Settlement Class. Indeed, the named Plaintiff has not in any way tried to leverage a
15 class action for some personal agenda or gain.

16 Plaintiff contends that the proposed Settlement also does not place the Class Counsel's
17 interests ahead of class members' interests. Settlement provisions relating to attorneys' fees and
18 litigation expenses in the action were not negotiated until after an agreement was reached in
19 principal with respect to the direct Settlement Class benefits and the Gross Settlement Amount.
20 Further, the Settlement provides only for a maximum permissible amount of the request for an
21 award of attorneys' fees and litigation expenses. Any award of fees and expenses remains to be
22 determined by the Court at the time of the fairness hearing and must necessarily be found to be fair
23 and reasonable to the Settlement Class based on applicable law.

24 Again, each Settlement Class Member has the right to object and be heard regarding the
25 amount of fees and expenses requested. Any amounts not awarded by the Court as fees and
26 expenses will remain in the net settlement fund to be distributed to the class. Class Counsel will
27 file a separate motion for approval of the fee award sought herein, at the time of and in conjunction
28

1 with the filing of the motion for final approval, should preliminary approval be granted, and a final
2 approval hearing scheduled by the Court.

3 **D. The Class Representative's Incentive Award, Counsel's Fees, and Expenses**

4 **1. The Incentive Award Requested by Plaintiff Is Reasonable**

5 As part of the Settlement, Plaintiff will seek a Class Representative Incentive Award of
6 \$10,000. (Bass Decl. ¶ 15) Plaintiff has taken the extraordinary step of challenging her former
7 employer's actions by bringing this case. Plaintiff did so in the belief that she, and the members of
8 the Settlement Class, were, in fact, entitled to the relief sought in this case. Until this case was
9 filed, no one was pursuing the claims raised in this matter. Plaintiff's actions have resulted in a
10 recovery for the members of the Settlement Class, and the incentive award she seeks is
11 reasonable. (Bass Decl., ¶ 49)

12 Plaintiff has fulfilled her duties as class representative throughout the litigation, spending
13 time and effort to gather relevant documents and information, providing the facts and evidence
14 necessary to prove the allegations, and discussing her employment with Class Counsel. (*Id.*, ¶
15 50). Plaintiff fully participated in this action throughout the pendency of the litigation. (*Id.*, ¶ 51).
16 She was kept well informed of the nature and extent of settlement discussions and approved the
17 same. (*Id.*) As such, the incentive award sought for Plaintiff is reasonable and represents a small
18 percentage of the Net Settlement Amount. (*Id.*) Absent the actions taken by Plaintiff, none of
19 the Class Members would have reaped the rewards of this action. (*Id.*)

20 **2. The Fees and Costs Requested by Class Counsel Are Reasonable**

21 As noted, *supra*, the Settlement provides for Class Counsel to apply to the Court for an
22 award of fees of one third of the Gross Settlement Amount, plus reimbursement of their litigation
23 expenses. The percentage award is commensurate with (1) the risk Class Counsel took in
24 commencing this action, (2) the time, effort and expense dedicated to the case, (3) the skill and
25 determination they have shown, (4) the results they have achieved throughout the litigation, (5)
26 the value of the Settlement which they have achieved for Class Members, and (6) the other cases
27 they have turned down in order to devote their time and efforts to this matter. (Bass Decl., ¶ 56).
28 California public policy encourages attorneys to take the risks of time and money necessary to

1 vindicate the public interest. To fulfill this policy, California law provides that attorneys' fees
2 awards should be equivalent to fees paid in the legal marketplace to compensate for the result
3 achieved and risk incurred. See *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19.
4 Accordingly, Class Counsel's request is based on marketplace standards. In *Lealao*, the First
5 Appellate District held that when an action leads to a recovery that can be "monetized" with a
6 reasonable degree of certainty, the trial court should "ensure that the fee awarded is within the
7 range of fees freely negotiated in the legal marketplace in comparable litigation." *Id.*, at 50.

8 The governing principles, as well as a survey of attorneys' fees jurisprudence (both in
9 California and throughout the country), are set out in *Lealao*. As the court in *Lealao* explained, in
10 determining an attorney fee request, courts should strive to award fees equivalent to those "freely
11 negotiated in the legal marketplace in comparable litigation." *Id.* "If courts were to ask what fee
12 structure an informed, sophisticated client would use to compensate his attorney when close
13 monitoring is not feasible, they would at least have focused on the correct question." *Id.*, at 48. As
14 *Lealao* recognizes, fee awards that are too small will "chill the private enforcement essential to
15 the vindication of many legal rights and obstruct the representative actions that often relieve the
16 courts of the need to separately adjudicate numerous claims." *Id.* at 53. Finally, an attorneys' fees
17 motion should not turn into "a second major litigation." *Id.* at 31 (citing *Hensley v. Eckerhart*
18 (1983) 461 U.S. 424, 437).

19 As in many cases of this type, Class Counsel seek a fee award for their successful
20 prosecution and resolution of this action, calculated as a percentage of the total value of benefits
21 afforded the Class Members by the Settlement. *Serrano v. Priest* (1977) 20 Cal.3d 25, 34
22 (*Serrano III*); *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; see also *Vincent v. Hughes*
23 *Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769. The purpose of this equitable doctrine is not
24 only to avoid unjust enrichment of counsel but also to spread litigation costs proportionally
25 among all the beneficiaries so that the active beneficiary does not bear the entire burden alone. *Id.*
26 Where the amount of a settlement is a "certain easily calculable sum of money," California courts
27 may calculate attorney fees as a reasonable percentage of the settlement created. Weil and Brown,
28 *California Practice Guide: Civil Procedure Before Trial*, ch. 14, § 14:145; *Dunk*, at 1808. In

1 addition, Class Counsel will present a lodestar plus multiplier analysis of their efforts which will
2 further support the amount sought.

3 **E. Claims Administration**

4 Parties seek the appointment of CPT Group as the Claims Administrator. CPT Group is a
5 well-established class action administration company, and has served as an administrator in
6 hundreds of class action cases. The administrator has estimated the cost for administering the claims
7 will not exceed \$10,000. (*Bass Decl.* ¶ 17, Ex. A)

8 **F. The Content and Manner of the Notice to Class Members Complies with
9 California Rules of Court, Rule 3.766 and Should be Approved.**

10 Class members are entitled to the best practical notice under the circumstances. *Kass v*
11 *Young*, (1977) 67 Cal.App.3d 100, 106. The purpose of the notice is to give class members
12 sufficient information to decide whether they should accept the benefits offered, opt out and pursue
13 their own remedies or object to the settlement. *Trotsky v Los Angeles Fed Savings & Loan Assn*,
14 (1975) 48 Cal.App.3d 143 151, 52. The notice must advise class members that they may be
15 excluded from the class if they so request and that they will be bound by the judgment, whether
16 favorable or not, if they do not request exclusion. *Kass*, 67 Cal.App.3d at 106. California authorities
17 generally require service of the class notice by mail or similar reliable means. *Chance v Super Ct.*,
(1962) 58 Cal 2d 275, 290.

18 Here, the Parties have negotiated the form of a notice (“Notice,” attached as Exhibit “1” to
19 Exhibit “A” of the Bass Declaration). The Notice will be disseminated to all people who fall within
20 the definition of the Settlement Class and whose names and addresses have already been identified
21 from Defendants’ records. In addition, Notices returned as undeliverable will be subjected to a
22 further follow up and re-mailing procedure as detailed in the Settlement Agreement.

23 With regard to the content of the Notice, the proposed version meets all requisite levels for
24 appropriately providing full disclosure and information to the class members. “Notice is
25 satisfactory if it generally describes the terms of the settlement in sufficient detail to alert those
26 with adverse viewpoints to investigate and to come forward and be heard.” 4 Newberg on Class
27 Actions § 8.32 at 8-103. As such, the Notice is proper and affords the best possible notice under
28 the circumstances presented in this case.

1 **V. THE CLASS SHOULD BE PROVISIONALLY CERTIFIED FOR SETTLEMENT**

2 Courts have generally found that class action suits are appropriate “when the question is
3 one of a common or general interest . . . or when the parties are numerous, and it is impracticable
4 to bring them all before the court.” *Cal. Civ. Proc.* § 382; *see also Richmond v. Dart Indus., Inc.*
5 (1981) 29 Cal.3d 462, 469-75. In order to sustain a class action, two requirements must be met: (1)
6 there must be an ascertainable class; and (2) there must be a “well-defined community of interest
7 in the questions of law and fact involved affecting the parties to be represented.” *Daar v. Yellow*
8 *Cab. Co.* (1967) 67 Cal.2d 695, 704. As a general rule, a community of interest is established where
9 (1) there are predominant common questions of law or fact; (2) the named Plaintiff has “claims or
10 defenses typical of the class”; and (3) the named Plaintiff is able to adequately represent the class.
11 *See Dunk*, 48 Cal.App.4th at 1806. In order to ensure the efficient use of judicial resources,
12 California law and policy favors the fullest and most flexible use of the class action device.
13 *Richmond*, 29 Cal.3d at 469-75.

14 As stated above, the settlement class is clearly defined and comprises approximately 146
15 individuals, which is sufficiently numerous to warrant the use of the class action device. The
16 Settlement Class is readily ascertainable and, in fact, Defendants have agreed to provide the names
17 and contact information for the Class to the Settlement Administrator. *Rose v. City of Hayward*
18 (1981) 126 Cal.App.3d 926, 932 (finding “[c]lass members are ‘ascertainable’ where they may be
19 readily identified without unreasonable expense or time by reference to official records.”)

20 Similarly, common questions of law and fact exist among Class Members in this case. *See*
21 *Clothesrigger, Inc. v. GTE Corp.* (1987) 191 Cal.App.3d 605, 612; *Lazar v. Hertz Corp.* (1983)
22 143 Cal.App.3d 128, 138-39. At a minimum, some of the common questions of law and fact
23 affecting the Class include: (1) whether Defendants adequately compensated Class Members for
24 all hours worked; (2) whether Defendants failed to pay all wages due to Class Members within the
25 required time upon their discharge or resignation; (3) whether the wage statements Defendants
26 provided to Class Members complied with California law; (4) whether Defendants deprived
27 Plaintiff and other Class Members of meal and/or rest periods or required Plaintiff to work during
28 meal and/or rest periods without compensation or failed to properly compensate Class Members

1 and Plaintiff for rest periods and meal periods; and (5) whether Defendants’ policies and practices
2 violate California’s Unfair Competition Law. Further, Plaintiff was able to evaluate such claims
3 by reviewing common evidence such as Defendants’ uniform employment policy and procedure
4 documents which Plaintiff and other non-exempt, hourly employees were subject to. *Duran v. U.S.*
5 *Bank National Assn.* (2014) 59 Cal.4th 1, 36 (“class litigation may be appropriate if the
6 circumstances of a particular case demonstrate that there is common evidence”).

7 The complex common questions implicated by the facts and law in this case strongly
8 suggest that Settlement Class Members could not do substantially better than this Settlement by
9 litigating individually. *See Dunk, supra*, 48 Cal.App.4th at 1807, fn. 19. Commonality and
10 predominance requirements for certification, particularly in the less intensive context of a
11 Settlement Class, are therefore satisfied.

12 Finally, Plaintiff’s claims are typical of class members’ claims and Plaintiff has and will
13 adequately represent the settlement class. Specifically, Plaintiff falls within the class definition and
14 was subjected to the same policies, procedures, and practices giving rise to the claims in this action.
15 *See Amchem Products, Inc. v. Windsor* (1997) 521 U.S. 591, 625-26 (“[A] class representative must
16 be part of the class and possess the same interest and suffer the same injury as the class members.”).
17 Plaintiff has pursued her case via highly experienced counsel (Bass Decl., ¶¶ 52-63). Plaintiff has
18 fulfilled her duties as class representative throughout the litigation, spending time and effort to
19 gather relevant documents and information, providing the facts and evidence necessary to prove
20 the allegations, and discussing her employment with Class Counsel. (Bass Decl., ¶¶ 49-51).

21 **VI. ACTION REQUESTED FOR THE MOTION FOR PRELIMINARY APPROVAL**

22 Plaintiff respectfully requests for this Court, as part of the preliminary-approval process, to
23 grant the following relief and make the following orders:

- 24 1. Consider and determine that the proposed class action settlement as set forth in the
25 Settlement Agreement preliminarily appears fair, reasonable, and adequate;
- 26 2. Conditionally certify the action as a class action for settlement purposes only;
- 27 3. Appoint Ronald W. Makarem and Daniel J. Bass of Makarem & Associates, APLC to
28 serve as Class Counsel;

4. Appoint Plaintiff as Class Representative for settlement purposes;
5. Approve CPT Group, Inc. as the settlement administrator to handle the notice and claims procedures as set forth in the Stipulation;
6. Order Defendants to provide CPT Group the he Class List as set forth in the Settlement Agreement;
7. Approve the Class Notice, which is attached to the Settlement Agreement;
8. Order that CPT Group mail the Class Notice to class members; and
9. Set a date for the Final Approval Hearing.

VII. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court preliminarily approve the proposed settlement, provisionally certify the Settlement Class, and enter the Proposed Order submitted concurrently herewith.

Dated: May 20, 2024

MAKAREM & ASSOCIATES, APLC

By: Daniel Bass
Daniel J. Bass
Attorneys for Plaintiff