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individually and on behalf of all others similarly
situated

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

ALISON ANDRADE, an individual,

Plaintiff,

vs.

URBAN OUTFITTERS, INC., and DOES 1-
20, inclusive;

Defendants.

CASE NO. 20STCV33377

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

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

Reservation ID: 666680054523

Date: January 31, 2023
Time: 8:30 a.m.
Division: 72

Complaint Filed: 12/9/2020

1 **PLEASE TAKE NOTICE** that on January 31, 2023 or as soon thereafter as the matter
2 may be heard in Department 72 of the above-entitled court, Plaintiff ALISON ANDRADE
3 (“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 Class Action and Representative Action Settlement and Release
6 (“Settlement Agreement”), a true and correct copy of which is attached to the Declaration of Daniel
7 J. Bass as Exhibit “1”.

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

10 The “Class” shall mean all individuals employed by Urban as non-
11 exempt employees who worked at an Urban Outfitters retail store in
12 California between June 28, 2019 and the earlier of the Preliminary
13 Approval Date or August 31, 2022.

14 3. Preliminary appointment of Plaintiff as Class Representative;

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

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

19 6. Approving as to form the Notice of Proposed Class Action Settlement Date for Court
20 Approval (“Class Notice” or “Notice” or “Notice of Settlement”) and ordering that such Notice be
21 given to the Class, a true and correct copy of which is attached as Exhibit “A” to Exhibit “1” of the
22 Declaration of Daniel J. Bass;

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

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

27 This Motion is brought pursuant to California *Rules of Court*, Rule 3.769, on the grounds
28

1 that the settlement reached with the Defendant Urban Outfitters, Inc. (“Urban” or “Defendant”), is
2 fair, reasonable, and adequate, achieved as the result of informed, arms-length negotiations, and
3 deserving of approval for the benefit of the Class members to whom it pertains.

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

8
9 Dated: January 17, 2023

MAKAREM & ASSOCIATES, APLC

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11 By: *Daniel Bass*
12 Daniel J. Bass
13 Attorneys for Plaintiff
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1 **I. INTRODUCTION**

2 By this Motion, Class Representative, Alison Andrade (referred to as “Class
3 Representative” or “Plaintiff”) and Defendant Urban Outfitters, Inc. (“Defendant” or “Urban”)
4 (collectively, the “Parties”) seek an Order from this Court granting preliminary approval of the
5 settlement reached in this matter by and between the Class Representative, on her own behalf, on
6 behalf of the Class Members, and as a proxy of the State of California and the California Labor and
7 Workforce Development Agency (“LWDA”) on behalf of all other allegedly aggrieved employees
8 on one hand, and Defendant on the other hand, which settles the claims in Plaintiff’s putative class
9 and PAGA representative action for a maximum settlement amount of \$2,500,000 in a non-
10 reversionary settlement.

11 The settlement before the Court is a fair outcome for the approximately 3,840 members of
12 the Class that worked a total of approximately 118,814 workweeks through June 12, 2022. Indeed,
13 the proposed settlement affords Class Members tangible monetary relief without the expense, delay,
14 and uncertainty of continued litigation. This is particularly true where, as here, Defendant sharply
15 disputes the factual and legal contentions of all the claims asserted. Absent settlement, the Parties
16 would be required to litigate these claims as to both certification and then liability issues, which
17 would be costly, time consuming to resolve, and would present substantial risk as to both sides of
18 the case.

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

24 **II. SUMMARY OF LITIGATION**

25 **A. Defendant and Plaintiff**

26 This case is a wage and hour action alleging violations of California state law. Defendant
27 Urban Outfitters, Inc. operates over 200 Urban Outfitters retail stores in the U.S., including
28 approximately 42 locations in California. (*Declaration of Daniel J. Bass “Bass Decl.”*, ¶ 2).

Plaintiff was hired by Urban Outfitters, Inc. around July 2019. In mid-March 2020, due to COVID-19, Plaintiff was placed on a two-week furlough along with all other employees, with pay. After the two weeks expired, Plaintiff remained on furlough, without pay, as the store remained closed, until she resigned in May 2020. The class Plaintiff seeks to represent includes all non-exempt hourly employees that worked for Defendant at an Urban Outfitters retail store in California during the covered class period. During the time that Plaintiff was employed she was subject to the same policies and procedures as all other non-exempt hourly paid employees including but not limited to Defendant's meal and rest period policies, which among other things, Plaintiff contends caused class members to not receive compliant meal and/or rest periods. (*Id. at* ¶ 3).

B. Commencement of the Action and Pleadings

Plaintiff filed her Complaint on September 1, 2020, seeking penalties for Defendant's unlawful practices and policies, in violation of California state wage and hour laws, including (a) failure to accurately pay overtime wages, (b) failure to pay minimum wages, (c) failure to provide meal periods and failure to pay an additional hour's pay in lieu of providing a meal period, (d) failure to authorize and permit rest breaks for every four hours or major fraction thereof worked and failure to pay an additional hour's of pay in lieu of providing a rest period, (e) failing to pay all wages earned, (f) failing to pay all wages owed upon separation of employment, (g) failing to provide accurate itemized wage statements, and (h) knowingly or intentionally failing to maintain accurate and complete records. A First-Amended Complaint was filed on December 9, 2020 but did not add any substantive claims. (*Id. at* ¶ 4). As part of the Parties' Settlement, Plaintiff has submitted a Second Amended Complaint asserting class and representative action claims under California law for (1) failure to pay minimum wage, (2) failure to pay overtime or pay overtime at the correct rate of pay, (3) failure to pay for all hours worked (off-the-clock work), (4) failure to provide meal periods, (5) failure to provide rest periods, (6) failure to pay premiums at the correct rate of pay, (7) failure to timely pay final wages and wages earned during employment, (8) failure to provide accurate itemized wage statements, and (9) failure to maintain accurate and complete records. (*Id. at* ¶ 5).

Defendant contends that it at all times complied with California law and is not liable for any of the claims asserted in the Action. Defendant asserts that it properly paid employees for all time

worked. Defendant further contends that it provided Plaintiff and other putative class members with compliant meal and rest periods, and that to the extent any employee did not take a compliant meal or rest period, the reason for the non-compliant meal or rest period would be an individualized issue that would preclude class certification and representative action treatment. (*Id. at* ¶ 6). Defendant further contends that Plaintiff is subject to an arbitration agreement that requires individual arbitration of her claims, and precludes Plaintiff from proceeding with her action in court on a class or representative basis. *Id.*

C. Investigation

Before filing the lawsuit, Class Counsel investigated and researched the facts and circumstances underlying the pertinent issues and the laws applicable thereto. This required thorough discussions between Class Counsel and the Plaintiff, as well as preliminary research into the various legal issues and employment practices involved in the case. After conducting their initial investigation, Class Counsel determined that Plaintiff claims were well-suited for class action adjudication owing to what appeared to be a common set of policies and procedures that impacted Plaintiff and other putative class members in a similar fashion. (*Id. at* ¶ 7).

After filing the lawsuit, Class Counsel conducted an extensive investigation of the facts and claims giving rise to the action, including:

- (1) reviewing and analyzing time and payroll records and Defendant's written policies and procedures;
- (2) researching the applicable law and evaluating potential defenses;
- (3) evaluating the damages based on countervailing interpretations of law;
- (4) reviewing other documentation provided by Defendant;
- (5) interviewing several putative class members regarding their experiences working for the Defendant. (*Id. at* ¶ 8).

Defendant, for its part, vigorously contested liability, the amount of claimed damages, the arbitrability of Plaintiff's claims, and the propriety of class certification and/or representative action treatment. After Class Counsel analyzed the relevant documentary and testimonial evidence, Class Counsel determined that this case was appropriate for resolution via settlement. (*Id. at* ¶ 9).

D. Mediation and Settlement

On May 26, 2022, the Parties participated in a mediation with experienced mediator Michael D. Young, Esq. After the mediation, the Parties accepted a mediator's proposal as to certain material terms of the Settlement, including the Maximum Settlement Amount. Over the

next months the parties negotiated the details of the long form settlement agreement which was fully executed on January 13, 2023 and for which the Parties now seek preliminary approval. (*Id.* at ¶ 10)

III. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS

A. Class for Purposes of Settlement

The “Class” means all individuals employed by Urban as non-exempt employees who worked at an Urban Outfitters retail store in California between June 28, 2019 and the earlier of the Preliminary Approval Date or August 31, 2022. Based on Plaintiff’s estimates from sample time and payroll records produced by Defendant, Plaintiff estimates approximately 3,840 members of the Class worked a total of approximately 118,814 workweeks through June 12, 2022. (*Id.* at ¶ 12).

B. Settlement Consideration

Under the terms of the proposed agreement, the parties have agreed that all claims brought on behalf of the Class shall be fully and finally resolved for a “Maximum Settlement Amount” of Two Million Five Hundred Thousand U.S. Dollars (\$2,500,000). (*Id.*, ¶13). The Maximum Settlement Amount is non-reversionary and no portion of the Settlement Amount will be returned to Defendant. (*Id.*, ¶ 13). The following amounts will be deducted from the Maximum Settlement Amount, with the amount remaining after these deductions constituting the Net Settlement Amount:

- **Attorneys’ Fees and Costs:** Up to 35% of the Maximum Settlement Amount or \$ 875,000.00 plus up to \$25,000 in actual costs and expenses;
- **Service Enhancement:** Up to \$ 15,000 to the named Plaintiff as a class representative;
- **Settlement Administration Costs:** Up to \$30,000 from the Maximum Settlement Amount for the costs associated with administration of the Settlement.
- **LWDA PAGA Penalty Amount:** 75% share of the \$100,000.00 (or \$75,000.00) allocated from the Maximum Settlement Amount for PAGA penalties that will be paid to the LWDA.
- **PAGA Group Payment:** 25% share of the \$100,000.00 (or \$25,000.00) allocated from the Maximum Settlement Amount for PAGA penalties that will be paid to PAGA Members

Thus, the net Settlement amount will be approximately \$1,455,000, plus the \$25,000.00 separately distributed for the PAGA Group Payment to PAGA Members. Each Class Member shall be eligible to receive an Individual Class Settlement Payment, which is the number of the Class Member’s individual Covered Class Workweeks divided by the total Covered Class Workweeks for all Class Members. This fraction shall be multiplied by the Net Settlement Amount. Presently, there are estimated to be approximately 3,840 Class Members. Assuming this Court makes no

modification, Class Members shall recover an estimated gross average recovery of approximately
1 \$385.41 based on the Net Settlement Amount and the PAGA Group Payment. (*Id.*, ¶¶ 19-20).

2 **C. Release By Class Members and PAGA Members**

3 “Released Class Claims” means any and all claims, obligations, demands, rights, causes of
4 action, and liabilities against Urban Releasees, whether in law or equity, that have been asserted or
5 that could have been asserted in the Complaint, the First Amended Complaint, the Second Amended
6 Complaint, and any amendments thereto; or that could have been asserted in the Complaint, the First
7 Amended Complaint, the Second Amended Complaint, and any amendments thereto, based on the
8 facts, claims and/or allegations pled therein. Released Class Claims include, but are not limited to,
9 claims for failure to pay minimum wage, failure to pay overtime or pay overtime at the correct rate
10 of pay, failure to pay for all hours worked (off-the-clock work), failure to provide meal periods,
11 failure to provide rest periods, failure to pay premiums at the correct rate of pay, failure to timely
12 pay final wages and wages earned during employment, failure to provide accurate, itemized wage
13 statements, and failure to maintain accurate and complete records, and includes all claims for
14 recovery of compensation, overtime pay, minimum wage, premium pay, and/or all penalties under
15 the California Labor Code and California’s Wage Orders, and claims derivative and/or related to
16 those claims, including those under the California Business & Professions Code and PAGA related
17 to released claims, from June 28, 2019 through the earlier of the Preliminary Approval Date or
18 August 31, 2022. (*Id.*, ¶ 21).

19 “Released PAGA Claims” means any and all claims, obligations, demands, rights, causes
20 of action, and liabilities against Urban Releasees, under PAGA that have been asserted or that could
21 have been asserted in the Complaint, the First Amended Complaint, the Second Amended
22 Complaint, the PAGA letter to the LWDA, and any amendments thereto; or that could have been
23 asserted in the Complaint, the First Amended Complaint, the Second Amended Complaint, and any
24 amendments thereto, based on the facts, claims and/or allegations pled therein. Released PAGA
25 Claims include, but are not limited to, claims for failure to pay minimum wage, failure to pay
26 overtime or pay overtime at the correct rate of pay, failure to pay for all hours worked (off-the-clock
27 work), failure to provide meal periods, failure to provide rest periods, failure to pay premiums at the
28 correct rate of pay, failure to timely pay final wages and wages earned during employment, failure

to provide accurate, itemized wage statements, and failure to maintain accurate and complete records and includes all such claims from June 28, 2019 through the earlier of the Preliminary Approval Date or August 31, 2022. (*Id.*, ¶ 22).

D. Notice Procedure

The Parties selected CPT Group, Inc. to serve as the Administrator. The Parties have agreed on the form of notice to be mailed to the Class and the method of notice to the class. ("Class Notice," attached as Exhibit "A" to Exhibit "1" of the Declaration of Daniel J. Bass). (*Id.*, ¶ 24).

1. Settlement Notice Timeline

Timeframe	Event
Within 21 days after the Preliminary Approval Date	Urban to provide the Settlement Administrator the Class Member information, including name(s), last known residence addresses, Social Security numbers, and all employment dates worked in the Covered Class Workweeks.
Within 30 days after receipt of Class Member data from Urban	Settlement Administrator to complete any skip trace or other address searched for Class Members, including updating any contact information. Settlement Administrator to mail Class Notice to Class Members.
5 business days before mailing Class Notice	Settlement Administrator to provide Urban's Counsel with estimated Class Settlement Payments to each Class Member and PAGA Group Payments to each PAGA Member.
45 days after mailing Class Notice	Deadline for Class Members to opt-out or object.

2. Details Regarding Dissemination of Notice

The Notice of Settlement, in materially the form attached to the Bass Declaration as Exhibit "A" to Exhibit "1" and as approved by the Court, shall be sent by the Claims Administrator to the Class Members, by first class mail to those addresses provided by Defendant, within approximately fifty-one (51) calendar days following Preliminary Approval of the Settlement.

Any Class Notice mailed to a Class Member is returned as having been undelivered by the U.S. Postal Service, the Settlement Administrator shall perform a skip trace search and seek an address correction for such.

E. The Claims, Opt-Out and Objection Process

Class Members who wish to “opt out” of and be excluded from the non-PAGA portion of this settlement must submit a written Request for Exclusion from the Settlement bearing a postmark from a date within the Claims Period. Class Members are still bound by the release of PAGA claims even if they submit a valid Request for Exclusion and will receive a check with his or her individual payment from the PAGA Group Payment. The Request for Exclusion must include: (a) the Class Member’s name; (b) a statement that the Class Member desires to exclude himself or herself from the case; and (c) the last four digits of the Class Member’s social security number. If a Class Member submits a Deficient Request for Exclusion, the Settlement Administrator shall notify the Class Member of the deficiency within five (5) business days of receipt. The Class Member shall have until the end of the Claims Period or five (5) business days after the close of the Claims Period if the notice of deficiency is sent by the Settlement Administrator within (5) business days of the end of the Claims Period to cure said deficiencies, at which point his or her Request for Exclusion will be rejected if not received. Class Members submitting untimely or Deficient Requests for Exclusion shall be bound by the Settlement and its releases and will be considered Settlement Class Members for settlement distribution purposes. Class Members shall be permitted to rescind their Request for Exclusion in writing by submitting a rescission statement to the Settlement Administrator not later than one (1) business day prior to the Final Approval Hearing, or as otherwise ordered by the Court. The Settlement Administrator shall not accept Late Requests for Exclusion without the written authorization of Urban. (*Id.*, ¶ 26).

IV. PRELIMINARY SETTLEMENT APPROVAL

California courts favor settlement, particularly in class actions and other complex cases where substantial resources can be conserved by avoiding the time, cost, and rigors of protracted formal litigation. *See 7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151. In determining whether to approve or reject a proposed settlement, courts have broad discretion. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-

235; *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, 62.

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

The proposed settlement here is the product of arm's-length negotiations, assisted by an experienced mediator during a full-day mediation for which the Parties prepared by engaging in exchanging substantial relevant information and documents.

Counsel for the Parties have investigated the applicable law, as applied to the facts discovered, regarding the alleged claims of Plaintiff and potential defenses thereto, and the damages claimed by Plaintiff. Armed with this extensive body of knowledge, the Parties engaged in a full, complete, and ultimately successful mediation. At all times, the negotiations leading to the Settlement have been adversarial, non-collusive and at arm's length.

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

Plaintiff believes that the Class claims in this action are legally meritorious and present a reasonable probability of a favorable determination on behalf of the class. At the same time, there is undeniably significant litigation risk avoided by the proposed Settlement, both at class certification proceedings, at trial, and in the appellate courts.

Liability remains highly contested by Defendant, who denies that it engaged in any violations of the law, and further denies any liability or engagement in wrongdoing of any kind associated with the claims alleged in the Action by the Named Plaintiff or any Class Member. Defendant contends that at all times it complied with all wage-and-hour laws in connection with the employment and/or retention of services of Plaintiff and the Class Members.

Plaintiff's counsel understood and appreciated the defenses and position of Defendant but believed that Plaintiff would ultimately succeed in the action. In light of the strongly divergent views, the parties, with the assistance of the mediator, were able to negotiate a fair settlement, considering the costs and risks of continued litigation. The negotiations were at all times conducted professionally and at arm's length and have produced a result that the Parties believe to be in their respective best interests.

1 The Parties have also considered the uncertainty and risk of the outcome of further
2 litigation, and the difficulties and delays inherent in such litigation. Plaintiff is also aware of the
3 burdens of proof necessary to establish liability for the claims asserted in the action, the defenses
4 thereto, and the difficulties in establishing damages. In evaluating the settlement, the Court will
5 seek a reasonable estimate of the nature and amount of recovery that each class member could have
6 obtained if the Plaintiff had prevailed in the litigation. Numerous decisions summarize a trial court's
7 task when considering whether to approve the settlement of a putative class action. As Division
8 Five of this Court stated:

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

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

18 The court's consideration of relevant factors, however, does not transform the settlement
19 approval “into a trial or rehearsal for trial on the merits.” *7-Eleven Owners for Fair Franchising*,
20 85 Cal.App.4th at 1145 (internal citation omitted). The record need only provide the trial court
21 with an understanding of the amount that is in controversy and the realistic range of outcomes of
22 the litigation. Because settlements are inherently a compromise, once the parties have provided it
23 with the requisite “basic information,” the trial court must only “satisfy itself that the class
24 settlement is within the ‘ballpark’ of reasonableness.” *Tech-Bilt, Inc. v. Woodward-Clyde & Assoc.*
25 (1985) 38 Cal.3d 488, 499-500.

26 Here, in preparation for mediation, Plaintiff calculated Defendant’s liability to Class
27 Members to be in excess of the settlement amount. Plaintiff’s valuation assumed that Plaintiff: (1)
28 prevailed in certifying the case; (2) prevailed in establishing liability on the merits; and (3) was
awarded the full amount of all discretionary penalties. (Bass Decl. ¶ 32).

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

Kullar v. Footlocker Analysis.

To allow this Court to make an informed assessment pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 18 Cal.App.4th 116, Plaintiff's Counsel provides the following assessment of the case and settlement. Plaintiff's Counsel believes that the settlement is a good one for the class members in light of the number of employees and claims at issue. In Plaintiff's Second Amended Complaint Plaintiff seeks not just PAGA penalties, but unpaid wages and statutory penalties as well as the equitable remedies. Plaintiff estimated Defendant's total non-penalty exposure at \$10,377,924.10. (Bass Decl., ¶ 35) As such, the settlement represents over approximately 24% of Defendant's non-penalty exposure based on Plaintiff's analysis. This is a reasonable recovery, particularly given Defendant's use of arbitration agreements. (*Id.*).

Courts have determined that settlements are, of course, reasonable even where Plaintiffs recover only a portion of their actual losses. *See Behrens v. Wometco Enters., Inc.* (S.D. Fla. 1988) 118 F.R.D. 534, 542, *aff'd*, (11th Cir. 1990) 899 F.2d 21 ("[T]he fact that a proposed settlement amounts to only a fraction of the potential recovery does not mean the settlement is unfair or inadequate."). Indeed, "[a] settlement can be satisfying even if it amounts to a hundredth or even - a thousandth of a single percent of the potential recovery." *Id.*; *see also City of Detroit v. Grinnell Corp.* (S.D.N.Y. 1972) 356 F.Supp. 1380, 1386 [a recovery of 3.2% to 3.7% of the amount sought is "well within the ball park"], *aff'd in part, rev'd on other grounds*, (2d Cir. 1974) 495 F.2d 448; *Martel v. Valderamma* (C.D. Cal. 2015) 2015 U.S. Dist. LEXIS 49830 * 17 (approving a settlement of \$75,000 when potential damages were \$1.2 million); *In re Toys R US FACTA Litig.* (C.D. Cal. 2014) 295 F.R.D. 438, 453 (approving settlement with vouchers (not cash) potentially worth a maximum of three percent (3%) if all possible claims were actually made, or \$391.5 million aggregate voucher potential where the class could have recovered \$13.05 billion); 4 William B. Rubenstein et al., *Newberg on Class Actions* (5th ed. 2016) § 13:15 (the range of reasonableness percentage could be as low as 1/100th or 1/1000th of 1%); *Ma v. Covidien Holding, Inc.*, (C.D. Cal. Jan. 31, 2014, No. SACV 12-02161-DOC) 2014 WL 360196, at *5 (finding a settlement worth

9.1% of the total value of the action “within the range of reasonableness”); *Balderas v. Massage*
1 *Envy Franchising, LLC*, (N.D. Cal. July 21, 2014, No. 12-CV-06327 NC) 2014 WL 3610945, at
2 *5 (granting preliminary approval of a net settlement amount representing 5% of the projected
3 maximum recovery at trial); *Glass v. UBS Fin. Servs., Inc.* (N.D. Cal. Jan. 26, 2007, No. C-06-4068
4 MMC) 2007 WL 221862, at *9, *aff’d*, 331 Fed. Appx. 452 (9th Cir. 2009) (approving a settlement
5 of an action claiming unpaid overtime wages where the settlement amount constituted
6 approximately 25% to 35% of the estimated actual loss to the class).

7 Below, Plaintiff details the issues that necessitated deductions from the maximum potential
8 value of this case to arrive at the reasonable Maximum Settlement Amount derived in this action:
9 Here Plaintiff estimates there are approximately 3,840 members of the Class that worked a total of
10 approximately 118,814 workweeks through June 12, 2022. (Bass Decl. ¶ 36).

11 **Rest Periods**

12 Plaintiff calculated Defendant’s maximum liability to be 3.4 violations per employee per
13 week (the average number of shifts per week) at the average hourly rate of \$19.72 per violation or
14 \$67.05 per week. As such, with an estimate of 118,814 workweeks through June 12, 2022, Plaintiff
15 estimated that Defendant’s exposure could be as high as \$ 7,966,478.70. Plaintiff did not discount
16 this number or the calculations that follow in order to arrive at the settlement, rather Plaintiff
17 discounted the number in order to reach a settlement that understood the risks of continued litigation
18 and difficulties in showing a 100% violation rate for rest breaks during employee shifts.

19 **Meal Periods**

20 Based on analysis of sample employee time records, Plaintiff estimated that there were
21 approximately 3.4 shifts per week, about 75.6% of which were eligible for meal breaks and
22 approximately 5.3% of shifts showed a potential violation, or 21,268 unique meal period violations.
23 Thus, Plaintiff calculated Defendant’s potential exposure as \$19.72 per violation x 21,268 unique
24 meal period violations = \$ 419,404.96. In regard to this number, Plaintiff recognized that even
25 though it was conversative, Plaintiff anticipates Defendant would likely argue that late and
26 shortened meal periods stemmed from the choices of class member and that such claims were not
27 amenable to class certification.

28 **Unpaid Off-the-Clock**

Based on Plaintiff's interviews of class members, Plaintiff estimated that in approximately .25 hours (15 minutes) of work was performed off-the-clock by employees on a daily basis, including time going through mandatory security checks including waiting for supervisors to perform the check, resulting in an approximately \$4.93 underpayment per shift. Thus, Plaintiff calculated Defendant's potential exposure as \$4.93 x an estimated 404,065 shifts = \$1,992,040.45.

Penalties

Although the Class arguably could have seen a payout of millions of dollars for waiting time penalties and wage statement penalties, Plaintiff's Counsel had to weigh the likelihood of recovery against probable defenses and the wide discretion Courts have exercised in awarding Labor code penalties. Along these lines, Plaintiff considered that Defendant would argue that Plaintiff could not prove the "willful" prong needed to obtain waiting time penalties under Cal. Lab. Code § 203 and would further argue that Plaintiff could not show that Class Members suffered an "injury" as a result of wage statement violations, as required by Cal. Lab. Code § 226. Further, Plaintiff arguably could not recover any waiting time penalties for meal and rest claims. Moreover, Plaintiff would not recover any derivative penalties if they failed to prove the underlying claims. (*Id. at* ¶ 40).

Plaintiff, in agreeing to the settlement had to take into account the difficulties in certifying a class and maintaining any such certification. What's more, Plaintiff had to take into account the Defendant's arbitration agreements and the availability of witnesses. Each of these concerns weighed into Plaintiff's analysis to eventually agree to a settlement that is less than Defendant's total projected liability even if Plaintiff eventually won every aspect of this case including an appeal. A settlement now guarantees that class members will 1) obtain a recovery and 2) that they will get the recovery in a time period that is shorter than one if the case went through a full trial and appeal process. (*Id. at* ¶ 41).

Certification in General

The great discretion afforded trial courts in electing to grant or deny class certification, and the resultant possibility that this Court would deny certification of any of the claims, resulting in no recovery whatsoever for those unnamed class members further weighed in favor of settlement. Indeed, going into mediation and during the course of constructing the settlement, Class Counsel

bore in mind similar meal and rest break cases wherein class certification was denied. *See e.g. In re Lamps Plus Overtime Cases* (2012) 209 Cal.App.4th 35; *Washington v. Joe's Crab Shack* (N.D. Cal. 2010) 271 F.R.D. 629 (“individualized inquiry will be required to determine whether any single employee failed to take a meal break because he/she was too busy, and also to determine whether a particular employee signed a waiver based on a decision not to take meal breaks”); *Hernandez v. Chipotle Mexican Grill, Inc.* (2012) 146 Cal.Rptr.3d 424, 2012 WL 3579567, *10.

Trial and Manageability Issues

While Plaintiff was confident in the strength of her claims, as is always the case with a trial, Plaintiff needed to accept that there was a possibility that she would not prevail at trial. 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. The Ninth Circuit observed “the very essence of a settlement is compromise, ‘a yielding of absolutes and an abandoning of highest hopes.’” *Officers for Justice v. Civil Serv. Commission* (9th Cir.1982) 688 F.2d 615, 624 (citation omitted). Thus, when analyzing the amount offered in settlement, the Court should examine “the complete package taken as a whole,” and the amount is “not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators.” *Id.* at pp. 625, 628.

Given the difficulties Plaintiff and the Class faced, both in terms of certification and in adjudicating their claims on the merits, the litigation discounts afforded by Plaintiff is appropriate and the settlement is fair, reasonable, and adequate. In the present case, it is clear that the settlement before this Court is the best course of action as it ensures a fair and adequate recovery for the members of the class. Thus, it was clearly reasonable for Plaintiff to negotiate a smaller certain award rather than seek the full recovery but risk recovering nothing.

C. The Settlement Has No Obvious Deficiencies

This proposed settlement has no obvious deficiencies. The settlement provides no preferential treatment for the Plaintiff or other Class Members. The Plaintiff will receive a

distribution from the settlement proceeds calculated in the same manner as the distributions to all other Class Members, plus any service award approved by the Court.

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

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

Again, each Settlement Class Member has the right to object and be heard regarding the amount of fees and expenses requested. Any amounts not awarded by the Court as fees and expenses will remain in the net settlement fund to be distributed to the class. Class Counsel will file a separate motion for approval of the fee award sought herein, at the time of and in conjunction with the filing of the motion for final approval, should preliminary approval be granted, and a final approval hearing scheduled by the Court.

D. The Class Representative's Enhancement, Class Counsel Fees, and Expenses

1. The Enhancement Requested by Plaintiff Is Reasonable

As part of the Settlement, Plaintiff will seek a Class Representative's Service Enhancement of \$15,000. Plaintiff has taken the extraordinary step of challenging her former employer's actions by bringing this case. Plaintiff did so in the belief that she, and the members of the Class, were, in fact, entitled to the relief sought in this case. Until this case was filed, no one was pursuing the

claims raised in this matter. Plaintiff's actions have resulted in a recovery for the members of the Class, and the service enhancement she seeks is reasonable. (*Bass Decl.* at ¶ 43)

Plaintiff fully participated in this action throughout the pendency of the litigation. She was kept well informed of the nature and extent of settlement discussions and approved the same. As such, the Service Enhancement sought for Plaintiff is reasonable and represents a small percentage of the Gross Settlement Amount. Absent the actions taken by Plaintiff, none of the Class Members would have reaped the rewards of this action. (*Bass Decl.* at ¶ 44)

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

As noted, *supra*, the Settlement provides for Class Counsel to apply to the Court for an award of fees of 35% of the Gross Settlement Amount, plus reimbursement of their litigation expenses. The percentage award is commensurate with (1) the risk Class Counsel took in commencing this action, (2) the time, effort and expense dedicated to the case, (3) the skill and determination they have shown, (4) the results they have achieved throughout the litigation, (5) the value of the Settlement which they have achieved for Class Members, and (6) the other cases they have turned down in order to devote their time and efforts to this matter.

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

The governing principles, as well as a survey of attorneys' fees jurisprudence (both in California and throughout the country), are set out in *Lealao*. As the court in *Lealao* explained, in determining an attorney fee request, courts should strive to award fees equivalent to those "freely negotiated in the legal marketplace in comparable litigation." *Id.* "If courts were to ask what fee structure an informed, sophisticated client would use to compensate his attorney when close monitoring is not feasible, they would at least have focused on the correct question." *Id.* at 48. As

1 Lealao recognizes, fee awards that are too small will “chill the private enforcement essential to the
2 vindication of many legal rights and obstruct the representative actions that often relieve the courts
3 of the need to separately adjudicate numerous claims.” *Id.* at 53. Finally, an attorneys' fees motion
4 should not turn into “a second major litigation.” *Id.* at 31 (citing *Hensley v. Eckerhart* (1983) 461
U.S. 424, 437).

5 As in many cases of this type, Class Counsel seek a fee award for their successful prosecution
6 and resolution of this action, calculated as a percentage of the total value of benefits afforded the
7 Class Members by the Settlement. *Serrano v. Priest* (1977) 20 Cal.3d 25
8 , 34 (*Serrano III*); *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *see also Vincent v. Hughes*
9 *Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769. The purpose of this equitable doctrine is not only
10 to avoid unjust enrichment of counsel but also to spread litigation costs proportionally among all the
11 beneficiaries so that the active beneficiary does not bear the entire burden alone. *Id.* Where the
12 amount of a settlement is a "certain easily calculable sum of money," California courts may calculate
13 attorney fees as a reasonable percentage of the settlement created. Weil and Brown, *California*
14 *Practice Guide: Civil Procedure Before Trial*, ch. 14, § 14:145; *Dunk*, at 1808. In addition, Class
15 Counsel will present a lodestar plus multiplier analysis of their efforts which will further support the
16 amount sought.

17 **E. Claims Administration**

18 Plaintiff seeks the appointment of CPT Group, Inc (“CPT”) as the Claims Administrator.
19 CPT is an experienced class notice administration company, and has acted as claims administrator
20 in thousands of class action cases. *See Declaration of Julie Green on Behalf of CPT Group, Inc.*
21 (“Green Decl.”) CPT has presented an estimate to counsel reflecting that its charges to administer
22 the proposed settlement at a flat rate of \$27,750.00. (*See Green Decl.* ¶11, Exhibit B).

23 **F. The Content and Manner of the Notice to Class Members Complies with** 24 **California Rules of Court, Rule 3.766 and Should be Approved.**

25 Class members are entitled to the best practical notice under the circumstances. *Kass v*
26 *Young*, (1977) 67 Cal.App.3d 100, 106. The purpose of the notice is to give class members
27 sufficient information to decide whether they should accept the benefits offered, opt out and pursue
28 their own remedies or object to the settlement. *Trotsky v Los Angeles Fed Savings & Loan Assn*,
(1975) 48 Cal.App.3d 143 151, 52. The notice must advise class members that they may be

1 excluded from the class if they so request and that they will be bound by the judgment, whether
2 favorable or not, if they do not request exclusion. *Kass*, 67 Cal.App.3d at 106. California
3 authorities generally require service of the class notice by mail or similar reliable means. *Chance*
4 *v Super Ct.*, (1962) 58 Cal 2d 275, 290.

5 As provided in California Rules of Court, Rule 3.769 (e):

6 If the court grants preliminary approval, its order must include the time, date, and
7 place of the final approval hearing; the notice to be given to the class; and any other
8 matters deemed necessary for the proper conduct of a settlement hearing.

9 Here, the Parties have negotiated the form of a notice ("*Class Notice*," attached as Exhibit
10 "*A*" to Exhibit 1 of the Declaration of Daniel Bass.). The Notice will be disseminated to all people
11 who fall within the definition of the Class and whose names and addresses have already been
12 identified from Defendant's records. In addition, Notices returned as undeliverable will be
13 subjected to a further follow up and re-mailing procedure as detailed in the Settlement Agreement.

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

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

21 Courts have generally found that class action suits are appropriate "when the question is
22 one of a common or general interest . . . or when the parties are numerous, and it is impracticable
23 to bring them all before the court." *Cal. Civ. Proc.* § 382; see also *Richmond v. Dart Indus., Inc.*
24 (1981) 29 Cal.3d 462, 469-75. In order to sustain a class action, two requirements must be met: (1)
25 there must be an ascertainable class; and (2) there must be a "well-defined community of interest
26 in the questions of law and fact involved affecting the parties to be represented." *Daar v. Yellow*
27 *Cab. Co.* (1967) 67 Cal.2d 695, 704. As a general rule, a community of interest is established where
28 (1) there are predominant common questions of law or fact; (2) the named Plaintiff has "claims or
defenses typical of the class"; and (3) the named Plaintiff is able to adequately represent the class.
See *Dunk*, 48 Cal.App.4th at 1806. In order to ensure the efficient use of judicial resources,

California law and policy favors the fullest and most flexible use of the class action device.
1 *Richmond*, 29 Cal.3d at 469-75.

2 As stated above, the class is clearly defined and comprises approximately 3,840 individuals,
3 which is sufficiently numerous to warrant the use of the class action device. The Class is readily
4 ascertainable and, in fact, Defendant has agreed to provide the names and contact information for
5 the Class to the Settlement Administrator. *Rose v. City of Hayward* (1981) 126 Cal.App.3d 926
6 , 932 (finding “[c]lass members are ‘ascertainable’ where they may be readily identified without
7 unreasonable expense or time by reference to official records.”)

8 Similarly, common questions of law and fact exist among Class Members in this case. *See*
9 *Clothesrigger, Inc. v. GTE Corp.* (1987) 191 Cal.App.3d 605, 612; *Lazar v. Hertz Corp.* (1983)
10 143 Cal.App.3d 128, 138-39. At a minimum, some of the common questions of law and fact
11 affecting the Class include: (1) whether Defendant adequately compensated Class Members for all
12 hours worked, including overtime wages; (2) whether Defendant failed to pay all wages due to
13 Class Members within the required time upon their discharge or resignation; (3) whether the wage
14 statements Defendant provided to Class Members complied with California law; (4) whether
15 Defendant deprived Plaintiff and other class members of meal and/or rest periods or required
16 Plaintiff to work during meal and/or rest periods without compensation or failed to properly
17 compensate class member and Plaintiff for rest periods and meal periods; and (5) whether
18 Defendant’s policies and practices violate California’s Unfair Competition Law. Further, Plaintiff
19 was able to evaluate such claims by reviewing common evidence such as Defendant’s uniform
20 employment policy and procedure documents. *Duran v. U.S. Bank National Assn.* (2014) 59 Cal.4th
21 1, 36 (“class litigation may be appropriate if the circumstances of a particular case demonstrate that
22 there is common evidence”).

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

28 Finally, Plaintiff’s claims are typical of class members’ claims and Plaintiff has and will

adequately represent the class. Specifically, Plaintiff falls within the class definition and was subjected to the same policies, procedures, and practices giving rise to the claims in this action. See *Amchem Products, Inc. v. Windsor* (1997) 521 U.S. 591, 625-26 (“[A] class representative must be part of the class and possess the same interest and suffer the same injury as the class members.”). Plaintiff has pursued her case via highly experienced counsel (*Bass Decl.* ¶¶ 45-50). Plaintiff has fulfilled her duties as class representative throughout the litigation, spending time and effort to gather relevant documents and information, providing the facts and evidence necessary to prove the allegations, and discussing her employment with Class Counsel.

VI. ACTION REQUESTED FOR THE MOTION FOR PRELIMINARY APPROVAL

Plaintiff respectfully requests for this Court to grant Plaintiff’s Motion for Preliminary Approval of Class Action Settlement and, as part of the preliminary-approval process, to grant the following relief and make the following orders:

1. Consider and determine that the proposed class action settlement as set forth in the Settlement Agreement preliminarily appears fair, reasonable, and adequate, and preliminarily approve the Settlement Agreement;
2. Conditionally certify the proposed Class, pursuant to the Settlement Agreement’s terms and conditions, for settlement purposes only;
3. Appoint Ronald W. Makarem, Cameron Stewart, and Daniel J. Bass of Makarem & Associates, APLC to serve as Class Counsel for settlement purposes;
4. Appoint Plaintiff as Representative Plaintiff 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 Defendant to provide CPT the Class Member data as set forth in the Settlement Agreement;
7. Approve the Class Notice, which is attached to the Settlement Agreement;
8. Order that CPT 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

1 approve the proposed settlement pursuant to the parties' Settlement Agreement, provisionally
2 certify the Class for settlement purposes, and enter the Proposed Order submitted concurrently
3 herewith.

4 Dated: January 17, 2023

MAKAREM & ASSOCIATES, APLC

5 By: *Daniel Bass*
6 Daniel J. Bass
7 Attorneys for Plaintiff
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