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

VIDALI ALEMAN, an individual on behalf
of herself and all others similarly situated,

Plaintiff,

vs.

MOONLIGHT PACKING CORPORATION,
a California corporation; MOONLIGHT
PACKING COMPANY, LLC, a California
limited liability company, and DOES 1
through 50, inclusive,

Defendants.

Case No.: 20CECG01196

CLASS ACTION

Assigned For All Purposes to
The Honorable Kristi Culver Kapetan

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF' MOTION FOR AN ORDER
(1) PRELIMINARILY APPROVING THE
CLASS ACTION SETTLEMENT; (2)
APPROVING NOTICE OF CLASS
ACTION SETTLEMENT; AND (3)
SETTING HEARING FOR FINAL
APPROVAL**

*[Filed concurrently with Plaintiff's Notice of
Motion and Motion; Declaration of David
Yeremian; and [Proposed] Order]*

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Vidali Aleman (“Plaintiff” or “Class Representative”) filed a class action
4 complaint in the Superior Court of the State of California, Fresno County, Case No
5 20CECG01196 against Defendant Moonlight Packing Corporation and Moonlight Packing
6 Company LLC (collectively “Defendants”). Plaintiff alleged the following causes of action: (1)
7 Failure to Pay Minimum Wages; (2) Failure to Pay Wages and Overtime Under Labor Code §
8 510; (3) Failure to Pay Reporting Time Pay; (4) Meal Period Liability Under Labor Code §
9 226(a); (5) Rest-Break Liability Under Labor Code § 226.7; (6) Violation of Labor Code §
10 226(a); (7) Violation of Labor Code §203; (8) Violation of Labor Code §204; (9) Violation of
11 Labor Code §221; (10) Failure to Keep Required Payroll Records Under Labor Code §§ 1174 and
12 1174.5; and (11) Violation of Business & Professions Code § 17200 *et seq*; and (12) Penalties
13 under Private Attorney General Act (“PAGA”).

14 Pursuant to the proposed Joint Stipulation of Class Action Settlement (“Settlement” or
15 “Settlement Agreement”), filed concurrently herewith, the class consists of “all current and
16 former non-exempt packing employees who worked for Defendants in California at any time
17 between May 4, 2016 and January 19, 2021.” After engaging in substantial investigation and
18 extensive negotiations with the assistance of a respected third-party neutral, Honorable Howard
19 Broadman (Ret.), the parties have agreed to settle all claims alleged in the lawsuit on a class-wide
20 non-reversionary basis for Nine Hundred Thousand Dollars and Zero Cents (\$900,000.00),
21 inclusive of all fees and costs. All 1,672 Class Members shall receive a settlement share unless
22 they opt out.

23 The proposed settlement reflected in the Settlement Agreement is fair, reasonable, and
24 adequate, and in the best interests of the Class. Consequently, Plaintiff, with the consent of
25 Defendants, hereby move this Court for an order: (1) granting preliminary approval of the
26 proposed class action settlement, as embodied in the Joint Stipulation of Class Action Settlement
27 (“Settlement” or “Settlement Agreement”) filed concurrently herewith; (2) approving the Notice
28 of Class Action Settlement to be sent to Class Members, and the notification schedule as set forth

1 in the Settlement Agreement and the Proposed Order, also filed concurrently herewith; and (3)
2 setting a hearing for final approval of the class action settlement.

3 **II. STATUS OF THE LITIGATION**

4 **A. Procedural History**

5 On May 4, 2020, Plaintiff filed a class action complaint against Defendants alleging
6 eleven causes of action: (1) Failure to Pay Minimum Wages; (2) Failure to Pay Wages and
7 Overtime Under Labor Code § 510; (3) Failure to Pay Reporting Time Pay; (4) Meal Period
8 Liability Under Labor Code § 226(a); (5) Rest-Break Liability Under Labor Code § 226.7; (6)
9 Violation of Labor Code § 226(a); (7) Violation of Labor Code § 203; (8) Violation of Labor
10 Code § 204; (9) Violation of Labor Code § 221; (10) Failure to Keep Required Payroll Records
11 Under Labor Code §§ 1174 and 1174.5; and (11) Violation of Business & Professions Code §
12 17200 *et seq.* (Declaration of David Yeremian (“Yeremian Decl.”), filed concurrently herewith, ¶
13 10) Plaintiff alleges Defendants failed to pay minimum wages and overtime for all hours worked,
14 failed to pay for reporting time pay, failed to provide compliant meal and rest breaks, failed to
15 pay premium wages for missed meal and rest breaks, failed to furnish accurate wage statements,
16 failed to timely pay wages including final wages, and failed to maintain accurate records. (*Id.*).

17 On April 6, 2020, Plaintiff submitted a Private Attorneys General Act (“PAGA”) notice
18 letter to the Labor Workforce Development Agency (“LWDA”) and served Defendants.
19 (Yeremian Decl., ¶ 11) The LWDA did not express an interest in investigating Plaintiff’s claims
20 within the 65 day period. (*Id.*). Therefore, on June 10, 2020, Plaintiff filed a First Amended
21 Complaint adding a cause of action for penalties under the Private Attorneys General Act
22 (“PAGA”). (*Id.*).

23 **B. Investigation**

24 Before filing the lawsuit, Class Counsel investigated and researched the facts and
25 circumstances underlying the pertinent issues and the law applicable thereto. (Yeremian Decl., ¶
26 12) This required thorough discussions and interviews between Class Counsel and Plaintiff, as
27 well as preliminary research into the various legal issues involved in the case. (*Id.*) After
28 conducting their initial investigation, Class Counsel determined that Plaintiff’s claims were well-

1 suited for class and representative action adjudication owing to what appeared to be a common
2 course of conduct affecting a similarly situated group of employees. (*Id.*)

3 After filing the lawsuit, Class Counsel conducted a thorough investigation of the facts and
4 claims giving rise to the action, including: (1) conducting informal and formal discovery, and
5 meeting and conferring with defense counsel about same; (2) reviewing and analyzing time and
6 pay records as well as employment handbooks, Plaintiff's personnel files, relevant policies and
7 other documentation; (3) researching the applicable law and potential defenses; (4) constructing
8 damage models based on interpretations of California law; and (5) reviewing information
9 provided by Defendants at the mediation. (Yeremian Decl., ¶ 13) The Class enumerated in this
10 action is ascertainable because the Class Members may be readily identified by reference to
11 Defendants' records. (*Id.*) Defendants have agreed to share the information from these records
12 with the Settlement Administrator in order to identify and contact the Class Members. (*Id.*) There
13 are approximately 1,672 total Class Members. (*Id.*)

14 Defendants, for their part, vigorously contested liability, the amount of claimed damages,
15 and the propriety of class certification. (Yeremian Decl., ¶ 14) After Class Counsel analyzed the
16 relevant documents and other gathered data, Class Counsel believed that this case was appropriate
17 for resolution via mediation. (*Id.*) Given the high level of risk present for both sides, the parties
18 elected to mediate Plaintiff's claims and explore the possibility of settlement. (*Id.*)

19 **C. Settlement Efforts**

20 On November 18, 2020, the parties mediated this case with Honorable Howard Broadman
21 (Ret.), a respected and highly experienced mediator in wage and hour class actions. (Yeremian
22 Decl., ¶ 15) During mediation, Plaintiff's and Defendants' counsel discussed all aspects of the
23 case, including the risks of litigation and the risks to both parties of proceeding with a motion for
24 class certification as well as the law relating to unpaid wages, meal periods, rest periods, wage
25 statements, and final pay. (*Id.*) As a result of the mediation, the parties agreed to settle the lawsuit
26 according to the terms set forth in the Settlement Agreement. (*Id.*; See Exhibit 1 attached to
27 Yeremian Decl., "Settlement" or "Settlement Agreement".)

28 From Class Counsel's review of the facts, strengths, and weaknesses of the case, the risks

1 and delays posed by further litigation, and Class Counsel's own prior litigation experience, Class
2 Counsel believes that the recovery for each Class Member is fair and reasonable taking into
3 consideration the amounts received in other wage and hour class actions, the risks inherent in
4 litigation of this genre, and the reasonable tailoring of each Class Member's claim to the
5 settlement award he or she will receive. (*Id.*) Further, and based on the settlement negotiations,
6 which were extensive, and conducted in good faith and at arm's length between attorneys with
7 substantial experience litigating class actions and wage and hour cases, the Settlement Agreement
8 was the product of a non-collusive settlement process in which the parties were forced to make
9 significant compromises in the interest of reaching a full and complete settlement of the lawsuit.
10 (*Id.*)

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

12 Under the terms of the proposed Settlement Agreement, the Defendants have agreed to
13 pay Nine Hundred Thousand Dollars and Zero Cents (\$900,000) ("Gross Settlement Amount") on
14 a non-reversionary basis to settle and release all claims asserted by Plaintiff in the Class Action
15 and PAGA Action on behalf of the proposed Class. (Yeremian Decl., ¶ 16; Exh. 1, §13) The
16 Settlement Agreement defines the "Class Members" as "all current and former non-exempt
17 packing employees who worked for Defendants in California at any time between May 4, 2016
18 and January 19, 2021." (Yeremian Decl., ¶ 17; Exh. 1, §6) The "Net Settlement Amount,"
19 available for distribution to Class Members, shall be the Gross Settlement Amount, less the
20 Attorneys' Fees and Costs, the Class Representative Enhancement Payment, Settlement
21 Administration Costs, and seventy-five percent (75%) of the LWDA Payment. (Yeremian Decl., ¶
22 18; Exh. 1, §14) These amounts are detailed as follows:

- 23 • not more than Three Hundred Thousand Dollars and Zero Cents (\$300,000.00) to
24 Class Counsel for attorneys' fees, and not more than Seventeen Thousand Dollars
25 and Zero Cents (\$17,000.00) in reasonable litigation costs; ((Yeremian Decl., ¶ 18;
26 Exh. 1, §33);
- 27 • not more than Fourteen Thousand Dollars and Zero Cents (\$14,000.00) for the
28 Settlement Administration Costs; ((Yeremian Decl., ¶ 18; Exh. 1, §35);

- not more than Five Thousand Dollars and Zero Cents (\$5,000.00) for a Class Representative Enhancement Payment; and ((Yeremian Decl., ¶ 18; Exh. 1, §34);
- Thirty Thousand Dollars and Zero Cents (\$30,000.00) for civil penalties under the PAGA, where 75% (\$22,500.00) will be paid to the LWDA and 25% (\$7,500.00) will be included in the Net Settlement Amount and distributed to Settlement Class Members). ((Yeremian Decl., ¶ 18; Exh. 1, §36)

The “Individual Settlement Payment,” which is each Class Member’s share of the Net Settlement Amount, will be calculated and apportioned from the Net Settlement Amount based on the number of workweeks a Class Member worked during the Class Period as a non-exempt employee in California. (Yeremian Decl., ¶ 19; Exh. 1, §37)

Defendants shall pay its corporate payroll tax obligations on the payouts to Class Members in addition to the Gross Settlement Amount. (Yeremian Decl., ¶ 20; Exh. 1, §13)

The settlement amount was a compromise figure, factoring in the inherent risks related to certification, liability and damages. (Yeremian Decl., ¶ 21) However, taking into account all of the circumstances of the action and the defenses raised by Defendants against certification, liability and damages, Class Counsel believes that the settlement is fair and reasonable. (*Id.*)

Attached to the Settlement Agreement as Exhibits A, B, and C is the Notice of Class Action Settlement, Opt-out Form, and Objection Form (“Notice Packet”). Class Members shall each receive a Notice Packet which will include the Class Notice, Opt-out Form, and Objection Form via first class mail (after the Settlement Administrator conducts a national change of address search). (Yeremian Decl., ¶ 22; Exh. 1, §41) Class Members will have an opportunity to dispute the information provided in their Notice Packet and they may produce evidence to support the information is inaccurate. (Yeremian Decl., ¶ 23; Exh. 1, § 44; *see also* Class Notice, **Exhibit A** attached to the Settlement Agreement.) The Settlement Administrator shall decide the dispute and may ask Defendants to produce the personnel and payroll files of the Class Member disputing their credited workweeks in order to resolve the dispute. (Yeremian Decl., ¶ 23; Exh. 1, §44) Class Members wishing to opt-out from the Settlement Agreement must sign and postmark a written Request for Exclusion to the Settlement Administrator within the Notice Period.

1 (Yeremian Decl., ¶ 24; Exh. 1, §45) The Notice Period will be forty five (45) calendar days from
2 the initial mailing of the Notice Packet. (*Id.*)

3 Class Members will also have the opportunity to object to the Settlement Agreement, by
4 serving a copy of the objection to the Settlement Administrator within the Notice Period.

5 (Yeremian Decl., ¶ 25; Exh. 1, §48) The Notice Period will be forty five (45) calendar days from
6 the initial mailing of the Notice Packet. (*Id.*)

7 The parties have also agreed that CPT Group, Inc. shall handle the notice and settlement
8 administration (Exh. 1, § 28), and the parties respectfully request this Court to appoint CPT
9 Group, Inc. to handle those procedures. The procedures for mailing notice and processing
10 exclusions and objections as well as distribution of the Net Settlement fund is detailed in the
11 Stipulation. (Exh. 1, §§41-48)

12 **IV. CERTIFICATION FOR SETTLEMENT PURPOSES ONLY IS APPROPRIATE**

13 Express judicial policy favors maintaining wage and hour actions as class actions. (*Prince*
14 *v. CLS Transp., Inc.* (2004) 118 Cal. App. 4th 1320, 1328; *Richmond v. Dart Industries, Inc.*
15 (1981) 29 Cal. 3d 462.) Any doubt as to the appropriateness of class treatment should be resolved
16 in favor of class certification, subject to later modification if necessary. (*Richmond*, 29 Cal. 3d at
17 473-75.) The decision to certify a class is a procedural one, and should be based on the allegations
18 in the operative complaint, and not in the perceived factual or legal merit of the class claims.
19 (*Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 439-41.)

20 To certify a settlement class, the Court must find the two primary requirements for
21 maintaining a class action: (1) there must be an ascertainable class, and (2) there must be a well-
22 defined community of interest in the questions of law and fact involving the parties to be
23 represented. (*See Vasquez v. Superior Court* (1971) 4 Cal. 3d 800, 805-09; *Daar v. Yellow Cab*
24 *Company* (1967) 67 Cal. 2d 695, 704.) These criteria are met here for the reasons set forth below.

25 **A. There Is A Numerous and Ascertainable Class**

26 Whether a class is ascertainable is determined by examining the class definition, the size
27 of the class and the means available for identifying class members. (*See Vasquez, supra*, 4 Cal. 3d
28 at 821-22; *Reyes v. Board of Supervisors of San Diego County* (1987) 196 Cal. App. 3d 1263,

1 1271.) Class members are “ascertainable” where they may be readily identified without
2 unreasonable expense or time.

3 Plaintiff contends, and Defendants do not dispute for settlement purposes only, this
4 requirement and the requirement of numerosity is met. Class Members are “all current and former
5 non-exempt packing employees who worked for Defendants in California at any time between
6 May 4, 2016 and January 19, 2021” (Yeremian Decl., ¶ 71(a)) Documents and information
7 exchanged between the parties reflect a class of approximately 1,672 Class Members. (Yeremian
8 Decl., ¶ 71(a)) The Class Members have already been identified by reference to Defendants’
9 payroll and personnel records. (Yeremian Decl., ¶ 71(b))

10 Therefore, and notwithstanding the foregoing, there is a numerous and ascertainable class.

11 **B. There Is A Well-Defined Community of Interest**

12 A community of interest is established by the predominance of common issues of law and
13 fact. *See Vasquez*, 4 Cal. 3d at 811. The requirement of a community of interest:

14 [D]oes not depend upon an identical recovery, and the fact that each
15 member of the class must prove his separate claim to a portion of
16 any recovery by the class is only one factor to be considered ... The
17 mere fact that separate transactions are involved does not of itself
18 preclude a finding of the requisite community of interest so long as
19 every member of the alleged class would not be required to litigate
numerous and substantial questions to determine his individual right
to recover subsequent to the rendering of any class judgment which
determined in plaintiff’ favor whatever questions were common to
the class.

20 *Id.* at 809.

21 Plaintiff contends, and Defendants do not dispute for settlement purposes only, that
22 common issues of fact and law predominate as to each of the claims alleged by Plaintiff, and the
23 Class is united in its proof. (Yeremian Decl., ¶ 71(e)) Because Plaintiff has alleged a single
24 scheme, “the relevant proof [does] not vary among class members” and “clearly presents a
25 common question fundamental to all class members.” (*See In Re NASDAQ Market-Makers*
26 *Antitrust Litigation* (SDNY 1997) 172 F.R.D. 119, 123 (citing *In Re NASDAQ Market-Makers*
27 *Antitrust Litigation*, (SDNY 1997) 169 F.R.D. 493, 518).) California courts show “no hesitancy”
28 in inferring class-wide causation, class-wide injury, and class-wide damages when a common

1 course of action has been shown. (*B.W.I. Custom Kitchen*, 191 Cal. App. 3d at 1350.) This
2 inference ““eliminates the need for each class member to prove individually the consequences of
3 the defendants’ actions to him or her.”” (*Id.* at 1351 (quoting *Rosack v. Volvo of America Corp*
4 (1982) 131 Cal. App. 3d 741, 753 [emphasis added])).)

5 This action involves, *inter alia*, a determination about Defendants’ alleged failure to
6 provide meal period and rest periods, failure to pay wages and overtime due to allegedly common
7 and unlawful policies, failure to pay final wages when required, failure to provide accurate
8 paystubs, and largely derivative claims under the Business & Professions Code and PAGA.
9 Plaintiff contends these practices affected Class Members in the same way. Plaintiff contends
10 these practices resulted in a failure to compensate employees at termination, and incomplete
11 wages displayed on wage statements. The outcome of litigation on this matter depends upon
12 questions that are common to Class Members. (Yeremian Decl., ¶ 71(f)) While Defendants
13 maintained otherwise, these issues will not be decided on the basis of facts peculiar to each Class
14 Member, but rather on the basis of facts common to them all. It is also true that these issues of
15 liability can be determined on a class-wide basis. (*Id.*)

16 C. The Named Plaintiff’s Claims Are Typical

17 A class representative’s claims are typical when they arise from the same event, practice,
18 or course of conduct that gives rise to the claims of other putative class members, and if their
19 claims rest on the same legal theories. The class representative’s claims must be “typical” but not
20 necessarily identical to the claims of other class members. It is sufficient that the representative is
21 similarly situated so that he or she will have the motive to litigate on behalf of all class members.
22 (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 47; *B.W.I. Custom Kitchens v. Owens-Illinois, Inc.*
23 (1987) 191 Cal.App.3d 1341, 1347 (“[I]t has never been the law in California that the class
24 representative must have identical interests with the class members.”) Thus it is not necessary that
25 the class representative should have personally incurred all of the damages suffered by each of the
26 other class members. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 228.)

27 Plaintiff contends, and Defendants do not dispute for settlement purposes only, that
28 Plaintiff’s claims are typical of Class Members’ claims because they arose from the same factual

1 basis and are based on the same legal theories. (Yeremian Decl., ¶ 71(c)) Plaintiff was employed
2 by Defendants during the Class Period, and was subject to the allegedly unlawful meal and rest
3 policies and pay practices at issue in this litigation. (*Id.*) Accordingly, Plaintiff is a member of the
4 Class. (*Id.*) The central issues of this litigation (whether Defendants failed to pay all wages,
5 whether Defendants failed to provide meal and rest periods, etc.), which would arise if this was an
6 individual action, applies to the other Class Members as well. The answer to these questions
7 would determine Defendants' liability to the putative class. (*Id.*) Thus, the claims of Plaintiff are
8 typical of the claims of the putative class. (*Id.*) Accordingly, the typicality requirement is
9 satisfied.

10 **D. Adequacy of Class Counsel and Class Representative**

11 Class Counsel are experienced in class actions, have represented their clients zealously
12 and have no conflicts of interest. (Yeremian Decl., ¶¶ 3-9, 71(d)) The Class Representative's
13 interests are aligned with those of the Class Members, she has suffered the same injuries as the
14 Class Members, and have no conflicts of interest. (*Id.*) Therefore Class Counsel and the Class
15 Representative are adequate.

16 **E. Predominance and Superiority**

17 Individual issues do not predominate over those common to the class. (Yeremian Decl.,
18 ¶71(f)) The class action mechanism is superior to individualized actions because Class Members
19 have little incentive to bring claims that are small. (*Id.*)

20 **V. THE TWO-STEP APPROVAL PROCESS**

21 Any settlement of class action litigation must be reviewed and approved by the Court.
22 This is accomplished in two steps: (1) An early (preliminary) review by the trial court, and (2) a
23 detailed review after the notice has been distributed to the class members for their comments or
24 objections. In this regard, the Manual for Complex Litigation (Second) explains:

25 A two-step process is followed when considering class
26 settlements... If the proposed settlement appears to be the product
27 of serious, informed, non-collusive negotiations, has no obvious
28 deficiencies, does not improperly grant preferential treatment to
class representative or segments of the class, and falls within the
range of possible approval, then the court should direct that notice
be given to the class members of a formal fairness hearing, at which

evidence may be presented in support of and in opposition to the settlement.

(*Manual for Complex Litigation (Second)* (1985) at § 30.44.) The preliminary approval of the class action settlement by the trial court is simply a conditional finding that the settlement appears to be within the range of acceptable settlements. (See, e.g., *Newberg*, § 11.25; *North County Contractor's Assn., Inc. v. Touchstone Ins. Services* (1994) 27 Cal. App. 4th 1085, 1094-95.) Thus, the preliminary approval of the class action settlement by the trial court is simply a conditional finding that the settlement appears to be within the range of acceptable settlements.

Settlements to resolve PAGA claims also require court approval. (Labor Code § 2699(l)(2).) There is no articulated standard for approving PAGA settlements. PAGA settlements for as little as \$0 have been approved. (See *Nordstrom Com'n Cases* (2010) 186 Cal.App.4th 576, 589 (approving PAGA settlement and release that allocated \$0 to PAGA claim).) Courts have also approved settlements for \$20,000 or less. (See, e.g., *Hicks v. Toys 'R' Us-Delaware, Inc.*, (C.D. Cal. Sept. 2, 2014) 2014 WL 4703915, at *1 (approving \$5,000 PAGA payment in \$4 million settlement); *Chu v. Wells Fargo Invest. LLC* (N.D. Cal. Feb. 16, 2011) 2011 WL 672645, at *1 (approving PAGA payment of \$7,500 in \$6.9 million settlement); *Williams v. Brinderson Constructors* (C.D. Cal. Feb. 6, 2017) 2017 WL 490901, at *5 (\$10,000 PAGA settlement in \$300,000 settlement).)

A review of the preliminary approval criteria demonstrates a substantial basis for granting the instant Motion and proceeding to a full settlement hearing.

VI. THE SETTLEMENT IS FAIR AND ADEQUATE

As a matter of public policy, courts both encourage the use of the class action device and favor settlement over continued litigation. (See, e.g., *Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 434 ("Courts have long acknowledged the importance of class actions as a means to prevent a failure of justice in our judicial system."); *Class Plaintiff v. City of Seattle* (1992) 955 F.2d 1268, 1276 ("[S]trong judicial policy . . . favors settlements, particularly where complex class action litigation is concerned."))

Moreover, courts presume the absence of fraud or collusion in the negotiation of a

1 settlement unless evidence to the contrary is offered. In short, there is a presumption that the
2 negotiations were conducted in good faith. (*Newberg*, §11.51; *Rodriguez v. West Publ. Corp.*
3 (C.D. Cal. August 10, 2007) 2007 U.S. Dist. LEXIS 74767, 24-25 ; *Priddy v. Edelman* (6th Cir.
4 1989) 883 F.2d 438, 447.) Courts do not substitute their judgment for that of the proponents,
5 particularly when settlement has been reached by experienced counsel familiar with the litigation.
6 (*Rodriguez*, 2007 U.S. Dist. LEXIS 74767 at 24; *Hammon v. Barry* (D.D.C. 1990) 752 F. Supp.
7 1087.)

8 In *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008), the court laid out
9 several factors that should be analyzed in determining if a class action settlement should be
10 approved. These factors include: (1) the strength of plaintiff's case; (2) the risk, expense,
11 complexity and likely duration of further litigation; (3) the risk of maintaining class action status
12 through trial; (4) the amount offered in settlement; (5) the extent of discovery completed and
13 stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a
14 governmental participant; and (8) the reaction of the Class Members to the proposed settlement.

15 The Settlement here satisfies each of these factors. Class Counsel conducted extensive
16 informal discovery before entering into meaningful settlement negotiations in this matter,
17 including a detailed analysis of Defendants' policies and a considerable sample of Defendants'
18 time and pay records. (Yeremian Decl., ¶¶ 11-12.) This discovery permitted Class Counsel to
19 fairly evaluate the strengths of the case and the risks associated with ongoing litigation. Class
20 Counsel is very experienced in the handling of wage and hour class actions and supports this
21 Settlement. (Yeremian Decl., ¶¶ 3-9.)

22 **A. The Strength of Plaintiff's Case.**

23 Plaintiff alleges that Defendants failed to pay minimum wages and overtime, failed to pay
24 for reporting time pay, failed to provide proper meal breaks or provide premium pay in lieu
25 thereof, failed to provide proper rest breaks or provide premium pay in lieu thereof, failed to
26 provide accurate wage statements, failed to timely pay all wages including upon termination, and
27 failed to maintain accurate records all in violation of California law. (Yeremian Decl., ¶ 27)

28 Class Counsel felt confident that the claims in this case would be certified given that

1 Defendants' policies were applicable to all Class Members and unlawful on their face. (Yeremian
2 Decl., ¶¶ 28-60) Defendants contended, however, that that the policies complied with California
3 law.

4 **B. The Risks Associated with the Merits.**

5 As with all litigation, there are risks that a party will not prevail on the merits. In this case,
6 Plaintiff contends that they and other Class Members were not properly provided meal periods.
7 (Yeremian Decl., ¶¶ 34-37) Defendants contended that Class Members were given a reasonable
8 opportunity to take their meal periods, and in fact received their meal periods most of the time
9 (*Id.*) If Defendants' contentions are proven true and prevail in trial, the likely outcome of this
10 claim would be no recovery for the Class Members. Plaintiff also contended that Defendants did
11 not provide Class Members with paid 10-minute rest breaks for every four hours or major fraction
12 thereof. (Yeremian Decl., ¶¶ 38-40) Class Members consistently worked in excess of consecutive
13 four-hour shifts and were entitled to paid rest breaks of not less than ten minutes for each
14 consecutive four hour shift which they were denied. Class Members were required to work
15 through their rest breaks, and through their entire shifts. Defendants maintained that they did
16 provide the reasonable opportunity for Class Members to take duty-free rest breaks. (Yeremian
17 Decl., ¶ 39) Defendants also pointed out that, unlike meal periods, rest breaks need not be
18 recorded and Defendants dispute all allegations that breaks were not received.. As these
19 considerations would likely depress the damages *vel non* ultimately awarded, Class Counsel
20 applied significant and appropriate discounts to the rest-break claim.

21 Plaintiff alleged that Defendants failed to pay Plaintiff and Class Members minimum
22 wages for all hours worked, in violation of minimum wage laws. (Yeremian Decl., ¶ 31) Plaintiff
23 contended that Class Members were not paid all wages they were owed including for all work
24 performed and for all overtime hours worked. (*Id.*) Plaintiff contended Defendants' unlawfully
25 rounded down the hours Class Members worked because the time punches Class Members were
26 required to input were rounded and reduced to reflect the scheduled work time rather than the
27 actual hours worked. (*Id.*) Additionally, Plaintiff contended Class Members were forced into
28 working off the clock due to pre-shift and post-shift work duties performed. (*Id.*) Specifically,

1 Plaintiff claimed Class Members had to wait in line to approach the timekeeping system which
2 would take several minutes. (*Id.*) Additionally, Plaintiff alleged at the end of each week, Class
3 Members were required to clock out of the timekeeping system and wait in line to receive their
4 paychecks. (*Id.*) Moreover, Plaintiff claims that about once or twice a week, the machines Class
5 Members would work on would malfunction and would need immediate maintenance and Class
6 Members were instructed to clock out while the machines were being fixed. (*Id.*)

7 Defendants contended that they paid for all reported hours worked, that Class Members
8 were trained to record all hours worked, and that they paid proper minimum wages. (*Id.* at 32)
9 Defendants also maintained that the allegations regarding failure to pay wages for hours worked
10 in excess of eight hours in a day did not constitute a basis for violation of Labor Code § 510.
11 Defendants argued that given their written policies and practices, any unrecorded hours were
12 likely subject to individualized inquiry and unlikely to be certified. Given the difficulty in
13 certifying this claim, Class Counsel had to apply a significant discount to damages based on this
14 theory.

15 **C. The Risks Associated with Paystub Violations and Waiting Time Penalties.**

16 In order to establish liability for these penalties, Plaintiff would first have to establish
17 liability for the underlying claims. Moreover, Defendants argued that meal violations, even if
18 established, could not be the predicate for a Labor Code § 226 wage statement or § 203 waiting
19 time claim. (Yeremian Decl., ¶¶ 41, 44) For example, the California Supreme Court has recently
20 held that claims for meal period penalties do not constitute “action[s] brought for the nonpayment
21 of wages” for the purpose of determining statutory fees. (*Kirby v. Immoos Fire Prot., Inc.* (2012)
22 53 Cal.4th 1244, 1259.) In *Ling v. P.F. Chang’s China Bistro* (2016) 245 Cal.App.4th 1242, the
23 Court of Appeal noted an action for unlawful meal periods “cannot support a section 203 penalty
24 because section 203, subdivision (b) tethers the waiting time penalty to a separate action for
25 wages.” Authority is divided on this point. Moreover, although authority is divided, many district
26 court rulings support the conclusion that any unpaid meal period premium pay cannot give rise to
27 derivative wage statement liability. (*See, e.g., Culley v. Lincare Inc.* (E.D. Cal. 2017) 236
28 F.Supp.3d 1184, 1195-96; *Soto v. Motel 6 Operating, L.P.* (2016) 4 Cal.App.5th 385, 392-393

1 (noting a wage statement need only document compensation *actually received* and the hours used
2 to calculate that compensation).) Thus, it is unclear if the Court would have permitted untimely
3 wage penalties or wage statement violations for Defendants’ alleged failure to provide meal
4 period penalties.

5 In addition, Plaintiff would have to establish that Defendants’ conduct was willful to
6 recover waiting time penalties. (Labor Code § 203.) With these penalties, there is always the risk
7 that the trier of fact would not have held that Defendants’ actions were done “willfully.” A good
8 faith belief in a legal defense can preclude a finding of willfulness. (*Gonzalez v. Downtown LA*
9 *Motors* (2013) 215 Cal.App.4th 36, 54; 8 C.C.R. § 13520.) As discussed above, Plaintiff alleges
10 that Defendants failed to pay for all hours worked and premiums for non-compliant meal and rest
11 breaks. Plaintiff contended the Class Members are entitled to these wages and premiums, which
12 they allege was not paid at the time of their termination or resignation. If Plaintiff is successful on
13 their claims, the penalties pursuant to Labor Code § 203 shall attach. Defendants, however,
14 contended they provided employees with the reasonable opportunity to take meal and rest breaks,
15 asked Class Members to confirm the accuracy of their time records, and therefore had good-faith
16 defenses under *Brinker* and its progeny. As such, there was some risk associated with waiting
17 time penalties that Class Counsel had to consider. (Yeremian Decl., ¶¶ 44-47)

18 Additionally, Defendants argued the claims for paystub violations and waiting time
19 penalties had little or no value. *See e.g.*, *Naranjo v. Spectrum Security Services, Inc.*, 40 Cal.
20 App. 5th 444 (2019), *rev. granted Naranjo v. Spectrum Security Services, Inc.*, No. S258966,
21 2020 Cal. LEXIS 167 (Jan. 2, 2020) ((noting, for example, that the remedy for a meal period/rest
22 break violation is an extra hour of pay, but that does not transform the remedy into a wage for
23 triggering section 203 waiting time penalties; similar analysis applied in rejecting a derivative
24 claim for paystub penalties); *see also Maldonado v. Epsilon Plastics, Inc.*, 22 Cal. App. 5th 1308,
25 1336-1337 (2018) (wage statements that accurately report wages paid to employees do not violate
26 Labor Code § 226, even if it is later determined that employer did not properly pay all wages
27 due).

28 ///

1 **D. The Risks Associated with the PAGA Penalties.**

2 Labor Code § 2699.3 gives aggrieved employees the right to recover civil penalties for
3 specific Labor Code violations by way of a civil action. The PAGA provides a penalty amount of
4 one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation
5 and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent
6 violation. Labor Code § 2699(e)(2). However, if a civil penalty is provided in a specified amount
7 by the Labor Code section relating to the underlying alleged Labor Code violation, that amount
8 shall apply. (*Id.*) The PAGA also gives the Court discretion to award any lesser amount than the
9 maximum civil penalty. (*Id.* [“...a court may award a lesser amount than the maximum civil
10 penalty amount specified by this part if, based on the facts and circumstances of the particular
11 case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or
12 confiscatory.”]); *See, e.g., Lopez v. Friant & Assocs., LLC*, 15 Cal. App. 5th 773, 788 (2017), *rev.*
13 *denied* (2018), (recognizing court’s ability to reduce PAGA penalties). Courts have held that
14 situations similar to the current one (e.g. injuryless violations, technical errors, and substantial
15 compliance) should lead to reductions in penalties. *See Thurman v. Bayshore Transit*
16 *Management, Inc.*, 203 Cal. App. 4th 1112, 1134-1135 (2012) (holding that reduction was
17 justified when employer “attempted to comply with the law”); *Fleming v. Covdien, Inc.*, No. ED
18 CV10-01487 RGK (OPx), 2011 U.S. Dist. LEXIS 154590 at *8-9 (C.D. Cal. August 12, 2011)
19 (reducing PAGA penalties more than 80% – from \$2.8 million to \$500,000 – when “employees
20 suffered no injury” employers were “not aware” of the violation and “took prompt steps to correct
21 all violations once notified”).

22 Plaintiff discounted potential penalties under this claim given this authority, and for other
23 reasons. The PAGA claims are premised on the same underlying unpaid wages, meal and rest
24 break, wage statement, and waiting time claims, and thus subject to the same disputes and
25 defenses. There is also a dispute as to whether violations in later pay periods trigger the \$200
26 penalty under PAGA as a “subsequent violation.” (*Amaral v. Cintas Corp. No. 2*, 163 Cal. App.
27 4th 1157, 1203 (2008).) As such, there is a fair amount of risk associated with PAGA claims.
28 (Yeremian Decl., ¶¶ 48-51) The parties also considered that the purpose of PAGA is to “achieve

1 maximum compliance with state labor laws,” and that through the proposed settlement,
2 Defendants have agreed to ensure policies comply with California law. (*Iskanian v. CLS Transp.*
3 *Los Angeles, LLC* (2014) 59 Cal. 4th 348, 379.) This makes the settlement’s contemplated PAGA
4 payment of \$30,000 appropriate.

5 Based on this analysis, Class Counsel believes that this settlement is fair and reasonable
6 and in the best interest of the Class. (Yeremian Decl., *passim*.)

7 **E. The Risk, Expense, Complexity and Likely Duration of Any Litigation.**

8 Given the risks outlined above, the issues in this case were complex and the risk for
9 Plaintiff and the Class Members associated with this litigation was high. (Yeremian Decl., ¶¶ 50-
10 53) A class trial would have required the retention of expensive expert witnesses, the accrual of
11 extensive litigation costs, and the parties would have had to spend a substantial amount of time.
12 (Yeremian Decl., ¶¶ 12, 56)

13 Finally, given the complexity and unsettled nature of the issues, it is likely that any
14 outcome at trial would have resulted in a lengthy and costly appeal. An appeal would result in
15 further delay for the Class Members who have already waited years for resolution in this matter.

16 **F. The Risk of Maintaining Class Action Status Through Trial.**

17 In class actions, decertification is always a possibility. There is always a risk that a trial of
18 this magnitude can become unmanageable. (*Id.*) Given cases like *Duran v. U.S. Bank Nat. Assn.*,
19 59 Cal. 4th 1, 34 (2014) that deal with the complexity of using statistical samples in class actions,
20 decertification is a real risk that Class Counsel must take into account.

21 **G. The Amount Offered in Settlement.**

22 There can be no doubt that this Settlement is the result of vigorous, adversarial, non-
23 collusive, and arms-length negotiations between the parties with an experienced mediator. In
24 order to determine the approximate potential damages which would be owed to each of the Class
25 Members, Class Counsel analyzed the time records for Plaintiff and Defendants provided Class
26 Counsel with records for a sampling of the class members. By analyzing this information, Class
27 Counsel was able to estimate the full value of the case if Plaintiff was to prevail at trial.

28 There are approximately 1,672 total Class Members. Plaintiff believes that the maximum

1 award the class could have obtained is approximately \$6,018,846. (Yeremian Decl., ¶ 28) Class
2 Counsel estimated the following maximum exposures: unpaid wage claim at \$1,533,116, meal
3 period claim at \$611,839.26, rest period claim at \$611,839.26, wage statement claim at \$200,350,
4 waiting time penalties at \$2,836,702, and on PAGA, Plaintiff estimated the maximum exposure at
5 \$225,000. (*Id.*)

6 However, taking into account the difficulties of proof, the Defendants' defenses, and other
7 attendant risks, Plaintiff estimates that the total amount of damages, monetary penalties, or other
8 relief that the class could reasonably expect to be awarded at trial is significantly less than the
9 maximum exposure. (Yeremian Decl., ¶ 29)

10 Plaintiff believes they would be awarded approximately \$2.6 million at trial. (Yeremian
11 Decl., ¶ 30) Class Counsel estimates they would recover the following amount in damages at trial
12 unpaid wage claim at \$779,085, meal period claim at \$305,919.13, rest period claim at \$0, wage
13 statement claim at \$100,175, waiting time penalties at \$1,418,351, and on PAGA, Plaintiff
14 estimates they would recover anywhere from \$25,000-50,000. (*Id.*)

15 Once Class Counsel was able to determine the maximum potential damages, it was able to
16 determine a fair and reasonable settlement for the Class. (*Id.* at ¶¶ 55-58) Class Counsel analyzed
17 the likelihood of success on the merits. (*Id.*) It believes that the Class had a reasonable likelihood
18 of success on the core claims. (*Id.*) However, Defendants dispute this contention, denies all
19 wrongdoing in this matter and are confident they have strong legal and factual defenses to
20 Plaintiff' claims. Moreover, Class Counsel determined that the likelihood of success on the claims
21 for unpaid wages and waiting time penalties were not as strong, because various defenses
22 including issues not suitable for class treatment, no detriment to the class members over time, and
23 *de minimis* defenses. Defendants may have had the opportunity to establish that they had a good
24 faith belief that they were complying with law. (*Id.*) After taking into account the likelihood of
25 success on each claim and the challenges faced with certifying these claims, Class Counsel
26 determined that the settlement amount of \$900,000.00 was fair and reasonable.

27 Under the Settlement, each of the approximately 1,672 Class Members will receive on
28 average, assuming they worked throughout the class period, \$323 after expenses. (*Id.* at ¶ 54)

1 Plaintiff feels that this Settlement is fair, reasonable, and advantageous to the class. (*Id.*)

2 To summarize, the Settlement here is fair because it provides a substantial payment to
3 each Class Member for releasing his or her claims; extinguishes the risk of litigation; and
4 provides a fair and adequate distribution of the settlement proceeds whereby the funds are
5 allocated to Class Members proportionally based on their Payout Ratio.

6 As detailed at length in the accompanying Declaration of David Yeremian, the settlement
7 is the result of extensive settlement negotiations between the parties, conducted at arm's length,
8 and informed by substantial factual and legal investigations. (Yeremian Decl., *passim.*)
9 Throughout this case, Class Members have been represented by experienced counsel with many
10 years of experience in employment class action litigation. (Yeremian Decl., ¶¶ 3-9)

11 Class Counsel has devoted a considerable amount of time to the prosecution of this case,
12 including but not limited to, interviewing Plaintiff on repeated occasions; drafting pleadings;
13 conducting considerable discovery, and meeting and conferring with defense counsel about same;
14 reviewing and analyzing time records and various handbooks and policies, Plaintiff' personnel
15 file, and other documentation; researching California law; interviewing numerous class members
16 regarding their experiences; preparing for and attending mediation; and negotiating and finalizing
17 the Settlement Agreement and related documents. (Yeremian Decl., ¶¶ 11-14)

18 Among those matters considered during the course of settlement negotiations were the
19 strength of Plaintiff' case versus the amounts offered in settlement; the risks, expenses, and length
20 of further litigation, including class certification and the appeals process; the present state of the
21 law as it applies to wage and hour class actions, particularly in light of *Brinker*; the present value
22 of a settlement versus the long wait necessitated by any potential judgment in class members'
23 favor; the burdens of proof necessary to establish liability against Defendants; and Defendants'
24 defenses to the action. (Yeremian Decl., *passim.*).

25 These factors each indicated that the interests of Class Members are best served by a
26 settlement of this action in the manner and upon the terms set forth in the Settlement Agreement.
27 The Settlement Agreement confers a substantial benefit on the class of up to \$900,000.00.
28 Moreover, the settlement awards for each Class Member will be tailored to their workweeks

1 during the class period. (*Id.* at ¶ 19) In addition Class Counsel secured prospective relief for the
2 class in that Defendants will ensure their policies comply with California law.

3 Class Counsel believes that the settlement is fair and reasonable and serves the best
4 interests of the Class Members. Although the recommendations of counsel proposing the class
5 settlement are not conclusive, the Court can properly take the recommendations into account,
6 particularly if counsel has been involved in litigation for some period of time, appear to be
7 competent, and have experience with this type of litigation, and significant discovery has been
8 completed. *See Newberg*, §11.47.

9 **VII. THE CLASS REPRESENTATIVE ENHANCEMENTS ARE FAIR AND** 10 **REASONABLE**

11 It is appropriate to provide a relatively modest additional incentive payment to the class
12 representative. *See Newberg*, § 12.1; *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901
13 F.Supp. 294.

14 Plaintiff is entitled to reasonable service payments for her efforts and initiative in bringing
15 and helping to prosecute this class action. Plaintiff spent significant time better apprising herself
16 of her rights, deciding whether remedial action should be taken, how it should be taken, searching
17 for attorneys, and contacting Class Counsel, who spent many hours with Plaintiff discussing their
18 case and the law. (Yeremian Decl., ¶¶ 66-70) In the end, Plaintiff decided to vindicate not only
19 her own rights but also those of her co-workers by filing a class action lawsuit.

20 The courage it took to do this should not be underestimated. By suing Defendants,
21 Plaintiff contends she increased her risk of retaliation by prospective employers. (*Id.*) Plaintiff's
22 lawsuit has now cost Defendants considerable resources, and Plaintiff contends such conduct will
23 not be lost on a prospective employer who has to choose between an applicant who has never
24 sued a prior employer and one who has. (*Id.*) Plaintiff contends this risk is particularly real in the
25 information age, where employers can, more easily than ever, perform background checks of
26 prospective employees, sometimes with the stroke of a key. (*Id.*)

27 But Plaintiff did not allow her fear of the potential repercussions of being a class
28 representative deter her from acting for the benefit of Class Members. (*Id.*) To the contrary,

1 Plaintiff has been intimately involved in this case since its inception. (*Id.*) She has devoted a
2 substantial amount of time to helping Class Counsel effectively develop and prosecute this action
3 at every stage of the litigation. (*Id.*) Both before and after the filing of this lawsuit, Plaintiff
4 conferred with Class Counsel to discuss every aspect of this case; Plaintiff has provided Class
5 Counsel with information about Defendants and about the industry generally, reviewed
6 documents, identified witnesses, consulted Class Counsel throughout the litigation, participated in
7 the mediation process, monitored the progress of the litigation with Class Counsel, and reviewed
8 and signed the settlement agreement. (*Id.*)

9 Plaintiff has spent a significant amount of time with Class Counsel detailing her
10 knowledge of Defendants' practices. (*Id.*) She has diligently, adequately, and fairly represented
11 Class Members, and has not placed her interests above any member of the putative class. (*Id.*)
12 This sort of payment to a class representative has been a common feature of settlements
13 negotiated by Class Counsel and has been routinely approved by trial courts. (*Id.*)

14 In light of the foregoing, Class Counsel believes that the incentive award in the amount of
15 \$5,000.00 to the Class Representative is fair and reasonable. (*Id.*)

16 **VIII. THE PROPOSED CLASS NOTICE PROVIDES ADEQUATE NOTICE TO THE**
17 **CLASS MEMBERS.**

18 Constitutional due process requires that class members be provided with notice sufficient
19 to give them an opportunity to be heard in the proceedings. *Mullane v. Central Hanover Bank &*
20 *Trust Co.* (1950) 339 U.S. 306. Proper notice must provide the class members with sufficient
21 information to make an informed decision as to whether to accept or object to the settlement. (*Id.*
22 at 314.) The notice must apprise the class members of the pendency of the action; reasonably
23 convey information regarding the settlement and the class members' rights, entitlements, and
24 obligations; and afford class members the opportunity to present their objections. (*Id.*)

25 The Notice Packet meets constitutional standards because it provides all the information a
26 reasonable person would need to make a fully informed decision about the settlement. It will
27 notify all class members of the terms of the settlement, of its effect on their rights, of their options
28 as class members (i.e., participate, object, opt out, do nothing), and of the consequences of

1 exercising those options. (Yeremian Decl., ¶¶ 59-61) Moreover, the Notice Packet will
2 specifically direct any class members who have questions or concerns to contact the Settlement
3 Administrator, CPT Group, Inc., or Class Counsel. (*Id.*)

4 The standard for determining the adequacy of notice is whether the notice has “a
5 reasonable chance of reaching a substantial percentage of the class members.” (*Cartt v. Superior*
6 *Court* (1975) 50 Cal.App.3d 960, 974.) The Judicial Council of California’s Deskbook on the
7 Management of Complex Civil Litigation (Matthew Bender 2003), § 3.74 notes that individual
8 notice by mail is preferred when possible and dissemination of combined certification/settlement
9 notice is a common and accepted practice. (*In re Vitamin Cases* (2003) 107 Cal.App.4th 820,
10 828.)

11 Here, the Notice Packet will be sent via first-class mail to each class member. (Yeremian
12 Decl., ¶ 42) If any Notice Packets are returned undeliverable without a forwarding address, the
13 Settlement Administrator will use the national change of address database and perform a skip
14 trace to locate the class member and mail a new Notice Packet to him or her at the correct
15 address. (*Id.*) Thus, most, if not all, class members will likely receive the Notice Packet.

16 Pursuant to controlling authority, the proposed Notice Packet and method of distribution
17 fully comport with due process requirements. Therefore, the Court should approve the Notice
18 Packet and direct that it be distributed as proposed herein.

19 **IX. STANDING TO OBJECT TO PROPOSED SETTLEMENT**

20 Non-settling parties and third parties periodically may attempt to object to proposed class
21 action settlements, but the right of non-settling parties to object at the final settlement approval
22 hearing, let alone the preliminary approval hearing, is quite limited. As a general rule, only class
23 members have standing to object to a proposed settlement. “Beginning from the unassailable
24 premise that settlements are to be encouraged, it follows that to routinely allow non-class
25 members to inject their concerns via objection at the settlement stage would tend to frustrate this
26 goal.” (*Gould v. Alleco, Inc.* (4th Cir. 1998) 883 F.2d 281, 284.) Since an application is being
27 filed to obtain a good faith determination, no persons other than class members have standing to
28 object to the proposed settlement. (*In re School Asbestos Litigation* (3rd Cir. 1990) 921 F.2d

1 1330.)

2 **X. THE STIPULATED AWARD OF ATTORNEYS' FEES AND COSTS IS**
3 **REASONABLE AND SHOULD BE APPROVED.**

4 Under the Settlement Agreement, subject to approval by this Court, Class Counsel will
5 seek an award of fees of no more than Three Hundred Thousand Dollars and Zero Cents
6 (\$300,000.00), approximately thirty-three percent of the Gross Settlement Amount, and not more
7 than Seventeen Thousand Dollars and Zero Cents (\$17,000.00) in costs. The requested fees are
8 fair compensation for a law firm involved in undertaking complex, risky, expensive, and time-
9 consuming litigation solely on a contingent basis. (Yeremian Decl. ¶¶ 63-65) Defendants will not
10 oppose Class Counsel's fees and cost request.

11 California courts routinely look to the federal courts on class action approvals. The Ninth
12 Circuit has recognized that an appropriate method for awarding attorneys' fees in class actions is
13 to award a percentage of the "common fund" created as a result of the settlement. (*Vincent v.*
14 *Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769.) The purpose of the common
15 fund/percentage approach is to "spread litigation costs proportionally among all the beneficiaries
16 so that the active beneficiary does not bear the entire burden alone." (*Id.*) Accordingly, courts
17 have discretion to choose either the percentage-of-the-fund method or the lodestar method. (*In re*
18 *Wash. Pub.Power Supply Sys. Sec. Litigation* (9th Cir. 1994) 19 F.3d 1291, 1295-96.)

19 Several courts have, however, expressed frustration with the "lodestar" approach for
20 deciding fee awards, which usually involves wading through voluminous time records. Thus, the
21 percentage approach can be preferable to the lodestar in certain situations because: (1) it aligns
22 the interests of class counsel and absent class members; (2) it encourages efficient resolution of
23 the litigation by providing an incentive for early, yet reasonable, settlement; and (3) it reduces the
24 demands on judicial resources. (*In re Activision Securities Litigation*, (N.D. Cal. 1989) 723
25 F.Supp. 1373, 1378-79.) The Ninth Circuit has used the percentage of the common fund approach
26 to determine the award of attorneys' fees. (*In re Pacific Enterprises Securities Litigation* (9th Cir.
27 1994) 47 F.3d 373, 378-79 (approving attorneys' fee of 33 1/3% of settlement fund).)

28 Class Counsel's application for attorneys' fees in light of the facts and circumstances

1 surrounding this case is well within the range of reasonableness. Historically, courts have
2 awarded percentage fees in the range of 20% to 50% of the common fund, depending on the
3 circumstances of the case. (*Newberg*, at §14.03; *see also In re Activision Securities Litigation*,
4 723 F. Supp. at 1378.) *Newberg* further notes: “[A]chievement of a substantial recovery with
5 modest hours expended should not be penalized but should be rewarded for considerations of
6 time saved by superior services performed.” (*Id.* at §§ 14-10:14-11.)

7 The attorneys’ fees request provided for in the Settlement Agreement is commensurate
8 with judicial precedent. Both state and federal courts regularly approve fee awards equal to or
9 greater than the percentage requested in this case. (*See, e.g., In re Pacific Enterprises Securities*
10 *Litigation* (9th Cir. 1995) 47 F.3d 373, 379 (affirming an award equal to 33% of the common
11 fund); *In re Activision Securities Litigation* (N.D. Cal. 1989) 723 F.Supp. 1373, 1375 (awarding
12 plaintiff’ counsel 32.8% of the common fund created to settle the litigation); *In re Ampicillin*
13 *Antitrust Litigation* (D. D.C. 1981) 526 F.Supp. 494 (awarding 45% of \$7.3 million settlement
14 fund); *Parker v. City of Los Angeles* (1974) 44 Cal.App.3d 556, 557-568 (affirming fee award to
15 counsel of one-third (1/3) of recovery achieved).)

16 In wage and hour class actions in particular, California trial courts have customarily
17 approved attorney’s fees consistent with or greater than the percentage of the common fund
18 requested in this case. (*See Evans v. Coca-Cola*, Los Angeles County Super. Ct. Case No. BC
19 220525 (Hon. Richard C. Hubbell) (Dec. 2001) (approving an award of attorneys’ fees of at least
20 33-1/3% of the settlement); *see also Estrada v. Dr. Pepper/Seven-Up*, Los Angeles County Super.
21 Ct. Case No. BC 262247 (May 2005) (Hon. Anthony J. Mohr); *Moreno v. Miller Brewing*, Los
22 Angeles County Super.Ct. Case No.BC 278170 (April 2004) (Hon. David M. Minning); *Josiah*
23 *Eaton v. Adolph Coors Company* (2003) Orange County Super. Ct. Case No. 01CC00140 (Hon.
24 Stephen J. Sundvold); *Kimbell v. Abercrombie & Fitch Stores, Inc.*, Los Angeles County
25 Super.Ct. Case No.BC 277359 (Sept. 2006) (Hon. Kenneth R. Freeman); *Daum v. Claim Jumper*
26 *Restaurants*, Orange County Super.Ct. Case No.02CC10201 (2006) (Hon. Ronald L. Bauer).)

27 Here, Class Counsel has borne the entire risk and costs of litigation and will not receive
28 any compensation until recovery is obtained. (*See Yeremian Decl.*, ¶¶ 65-67) The Court should

1 also consider the benefit obtained by Class Counsel on behalf of class members. Thus, the
2 requested award for Class Counsel is reasonable.

3 **XI. ACTION REQUESTED AS A PART OF THE MOTION FOR PRELIMINARY**
4 **APPROVAL**

5 The parties respectfully request this Court, as part of the preliminary approval process, to
6 grant the following relief and make the following orders:

- 7 1. Review and approve the Settlement Agreement;
- 8 2. Review and approve the Notice Packet, attached to the Settlement Agreement as
9 Exhibit A;
- 10 3. Consider and determine that the proposed class action settlement as set forth in the
11 Settlement Agreement preliminarily appears fair, reasonable, and adequate;
- 12 4. Enter an order conditionally certifying the action as a class action for settlement
13 purposes only and preliminarily approving the proposed class action settlement and the
14 Settlement Agreement;
- 15 5. Approve and appoint David Yeremian of David Yeremian & Associates, Inc. to serve
16 as Class Counsel for settlement purposes;
- 17 6. Approve and appoint CPT Group, Inc. as the Settlement Administrator to handle the
18 notice and claims procedures as set forth in the Settlement Agreement;
- 19 7. Approve the proposed settlement's allocation of funds to claims made under PAGA;
- 20 8. Order Defendants to disclose to CPT Group, Inc. the names, last-known addresses,
21 telephone numbers, dates of employment, and social security numbers of class members as set
22 forth in the Settlement Agreement;
- 23 9. Order that CPT Group, Inc mail the Notice Packet to class members; and
- 24 10. Set a date for the Final Approval Hearing.

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1 Dated: March 15, 2021

Respectfully submitted,

2 DAVID YEREMIAN & ASSOCIATES, INC.

3
4 By

5 David Yeremian
6 Attorneys for Plaintiff
7 VIDALI ALEMAN on behalf
8 of herself and others similarly situated
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