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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

TIEN PHAM, as an aggrieved employee pursuant to the Private Attorneys General Act ("PAGA"), on behalf of the State of California and other aggrieved employees,	)	Case No.: 20STCV31808
	)	<i>[Assigned to: Hon. Christopher K. Lui,</i>
	)	<i>Dept 76]</i>
Plaintiffs,	)	PLAINTIFFS' NOTICE OF UNOPPOSED
	)	MOTION AND MOTION FOR
vs.	)	PRELIMINARY APPROVAL OF CLASS
	)	ACTION/PAGA SETTLEMENT;
SEVEN POINTS MANAGEMENT, a	)	MEMORANDUM OF POINTS AND
California corporation; WALNUT LLC, a	)	AUTHORITIES IN SUPPORT THEREOF
California corporation, 3030 WALNUT LLC,	)	
a California corporation; 3008 WALNUT	)	<i>[Filed concurrently with the Decl. of Adam N.</i>
LLC, a California corporation; CAMERON	)	<i>Bouayad]</i>
DAMWIJK, an individual, and DOES 1-20,	)	
	)	
Defendants.	)	Date: October 8, 2024
	)	Time: 8:30 a.m.
	)	Dept.: 76
	)	
	)	<i>Complaint filed: August 19, 2020</i>
	)	
	)	
	)	

1 **TO THE COURT, THE PARTIES, AND THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that, pursuant to Rule 3.769 of the California Rules of Court, on
3 October 8, 2024, at 8:30 a.m., in Department 76 of the above-entitled court, located at 111 North Hill,
4 St., Los Angeles, California, Plaintiffs TIEN PHAM and CHASITY BENNETT (“Plaintiffs”),
5 individually and on behalf of a class of similarly situated individuals, will and hereby move this Court
6 for:

- 7 1. Preliminary approval of the proposed class settlement of this lawsuit;
8 2. Pursuant to section 382 of the California code of Civil Procedure, provisional certification
9 of the following Settlement Classes defined as follows:

10 “W-2 Worker Sub-Class”: All current and former non-exempt W-2 employees who have
11 worked for Defendant Walnut LLC (“Walnut”) in California
12 during the time period of August 19, 2017, through the date of
13 preliminary approval of this Settlement; and;

14 “Independent Contractor Sub-Class”: All current and former individuals who worked
15 for Walnut in California during the time period of August 19,
16 2017, through the date of preliminary approval of this settlement.
17 (W-2 Worker Sub-Class and Independent Contractor Sub-Class
18 collectively “Class Members”);

- 19 3. Preliminary appointment of CHASITY BENNETT as the W-2 Worker Sub-Class
20 Representative and TIEN PHAM as the Independent Contractor Sub-Class Representative;
21 4. Preliminary appointment of Adam N. Bouayad and Gregory D. Wolflick of Workplace
22 Rights Law Group, APC as Class Counsel;
23 5. The scheduling of a hearing to consider whether Settlement should be finally approved and
24 to permit Class Representative Services Awards to Plaintiffs, Claims Administrator costs,
25 civil penalties payable to the California Labor Workforce Development Agency, and
26 attorneys’ fees and costs to Class Counsel;
27
28

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Tien Pham and Chasity Bennett brought this class/representative action against
4 Defendant Walnut LLC (hereinafter “Walnut” or “Defendant”) for various wage and hour violations.¹

5 Plaintiffs now respectfully request that this Court preliminarily approve this non-reversionary,
6 common-fund class action settlement², in which Defendant has agreed to pay Three Hundred Ninety-
7 Six Thousand Dollars and Zero Cents (\$396,000.00) on behalf of the following Settlement Classes:

8 **“W-2 Worker Sub-Class”³:** All current and former non-exempt W-2 employees who
9 worked for Defendant Walnut in California during the time period of August 19, 2017, through the date
10 of preliminary approval of this Settlement; and

11 **“Independent Contractor Sub-Class”⁴:** All current and former individuals who worked for
12 Walnut in California as independent contractors during the time period of August 17, through the date
13 of preliminary approval of this settlement.
14

15 There are approximately 421 Settlement Class Members and 19,831 workweeks in the Class
16 Period, and the average payment to participating Settlement Class Members from the *Net Settlement*
17 *Amount*, not include PAGA penalties, is projected to be \$466.47.
18
19
20

21 ¹ Plaintiff’s primary allegations are that Walnut: (1) failed to pay all overtime wages owed; (2) failed to
22 pay all minimum/straight time wages owed; (3) failed to provide all meal periods in accordance with
23 California law; (4) failed to provide rest breaks in compliance with California law; (5) failed to issue
24 accurate, itemized wage statements; (6) failed to pay all wages owed upon termination; (7) failed to
25 provide legally accrued sick leave; (8) failed to provide accurate itemized wage statements; (8) failed to
26 reimburse for expenses necessarily incurred; (9) made illegal deductions from wages, earned bonuses
27 and incentive pay; (10) unlawfully misclassified employees as independent contractors; and (11) is liable
28 for civil penalties under the Labor Code Private Attorneys General Act of 2004 (“PAGA”).

² The Stipulation of Settlement (“Settlement”) is attached to the concurrently filed Declaration of Adam N.
Bouayad as Exhibit A. The proposed Notice Packet (which is comprised of the Notice of Pendency Class Action
and Proposed Settlement and Notice of Individual Settlement Award) are attached to the Settlement as Exhibits A
and B respectively. All defined terms in this Motion have the same definitions as used in the Settlement.

³ The W-2 Worker Sub-Class consists of 393 individuals. (Bouayad Decl., ¶5.)

⁴ The Independent Contractor Sub-Class consists of 28 individuals. (Bouayad Decl., ¶5.)

1 **I. SUMMARY OF THE LITIGATION**

2 Defendant Walnut is a licensed cultivator and distributor of cannabis (or “marijuana”). During
3 the relevant period, Defendant maintained a location in the County of Los Angeles. Plaintiff Tien Pham
4 was employed from May 2019 until July 2019 as a second lead supervisor engaged in building Walnut’s
5 grow areas (e.g. install lighting and irrigation; setting up grow tables, etc...) prior to opening. (Pham
6 Decl., ¶2⁵) During Mr. Pham’s employment with Walnut he was treated as an independent contractor.
7 (Pham Decl. ¶2) Plaintiff Chasity Bennett worked for Walnut from October 2019 until November 2021
8 as a Lead Maintenance Tech. (Bennett Decl. ¶2.) During Ms. Bennett’s employment she was treated as
9 a non-exempt W-2 employee. (Bennett Decl., ¶2.)

10 On August 19, 2020, Plaintiff Pham filed a PAGA complaint against Walnut in Los Angeles
11 Superior Court. (Bouayad Decl. ¶1) On April 26, 2022, the parties participated in a full day mediation
12 with the Honorable Carl J. West (Ret.), leading to a settlement on a class-wide basis. (Id., ¶3) To that
13 end, pursuant to a stipulation between the parties, and the Court’s approval, on May 26, 2022, a First
14 Amended Complaint was filed adding Class Representative Chasity Bennett and alleging class claims on
15 behalf of both Plaintiffs. (Id. ¶1) A motion for preliminary settlement approval followed, which was
16 rejected, without prejudice by this Court. This is Plaintiffs’ renewed motion for preliminary settlement
17 approval.
18

19 **II. THE PROPOSED SETTLEMENT**

20 **A. ESSENTIAL TERMS OF THE SETTLEMENT**

21 Walnut has agreed to pay a Gross Settlement Amount (“GSA”) of \$396,000.00. (Bouayad Decl.,
22 ¶3, Exh. A). Significantly, this Settlement is non-reversionary, and no Settlement Class Member will
23 have to submit a claim form to receive their Settlement Share. (Id., Exh. A, ¶4.) *Each Settlement Class*
24 *Member will automatically receive a Settlement share unless he or she affirmatively opts out of the*
25 *Settlement.* (Id., Exh. A ¶ 9(E).) The monetary terms of the Settlement are summarized below:
26
27

28 ⁵ The Declarations of Plaintiffs Pham and Bennett are attached to the Declaration of Adam N. Bouayad, as Exhibits D and E, respectively.

<u>Gross Settlement Amount (“GSA”):</u>	<u>\$396,000.00</u>
Minus Court-approved attorneys’ fees (1/3 of GSA):	\$131,868.00
Minus Court-approved, verified costs (up to):	\$15,000.00
Minus Court-approved Class Representative Service Award:	\$16,000.00
(\$10,000.00 to Plaintiff Pham and \$6,000.00 to Plaintiff Bennett)	
Minus Claims Administrator costs:	\$11,750.00
<u>Minus PAGA payment:</u>	<u>\$25,000.00</u>
Net Settlement Amount (“NSA”):	\$196,382.00.

With the exception of the Claims Administrator’s estimated fees, the Gross Settlement Amount if otherwise required by the Claims Administrator, shall be deposited with the Claims Administrator by the later of April 30, 2023 or within (30) calendar days of the Effective Date (which, shall be defined as the date on which the Court enters an Order granting Final Approval of the Settlement Agreement) (“Final Approval Order”) (which, shall be defined as the date on which the Court enters an Order granting Final Approval of the Settlement Agreement) or, solely in the event that there are any objections to the Settlement Agreement (the filing of an objection being a prerequisite to the filing of an appeal), the later of: (i) the last date on which any appeal might be filed or (ii) the successful resolution of any appeal(s) – including expiration of any time to seek reconsideration or further review. (Id., Exh. A)

1. The Settlement Provides for Reasonable Monetary Payments

After deducting amounts approved by the Court for Class Counsel’s attorneys’ fees, Class Counsel’s costs and expenses, Plaintiffs’ Class Representative Service Award, the Claims Administrator’s fees and expenses for administration, and the amount designated as PAGA civil penalties payable to the LWDA, the remaining amount shall be known as the “*Net Settlement Amount*” or “*NSA*”. The NSA is at least \$196,382.00 and will be disbursed to all Settlement Class Members who do not timely opt out.⁶ (Id., Exh. A, ¶9.) For purposes of calculating applicable taxes and withholdings, each Settlement Award shall be allocated as follows: 80% as penalties and interest; and 20% as wages.

⁶ Walnut will pay the employer’s share of payroll taxes separately and apart from the Gross Settlement Amount.

(Id., Exh. A, ¶4(D).) The NSA shall be allocated to Class Members, as follows: The Claims Administrator will calculate each Settlement Class Member's Individual Settlement Award from the NSA based on the following formula - 25% of the NSA will be allocated to the "Independent Contractor Sub-Class"; and 75% of the NSA will be allocated to the "W-2 Worker Sub-Class" (Id., Exh. A, ¶4(B)(a)(b).) This amount will be further allocated as follows:

For the "Independent Contractor Sub-Class", each member shall receive a proportionate share that will be calculated by: (1) dividing 25% of the NSA by the total number of workweeks worked by all members of the Independent Contractor Sub-Class, and (2) multiplying the result by the number of workweeks worked by each individual member of the Independent Contractor Sub-Class during the Class Period. (Id., Exh. A, ¶4(B)(a).)

For the "W-2 Worker Sub-Class", each member shall receive a proportionate share that will be calculated by (1) dividing 75% of the NSA by the total number of workweeks worked by all members of the W-2 Worker Sub-Class, and (2) multiplying the result by the number of workweeks worked by each individual member of the W-2 Worker Sub-Class during the Class Period. (Id., Exh. A, ¶4(B)(b).)

Further, \$25,000.00 of the Gross Settlement Amount has been designated as the "PAGA Amount". Per Labor Code § 2699(i), 75% is penalties (\$18,750.00) and is payable to the Labor & Workforce Development Agency ("LWDA"), and the remaining 25% (\$6,250.00) is payable to Settlement Class Members as follows: each Class Member who worked for Defendant during the PAGA Period shall receive a portion of the PAGA Amount proportionate to the number of workweeks worked, calculated by (1) dividing the PAGA Amount by the total number of workweeks worked by all Class Members during the PAGA Period, and (2) multiplying the result by the number of workweeks worked during the PAGA Period. (Id., Exh. A, ¶4(B)(c).)

If there are approximately 421 total Settlement Class Members and 19,831 workweeks during the Class Period⁷, the average payout to each Class Member from the NSA is projected to be approximately

⁷ During mediation, Defendant represented that there is an estimated 421 Class Members and 19,831 workweeks in the Class Period. If, as of the end of the Class Period, the number of workweeks has increased by 10% or more (i.e., if there are more than 21,814 workweeks in the Class Period), then Defendant agrees that it shall increase the Gross Settlement Amount on a proportional basis equal to the increase in workweeks greater than 10% (i.e., if the

Four Hundred Sixty-Six Dollars and Forty-Seven Cents (\$466.46), i.e., $\$196,382.00/421 = \466.46 . In fact, a specific Class Member employed between April 15, 2019 and April 26, 2022 (date of mediation), would expect to receive a payout of around \$1,242.92, i.e., $\$196,382.00/158$ weeks. (Id., ¶25.)

Settlement Class Members will have 45 calendar days from the mailing of the Class Notice and Notice of Settlement Award (collectively referred to as the “Notice Packet”) to opt-out or object to the Settlement, thereby providing ample time to review the Notice Packet without unduly delaying the Settlement. (Id., Exh. A, ¶9(A)-(E).) Those Class Members who do not opt-out of the Settlement will be bound by its terms and will release all claims against Defendant included within the Settlement, for the period August 19, 2017, through the date of preliminary approval of the Settlement. (Id., Exh. A, ¶¶1,2.)

Finally, the Settlement provides that *any uncashed funds will escheat to the California State Controller’s Office*. (Id., Exh. A, ¶4(F).)

2. Attorneys’ Fees, Costs, Service Award, and PAGA Payment

Plaintiffs will separately apply for a Class Representative Service Award at the time of seeking final approval of the proposed class action settlement in the amounts of \$10,000.00 for Plaintiff Tien Pham; and \$6,000.00 for Chasity Bennett, which is based on their service to the Settlement Class.⁸

As will be fully briefed at the time of final approval, Plaintiffs’ requested Class Representative Service Awards are intended to recognize Plaintiff’s time and effort expended on behalf of the Settlement Class, including providing substantial factual information and documents to Class Counsel, attending multiple in-person and telephonic meetings with Class Counsel, as well as the significant risks Plaintiffs undertook by agreeing to serve as a named plaintiff in this case. (Id., ¶¶16-19; and Exhs. D, ¶¶3-10 and Exh. E ¶¶3-8 thereto.)

class workweeks were 11% greater than 19,831, Defendant will increase the Gross Settlement Amount by one percent). However, Defendant retains the option to instead of increasing the Gross Settlement Amount if this escalator clause is triggered, it can instead elect to cut-off the Class Period and release period as of the date that the increased workweeks reaches 21,814. (See Settlement ¶¶3(E).)

⁸ “[I]ncentive awards are fairly typical in class action cases . . . and are intended to compensate class representatives for work done on behalf of the class [and] to make up for financial or reputational risk undertaken in bringing the action.” (*In re Cellphone Fee Termination Cases*, (2010) 186 Cal.App.4th 1380, 1393-94.)

1 Class Counsel will also apply for an attorneys' fees award of one-third of the GSA, which is
2 currently estimated to be \$131,868.00, and up to \$15,000.00 in verified costs reimbursement. (Id., ¶¶ 28-
3 30; and Exhs. A, ¶3(C)(4) and Exh. F thereto.) Plaintiffs contend the requested fee is fair compensation
4 for undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent fee
5 basis. (Id., ¶23.); and incurring substantial attorney fees litigating this matter. (Id., ¶29.) Further, Class
6 Counsel expects to expend additional attorney time seeking approval of the Settlement.

7 California courts recognize an appropriate method for awarding attorneys' fees in class actions is
8 to award a percentage of the "common fund" created as a result of a settlement.⁹ Class Counsel's request
9 for fees of one-third of the MSA is well within the range of reasonableness, and indeed is considered the
10 typical rate for common fund settlements. Historically, courts have awarded percentage fees in the range
11 of 20% to 50%. (See 4 Newberg on Class Actions § 14.6 (4th Ed. 2013).)
12

13 **III. ARGUMENT IN FAVOR OF PRELIMINARY APPROVAL**

14 California Rule of Court 3.769 conditions settlement of a class action on court approval, which is
15 generally evaluated under the federal standards applicable under Rule 23 of the Federal Rules of Civil
16 Procedure.¹⁰ Further, settlement is the preferred means of dispute resolution, particularly in complex
17 class action litigation.¹¹
18

19 **A. STANDARD FOR PRELIMINARY APPROVAL**

20 To make a fairness determination, the Court should consider several factors, including: "the
21 strength of plaintiff's case, the risk, expense, complexity and likely duration of further litigation, the risk
22

23 ⁹ Laffitte v. Robert Half Int'l, Inc., (2016) 1 Cal.5th 480, 506 [holding "the percentage of fund method survives in
24 California class action cases"].

25 ¹⁰ Reed v. United Teachers Los Angeles (2012) 208 Cal.App.4th 322 [requires trial court to determine "that the
26 settlement is fair, reasonable and adequate to all concerned"]; Hanlon v. Chrysler Corp. (9th Cir. 1998) 150 F.3d
1011, 1026 [requires the trial court to determine "whether a proposed settlement is fundamentally fair, adequate,
and reasonable"].

27 ¹¹ In re Syncor ERISA Litig. (9th Cir. 2008) 516 F.3d 1095, 1101.) The Court's role in evaluating a proposed
28 settlement is limited to ensuring that the agreement taken as a whole is fair. (See e.g., Hanlon, *supra*, 150 F.3d at
1027.) There is an initial presumption of fairness where, as here, the Settlement was negotiated at arm's-length by
class counsel and with the assistance of an experienced wage and hour class action mediator. (See e.g. Kullar v.
Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, 130. 1.)

1 of maintaining class action status through trial, the amount offered in settlement, the extent of discovery
2 completed and the stage of the proceedings, [and] the experience and views of counsel.” (Dunk v. Ford
3 Motor Co. (1996) 48 Cal.App.4th 1794, 1801.)¹²

4 **The Strength of Plaintiffs’ Case:** Although Plaintiffs maintain their claims are meritorious,
5 they acknowledge the substantial risks and uncertainties in litigation, and Defendants’ multiple defenses
6 to their claims, both on the merits and with respect to class certification. (Bouayad Decl., ¶¶6-15.) Thus,
7 while Plaintiffs were prepared to litigate these claims through class certification, and ultimately trial,
8 success is far from certain.

9 **The Risk, Expense, Complexity, and Duration of Further Litigation:** Although the parties
10 engaged in extensive informal discovery in advance of mediation, the parties would still have additional
11 discovery to complete in formal litigation had the matter not settled. (Id., ¶25.) Further, Plaintiffs still
12 have to file for class certification, and face the prospect of appeals in the wake of a disputed class
13 certification ruling for Plaintiffs and/or an adverse summary judgment ruling. (Id.)

14
15 Even if the classes sought to be certified by Plaintiffs were in fact certified, the parties would
16 incur considerably more attorneys’ fees and costs through a possible decertification motion, trial, and
17 possible appeal. (Id.) This settlement avoids those risks and the accompanying expense.

18 **Risk of Maintaining Class Action Status:** Plaintiffs have not yet filed a motion for class
19 certification, and as such, the extent to which Plaintiffs’ proposed classes are certifiable is somewhat
20 speculative. Due to the various defenses asserted by Defendant, absent settlement, there is a risk of no
21 certified class at the time of trial.

22 **Amount Offered in Settlement Given Realistic Value of Claims:** The Settlement provides a
23 fair and reasonable monetary recovery for the Settlement Class Members in the face of disputed claims.
24 Plaintiffs conducted an analysis of the alleged unpaid wages due to Defendant’s allegedly unlawful
25 wage and hour practices and PAGA civil penalties. Plaintiffs’ analysis of the maximum and realistic
26

27
28 ¹² “The list of factors is not exclusive and the court is free to engage in a balancing and weighing of the factors
depending on the circumstances of each case.” (Wershba v. Apple Computer, Inc. (2001) 91 Cal.App.4th at 245.)

1 expected recoveries for each of the theories of liability pled is set forth below:

2 *Failure to Pay Straight Time/Minimum Wages:* Plaintiffs contend Walnut failed to compensate
3 them for all hours worked. (Id. ¶6) In Plaintiff Pham's case, he and the Independent Contractor Sub-
4 Class members did not receive all straight time/minimum wages due to Walnut's failure to track any of
5 their hours worked. (Id.) For Plaintiff Bennett and the members of the W-2 Worker Sub-Class, Walnut
6 failed to pay for pre and post-shift work performed off the clock; they were not compensated all straight
7 time wages due to Walnut's employee time rounding practices, which rounded employee hours worked
8 in favor of Walnut; they were not paid for hours worked during rest breaks and while employees are
9 punched out for their meal period; and/or they were not paid reporting time when they reported to work
10 but were furnished with less than half their usual or scheduled day's work. (Id.)

11 In its defense, Walnut contends the Independent Contractor Sub-Class was properly classified as
12 independent contractors and as such, paying them a flat rate for all hours worked in a day was not
13 unlawful. (Id. ¶6) As to the W-2 Worker Sub-Class, Walnut contends it maintains lawful policies and
14 practices whereby employees are not permitted to work before clocking in, and meal and rest breaks are
15 timely provided in full and uninterrupted. (Id.) Walnut denies that it rounded employee hours, and
16 contends that it compensated the W-2 Worker Subclass properly for all hours worked. (Id.) As to
17 certification, Walnut contends Plaintiffs are unable to certify an off-the-clock claim given the
18 individualized inquiries that would be required, given its practices are lawfully and facially neutral. (Id.)
19 Finally, Walnut contends there is no evidence employees reported to work but were furnished with less
20 than half their usual or scheduled day's work. (Id.)

21 *Failure to Pay Overtime:* Plaintiffs argue Walnut regularly caused them to work in excess of 8
22 hours in a workday and/or 40 hours in a workweek but did not properly compensate them at one and
23 one-half their regular rate of pay for such hours. (Id., ¶7) In Plaintiff Pham's case, he and the
24 Independent Contractor Sub-Class members worked more than eight hours in a workday; however, they
25 were paid a flat daily rate no matter how many hours they worked. (Id.) In Plaintiff Bennett's case, she
26 and the other W-2 Worker Subclass members did not receive overtime due to Walnut's policies and/or
27 practices of not paying for pre and post-shift work; working on a seventh consecutive days without
28

1 overtime; failing to record, altering or changing the amount of time worked; and generally not paying
2 for hours worked while subject to Walnut's control. (Id.)

3 In its defense, Walnut contends the Independent Contractor Sub-Class was properly classified as
4 independent contractors and as such, paying them a flat rate for all hours worked in a day was not
5 unlawful. (Id.) As to the W-2 Worker Sub-Class, Walnut contends they received all overtime wages to
6 which they were entitled as it maintains lawful policies and practices whereby employees are paid the
7 applicable lawful rate of pay for all hours worked, which is tracked. (Id.) Additionally, as to both sub-
8 classes, Walnut contends Plaintiffs are unable to certify a class based on the individualized assessment
9 needed in connection with the various employee positions and duties at issue. (Id.)

10 *Meal Period Claim:* Plaintiffs argue Walnut maintains a general policy and/or practice of
11 informing its employees when they are permitted to take their meal periods. (Id. ¶8) As a result, Walnut
12 regularly failed to provide Plaintiffs and the Class Members with all required and compliant meal
13 periods due, in part, due to the work demands and practices imposed by Walnut due to the insufficient
14 help and a high volume of work. (Id.) Plaintiffs and Class Members were regularly required to take their
15 meal periods after more than five hours worked during shifts of more than six (6) hours. Further,
16 Defendants regularly failed to provide Plaintiffs and similarly situated Class Members with a thirty (30)
17 minute uninterrupted meal period for every five (5) hours worked; failed to permit a thirty (30) minute
18 meal period to be taken at all when required; required Plaintiffs and similarly situated Class Members to
19 eat meals while working; prohibited Plaintiffs and similarly situated Class Members from leaving the
20 premises during their meal periods; regularly interrupted Plaintiffs and similarly situated Class Members
21 during their meal periods; regularly failed to permit Plaintiffs and similarly situated Class Members to
22 take a full thirty (30) minute meal period; and failing to provide compliant second meal periods for
23 shifts over ten (10) hours. (Id.) For instance, the Independent Worker Sub-Class regularly worked over
24 ten (10) hours in day; however, they never received a second meal period. (Id.)

26 In its defense, Walnut contends there can be no liability in connection with the Independent
27 Contractor Sub-Class because they were properly classified and there's no requirement that it make meal
28 periods available to them. (Id.) As to the W-2 Worker Subclass, Walnut contends it has always provided

1 non-exempt employees with an opportunity to take legally compliant meal periods, and any non-
2 compliant meal periods were solely the result of employee choice. (Id.)

3 *Rest Break Claim:* Plaintiffs and other Class Members were not permitted or authorized to take
4 all rest breaks for every four hours worked, or major fraction thereof. (Id., ¶9) Walnut argues it had no
5 duty to make rest breaks available to anyone in the Independent Worker Sub-Class. (Id.) As to the W-2
6 Worker Sub-Class, Walnut argues it always provided the opportunity for employees to take timely rest
7 breaks; and its written policies provided for timely and compliant rest breaks. (Id.) Further, Walnut
8 argues there exists significant individualized issues that could arise based on differences as to whether,
9 how often, and why a particular employee took a particular rest break, late, took a short rest break, or
10 missed a particular rest break on a particular shift. (Id.)

11 *Failure to Pay Sick Leave:* as mentioned above, Plaintiffs allege that Walnut did not maintain a
12 lawful absence control policy pursuant to Labor Code §233. (Id., ¶10)

13
14 In its defense, Walnut claims there can be no liability as to the Independent Contractor Sub-Class
15 because they don't accrue sick time under the Labor Code. As to the W-2 Worker Subclass, Walnut
16 counters it does maintain a lawful paid sick leave practice pursuant to Labor Code §246. (Id.) To date,
17 Plaintiffs have not found evidence to support their claim, as such, a resolution of this matter should not
18 impact the Settlement Agreement at issue. (Id.)

19 *Wage Statement Claim* – This is a derivative claim that fails or succeeds based on a finding of
20 liability on other claims. As such, due to the foregoing arguments and associated uncertainties, a
21 resolution pursuant to the terms of the Settlement Agreement makes sense. (Id., ¶11)

22 *Failure to Reimburse* - Plaintiffs claim Walnut maintained a policy and/or practice during the
23 relevant period of not paying Class Members for costs and expenses necessarily incurred by them as a
24 direct consequence of their duties as employees. (Id., ¶12)

25 Walnut argues the Independent Contractor Sub-Class members are not subject to reimbursement
26 under Labor Code §2802. (Id.) As to the W-2 Worker Sub-Class, Walnut argues that all necessary tools
27 and protective equipment are provided such that any purchase would not be considered “necessary
28 expenditures or losses incurred by the employee in direct consequence of the discharge of his or her

1 duties” pursuant to Labor Code §2802. (Id.) Further, Walnut denies deducting wages, earned bonuses
2 and/or incentive pay from Class Members. (Id.) Further, Walnut argues there exists significant
3 individualized issues that must take account of each position’s duties and department to determine the
4 work required and the tools necessary to complete the work. (Id.)

5 *Waiting Time Penalty Claim/PAGA Penalties* – These are also derivative claims that fail or
6 succeed based on a finding of liability in connection with Plaintiffs’ other claims.

7 In sum, Plaintiffs’ theories of liability carry significant risks of no liability, non-certification
8 and/or reduction on the merits, based on Walnut’s arguments. Therefore, because the settlement roughly
9 equates to 25% of Walnut’s estimated exposure based on employee interviews; review of Walnut’s
10 employee personnel documents; and employee payroll and time records, the parties’ proposed settlement
11 is reasonable based on the arguments and defenses at issue. (Id., ¶25)

12 **The Experience and Views of Counsel** - “Parties represented by competent counsel are better
13 positioned than courts to produce a settlement that fairly reflects each party’s expected outcome in
14 litigation.” (In re Pacific Enterprises Securities Litigation (9th Cir. 1995) 47 F.3d 373, 378.) Here,
15 Plaintiffs are represented by competent, experienced counsel who posses extensive experience
16 prosecuting and defending wage-and-hour class actions, and have served as class counsel in numerous
17 cases alleging similar claims. (Id., ¶¶21-22.)

18 Class Counsel conducted an in-depth review of Defendant’s policies and timekeeping/ payroll
19 records; and drew on their extensive experience in similar cases to assess the strengths and weaknesses
20 of this case. (Id. ¶¶5, 16, 17, 23.) The Settlement was also reached with the assistance of an experienced
21 and respected wage and hour class action mediator (Id., ¶2), which strongly supports preliminary
22 approval of the Settlement. (See Kullar, *supra*, 168 Cal.App.4th at 130.)
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1 **B. THE PRELIMINARY APPROVAL STANDARD IS MET**

2 At this stage, the Court can grant preliminary approval of the settlement and direct that notice be
3 given if the proposed settlement: (1) falls within the range of possible approval; (2) appears to be the
4 product of serious, informed, and non-collusive negotiations; and (3) has no obvious deficiencies.¹³

5 **The Settlement Is Within the Range of Possible Approval** - The proposed settlement is
6 reasonable in light of the significant litigation risks and will provide tangible monetary compensation for
7 strenuously disputed claims. Indeed, the percentage of the liability exposure recovered in this case, i.e.,
8 25%, meets percentages routinely approved by courts.¹⁴

9 Thus, Plaintiffs submit that the proposed settlement is within the range of possible approval, such
10 that notice should be provided to the Settlement Class so that they can consider the Settlement. The
11 Court will have the opportunity to again assess the reasonableness of the Settlement after the Class
12 Members have had the opportunity to opt-out or object.

13 **The Settlement Resulted from Serious, Informed Negotiations** - The Settlement resulted from
14 a substantial exchange of information/records, arm's-length negotiation by counsel and a full day
15 mediation before an experienced wage and hour mediator. Thus, the Settlement is entitled to an initial
16 presumption of fairness. (Kullar, *supra*, 168 Cal.App.4th at 130.)

17 As discussed, Plaintiffs carefully vetted the claims at issue, interviewed witnesses and reviewed
18 extensive timekeeping records and payroll data to arrive at a reasonable settlement. (*Id.*, ¶5.) The parties
19 attended an all-day mediation and subsequently finalized the Settlement. (*Id.*, ¶3.)

20 **The Settlement Is Devoid of Obvious Deficiencies** - Preliminary approval of the Settlement is
21 also warranted because there are no obvious deficiencies. The Settlement will provide monetary relief to
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25 ¹³ See Manual for Complex Litigation § 30.41(3rd Ed. 1995); 4 Newberg on Class Actions § 11:24-25 (4th Ed. 2013).

26 ¹⁴ Glass v. UBS Finan. Servs. (N.D. Cal. 2007) Case No. C-06-4068 MMC, 2007 WL 221862, *4 [approving
27 settlement representing 25% to 35% of potential damages]; Dunleavy v. Nadler (9th Cir. 2000) 213 F.3d 454, 459
28 [approving settlement representing about one-sixth of potential recovery]; Nat'l Rural Telecomm. Coop. v. DirecTV, Inc. (C.D. Cal. 2004) 221 F.R.D. 523, 527 ["it is well-settled law that a proposed settlement may be acceptable even though it amounts to only a fraction of the potential recovery that might be available to the Settlement Class Members at trial"].

1 Settlement Class Members. The amounts proposed for Class Counsel’ attorneys’ fees and costs, and
2 service awards are all reasonable and appropriate based on the facts of this case.

3 **C. THE COURT SHOULD CERTIFY THE SETTLEMENT CLASS**

4 The Class satisfies the criteria for certification of a settlement class under California law
5 because: (1) the Class is so numerous that joinder would be impractical; (2) common questions of law
6 and fact predominate over individual questions such that class certification is the most efficient and
7 desirable way to maintain this litigation; (3) Plaintiffs’ claims are typical of the claims of absent
8 Settlement Class Members; and (4) Plaintiffs and their counsel will fairly and adequately represent
9 Settlement Class Members’ interest. (See Cal. Civ. Proc. § 382.)

10 **The Proposed Class Is Ascertainable and Numerous**¹⁵ - Here, the proposed classes are
11 defined as:

12 **“W-2 Worker Sub-Class”:** All current and former non-exempt W-2 employees who have
13 worked for Walnut in California during the time period of August 19, 2017, through the date of
14 preliminary approval of this Settlement; and

15 **“Independent Contractor Sub-Class”:** All current and former individuals who worked for
16 Walnut in California during the time period of August 17, through the date of preliminary approval of
17 this settlement.

18 Therefore, Settlement Class Members can be identified from Walnut’s personnel and
19 employment records. Defense counsel represents that the Settlement Class consists of approximately
20 421 current and former non-exempt employees and independent contractors. (Id., ¶5.) It would
21 therefore be impracticable to bring all Settlement Class Members before the Court, or for each
22 Settlement Class Member to bring an individual lawsuit. The proposed Settlement Class therefore
23 satisfies numerosity.¹⁶

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26 ¹⁵ A class is “ascertainable” where the members “may be readily identified without unreasonable expense or time
27 by reference to official [or business] records.” (See Sevidal v. Target Corp. (2010) 189 Cal.App.4th 905, 916
(alterations in original).)

28 ¹⁶ Bowles v. Sup. Ct. (1955) 44 Cal.2d 574 [holding a class representing 10 beneficiaries of a trust sufficiently
numerous].

1 **Common Issues of Law and Fact Predominate** - The focus in a certification dispute is not the
2 merits, but rather on what types of questions, “common or individual,” are likely to arise in the action.
3 (See Sav-On Drug Store, Inc. v. Superior Court (Rocher) (2004) 34 Cal.4th 319, 327.) Plaintiffs’
4 primary claims are predicated on Defendant’s alleged timekeeping practices; and meal period policies
5 and practices. These types of claims are commonly held to be proper for class certification.¹⁷

6 **The Claims of the Named Plaintiff Are Typical** - Here, Plaintiffs’ claims are typical of those
7 held by the members of the proposed Class.¹⁸ *First*, Plaintiffs were employed by Defendant during the
8 Class Period as a non-exempt employee (Bennett); and an independent contractor (Pham), who were
9 subject to Walnut’s wage and hour policies at issue in this case. (Id., Exh. D Pham Decl., ¶2; and Exh. E
10 Bennett Decl., ¶2, thereto.)

11 *Second*, Plaintiffs were injured by the same challenged policies that allegedly injured the Classes
12 as a whole. For example, Plaintiffs assert they were not paid correctly (or at all) for all hours worked;
13 and were not provided legally required meal and rest periods. (Id.) Plaintiffs further assert they were not
14 provided paid sick time or reimbursed for expenses. (Id.) Finally, each received inaccurate wage
15 statements, similar to those received by the Settlement Class Members. (Id.)

16 Because Plaintiffs have suffered the same injuries as the other members of the Class, the
17 typicality requirement is satisfied.

18 **Plaintiff and Class Counsel Will Fairly and Adequately Represent the Class** - The adequacy
19 requirement examines conflicts of interest between named parties and the class(es) they seek to
20 represent. (Capital People First v. State Dept. of Developmental Services 155 (2007) Cal.App.4th 676,
21 697.) Plaintiffs and their counsel will adequately represent the Settlement Class, as there are no conflicts
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25 ¹⁷ Benton v. Telecom Network Specialists, Inc. (2013) 220 Cal.App.4th 701, 726; Williams v. Superior Court
26 (2013) 221 Cal.App.4th 1353, 1371 [certifying class based on uncompensated work time]; Bluford v. Safeway
27 Inc. (2013) 216 Cal.App.4th 864, 871 [reversing denial for certification of rest period claim]. Also, See Decl. of
28 Pham, ¶2; and Decl. of Bennet, ¶2.

¹⁸ The typicality requirement is satisfied where class representatives have claims that are typical of those of the
rest of the class. (B.W.I. Custom Kitchen v. Owens-Illinois, Inc. (1987) 191 Cal.App.3d 1341, 1347 [finding
typicality satisfied where named Plaintiff purchased the same goods as the putative class in a consumer class
action].)

1 between Plaintiffs and the proposed Settlement Class. Plaintiffs possess claims that are in line with those
2 of the Settlement Class.¹⁹ Class Counsel also have extensive experience in wage and hour class action
3 litigation. (Id., ¶21.)

4 **D. THE COURT SHOULD ORDER DISTRIBUTION OF THE NOTICE**

5 This Court should order distribution to the Settlement Class of the proposed Notice Packet by
6 U.S. Mail, postage prepaid, using last known mailing address information provided by Defendant.²⁰ (Id.,
7 Exh. A ¶9(A)).

8 The content of the proposed Notice Packet satisfies California Rule of Court 3.766(d) because it
9 advises Class Members of the nature of the claims, basic contentions and denials of the parties, and the
10 key terms of the Settlement, the Forty-Five (45) day deadline to opt-out or object to the Settlement and
11 the procedures by which to do so, explains the recovery formula and expected recovery amount for each
12 Settlement Class Member, and advises them that they will be bound by the terms of the Settlement if
13 they do not opt-out. (Id. ¶3, Sub-Exhs. A and B to the Settlement.) The proposed Notice Packet will also
14 notify Settlement Class Members of the final approval hearing date and provides Settlement Class
15 Members the contact information for Class Counsel, and advises Settlement Class Members that they
16 may enter an appearance through counsel if they wish to, which satisfies California Rule of Court
17 3.766(e).
18

19
20 ¹⁹ See McGhee v. Bank of America (1976) 60 Cal.App.3d 442, 450-51 [adequacy satisfied where there was no
21 indication that Class Counsel were not qualified and the named plaintiff had no interests antagonistic to those of
22 the proposed class]. Also, See Decl. of Pham, ¶2; and Decl. of Bennet, ¶2.

23 ²⁰ This manner of giving notice is the “best notice practicable” under the circumstances because it
24 provides “individual notice to all members who can be identified through reasonable effort.” (See Eisen v.
25 Carlisle & Jacquelin (1974) 417 U.S. 156, 173.) Here, Plaintiffs propose that the Settlement be administered by
26 CPT Group, Inc., (“CPT”) which is an experienced class action settlement administrator. (Id., ¶31 and Exh. G and
27 H thereto.) Settlement Class Members’ addresses will be ascertainable through Defendant’s personnel and payroll
28 records, which Defendant will provide to CPT within thirty (30) business days of preliminary approval of the
Settlement. (Id., Exh. A ¶9(A).) Within ten (10) business days of receipt of the Settlement Class Members’
addresses, CPT will run the addresses through the United States Postal Service Notice of Change of Address
database (which provides updated addresses for any individual who has moved in the previous four years and has
notified the U.S. Postal Service of a forwarding address) and mail the notices to Settlement Class Members. (Id.,
Exh. A ¶9(B).) To the extent that any notices are returned, CPT will perform a “skip trace” to track any
Settlement Class Member’s current mailing address. (Id., Exh. A ¶9(C).

1
2 **IV. CONCLUSION**

3 For the foregoing reasons, Plaintiffs respectfully request that the Court grant preliminarily
4 approve the proposed Settlement.
5

6 **WORKPLACE RIGHTS LAW GROUP, LLP**

7
8 Dated: September 16, 2024

By: 

ADAM N. BOUAYAD
GREGORY D. WOLFLICK
Attorneys for Plaintiffs,
TIEN PHAM and CHASITY BENNETT

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 130 North Brand Boulevard, Suite 410, Glendale, California 91203.

On **September 16, 2024**, I served the foregoing document described as

PLAINTIFFS' NOTICE OF UNOPPOSED MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION/PAGA SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

on the interested parties set out as follows, by the method indicated below:

Rukayat Salaam Damien DeLaney Akerman LLP 601 West 5 th Street, Suite 300 Los Angeles, CA 90071 Tel: 213-553-5940 rukayat.salaam@akerman.com damien.delaney@akerman.com carol.corder@akerman.com Attorneys for Defendants	
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XXX (BY EMAIL) Pursuant to Code of Civil Procedure Sec. 1010.6(b)(2), '(2) A person represented by counsel, who has appeared in an action or proceeding, shall accept electronic service of a notice or document that may be served by mail, express mail, overnight delivery, or facsimile transmission.'

XXX (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on **September 16, 2024**, at Glendale, California.


Geri Johnston