

1 ADAM N. BOUAYAD (SBN 248087)
2 GREGORY D. WOLFLICK (SBN 108699)
3 **WORKPLACE RIGHTS LAW GROUP, LLP**
4 130 N. Brand Boulevard, Suite 420
5 Glendale, California 91203
6 Tel: (818) 844-5200
7 Email: adam@workplacelaw.com; greg@workplacelaw.com;
8
9 Attorneys for Plaintiff, TIEN PHAM and CHASITY BENNETT

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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **COUNTY OF LOS ANGELES**
14

15 TIEN PHAM, as an aggrieved employee) **Case No.: 20STCV31808**
16 pursuant to the Private Attorneys General Act)
17 (“PAGA”), on behalf of the State of California) *[Assigned to: Hon. Christopher K. Lui,*
18 and other aggrieved employees,) *Dept 76]*
19
20 Plaintiffs,) **PLAINTIFFS’ NOTICE OF UNOPPOSED**
21) **MOTION AND MOTION FOR**
22 vs.) **PRELIMINARY APPROVAL OF CLASS**
23) **ACTION/PAGA SETTLEMENT;**
24 SEVEN POINTS MANAGEMENT, a) **MEMORANDUM OF POINTS AND**
25 California corporation; WALNUT LLC, a) **AUTHORITIES IN SUPPORT THEREOF**
26 California corporation, 3030 WALNUT LLC,)
27 a California corporation; 3008 WALNUT) *[Filed concurrently with the Decl. of Adam N.*
28 LLC, a California corporation; CAMERON) *Bouayad]*
DAMWIJK, an individual, and DOES 1-20,)
Defendants.) **RESERVATION #667485556686**
) **Date: November 2, 2022**
) **Time: 8:30 a.m.**
) **Dept.: 76**
) *Complaint filed: August 19, 2020*

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,
3 on November 2, 2022, at 8:30 a.m., in Department 76 of the above-entitled court, located at 111
4 North Hill, St., Los Angeles, California, Plaintiffs TIEN PHAM and CHASITY BENNETT
5 (“Plaintiffs”), individually and on behalf of a class of similarly situated individuals, will and
6 hereby move this Court for:

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

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

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

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

1 Administrator costs, civil penalties payable to the California Labor Workforce
2 Development Agency, and attorneys' fees and costs to Class Counsel;

- 3 6. Appointment of CPT Group, Inc., as the third-party Claims Administrator for mailing
4 notices;
- 5 7. Approval of the proposed Notice Packet (which is comprised of the Notice of
6 Pendency of Class Action and Proposed Settlement, and Notice of Individual
7 Settlement Award, which are attached to the Settlement as Exhibit's "A" and "B",
8 respectively) and an order that it be disseminated to the proposed Settlement Class as
9 provided in the Settlement Agreement; and
- 10 8. Approval of California State Controller's Office as the cy pres.

11 This Motion is based on this notice of motion, the attached memorandum of points and
12 authorities, the declarations of Adam N. Bouayad, Gregory D. Wolflick, Plaintiff Tien Pham,
13 Plaintiff Chasity Bennett, Ryan Schley of CPT Group, Inc., and the exhibits attached thereto, the
14 pleadings and other papers filed in this action, and on any further oral or documentary evidence
15 of argument presented at the time of hearing.
16

17
18 WORKPLACE RIGHTS LAW GROUP, LLP

19 Dated: October 6, 2022

20 By: _____
21 ADAM N. BOUAYAD
22 GREGORY D. WOLFLICK
23 THEODORE S. KHACHATURIAN
24 Attorneys for Plaintiff,
25 TIEN PHAM and CHASITY BENNETT
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TABLE OF CONTENTS

MEMORANDUM OF POINTS AND AUTHORITIES.....	1
I. INTRODUCTION	1
II. SUMMARY OF THE LITIGATION	3
A. THE PARTIES	3
B. PLAINTIFFS' CLAIMS AND DEFENDANT'S DEFENSES	4
1. Failure to Pay Straight Time/Minimum Wages.....	4
2. Failure to Pay Overtime.....	5
3. Meal Period Claim.....	5
4. Rest Break Claim.....	6
5. Failure to Pay Sick Leave	7
6. Wage Statement Claim.....	8
7. Failure to Reimburse.....	8
8. Waiting Time Penalty Claim	9
C. DISCOVERY AND MEDIATION	9
III. THE PROPOSED SETTLEMENT A. ESSENTIAL TERMS OF THE SETTLEMENT	10
1. The Settlement Provides for Reasonable Monetary Payments	11
2. Attorneys' Fees, Costs, Service Award, and PAGA Payment	14
IV. ARGUMENT	15
A. PRELIMINARY APPROVAL IS WARRANTED	15
B. STANDARD FOR PRELIMINARY APPROVAL	16
2. The Preliminary Approval Standard Is Met.....	22

1	C. THE COURT SHOULD CERTIFY THE SETTLEMENT CLASS	23
2	1. The Proposed Class Is Ascertainable and Numerous.....	24
3	2. Common Issues of Law and Fact Predominate	25
4	3. The Claims of the Named Plaintiff Are Typical	25
5	4. Plaintiff and Class Counsel Will Fairly and Adequately Represent the Class ...	26
6	D. THE COURT SHOULD ORDER DISTRIBUTION OF THE NOTICE	26
7	E. THE COURT SHOULD SET A FINAL APPROVAL HEARING	27
8	V. CONCLUSION	27
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

TABLE OF AUTHORITIES

Cases

<u>B.W.I. Custom Kitchen v. Owens-Illinois, Inc.</u> (1987) 191 Cal.App.3d 1341, 1347	25
<u>Benton v. Telecom Network Specialists, Inc.</u> (2013) 220 Cal.App.4th 701, 726.....	25
<u>Bluford v. Safeway Inc.</u> (2013) 216 Cal.App.4th 864, 871	25
<u>Bowles v. Sup. Ct.</u> (1955) 44 Cal.2d 574	24
<u>Brinker Restaurant Corp. v. Superior Court</u> (2012) 53 Cal. 4th 1004	6
<u>Capital People First v. State Dept. of Developmental Services</u> 155 (2007) Cal.App.4th 676, 697	26
<u>Dunk v. Ford Motor Co.</u> (1996) 48 Cal.App.4th 1794, 1801	16
<u>Dunleavy v. Nadler</u> (9th Cir. 2000) 213 F.3d 454, 459	23
<u>Eisen v. Carlisle & Jacquelin</u> (1974) 417 U.S. 156, 173	26
<u>Fleming v. Covidien Inc.</u> (C.D. Cal. 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4.....	9
<u>Glass v. UBS Finan. Servs.</u> (N.D. Cal. 2007) Case No. C-06-4068 MMC, 2007 WL 221862, *4	23
<u>Hanlon v. Chrysler Corp.</u> (9th Cir. 1998) 150 F.3d 1011, 1026	15, 16
<u>In re Cellphone Fee Termination Cases</u> , (2010) 186 Cal.App.4th 1380, 1393-94	14
<u>In re Pacific Enterprises Securities Litigation</u> (9th Cir. 1995) 47 F.3d 373, 378	22
<u>In re Syncor ERISA Litig.</u> (9th Cir. 2008) 516 F.3d 1095, 1101	16
<u>Kao v. Joy Holiday</u> , (2017)12 Cal.App.5th 947, 963	9
<u>Kullar v. Foot Locker Retail, Inc.</u> (2008) 168 Cal.App.4th 116, 130. 1	16
<u>Laffitte v. Robert Half Int’l, Inc.</u> , (2016) 1 Cal.5th 480, 506	15
<u>McGhee v. Bank of America</u> (1976) 60 Cal.App.3d 442, 450-51	26
<u>Nat’l Rural Telecomm. Coop. v. DirecTV, Inc.</u> (C.D. Cal. 2004) 221 F.R.D. 523, 527	23
<u>Price v. Starbucks Corp.</u> (2011) 192 Cal.App.4th 1136, 1147	9
<u>Reed v. United Teachers Los Angeles</u> (2012) 208 Cal.App.4th 322.....	15
<u>Sav-On Drug Store, Inc. v. Superior Court</u> (Rocher) (2004) 34 Cal.4th 319, 327	25

1	<u>Sevidal v. Target Corp.</u> (2010) 189 Cal.App.4th 905, 916.....	24
2	<u>Thurman v. Bayshore Transit Mgmt., Inc.</u> (2012) 203 Cal.App.4th 1112, 1135	9
3	<u>Wershba v. Apple Computer, Inc.</u> (2001) 91 Cal.App.4th at 245	16
4	<u>Williams v. Superior Court</u> (2013) 221 Cal.App.4th 1353, 1371.....	25
5	<u>Statutes</u>	
6	8 Cal. Code Regs. § 13520.....	9
7	California Rule of Court, Rule 3.764(c)(2).....	1
8	California Rule of Court, Rule 3.766(d)	27
9	California Rule of Court, Rule 3.766(e)	27
10	California Rules of Court, Rule 3.769	2, 15, 27
11	Code of Civil Procedure § 382.....	2, 24
12	Labor Code §226(a)	8
13	Labor Code §226(e)	8
14	Labor Code §233.....	7
15	Labor Code §246.....	7, 8, 21
16	Labor Code §2699(e)(2)	9
17	Labor Code §2699(i).....	12
18	Labor Code §2802.....	9, 21
19	Labor Code Private Attorneys General Act of 2004.....	1
20	<u>Other Authorities</u>	
21	4 Newberg on Class Actions § 14.6 (4th Ed. 2013).....	15, 22
22	Manual for Complex Litigation § 30.41(3rd Ed. 1995).....	22
23		
24		
25		
26		
27		
28		

MEMORANDUM OF POINTS AND AUTHORITIES¹

I. INTRODUCTION

Plaintiffs Tien Pham and Chasity Bennett brought this class/representative action against Defendant Walnut LLC (hereinafter “Walnut” or “Defendant”) for various wage and hour violations. Plaintiff’s primary allegations are that Walnut: (1) failed to pay all overtime wages owed; (2) failed to pay all minimum/straight time wages owed; (3) failed to provide all meal periods in accordance with California law; (4) failed to provide rest breaks in compliance with California law; (5) failed to issue accurate, itemized wage statements; (6) failed to pay all wages owed upon termination; (7) failed to provide legally accrued sick leave; (8) failed to provide accurate itemized wage statements; (8) failed to reimburse for expenses necessarily incurred; (9) made illegal deductions from wages, earned bonuses and incentive pay; (10) unlawfully misclassified employees as independent contractors; and (11) is liable for civil penalties under the Labor Code Private Attorneys General Act of 2004 (“PAGA”).

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

“W-2 Worker Sub-Class”³: All current and former non-exempt W-2 employees who worked for Defendant Walnut in California during the time

¹ Given the multiplicity of issues addressed in this Motion, Plaintiffs respectfully request that the Court allow them to exceed the 20-page limit set forth in California Rule of Court 3.764(c)(2), and that the Court consider the attached memorandum of points and authorities which is 20 pages in length.

² The Stipulation of Settlement (“Settlement”) is attached to the 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., ¶15.)

period of August 19, 2017, through the date of preliminary approval of this Settlement; and

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

Significantly, Settlement Class Members do not need to file a claim to benefit from the Settlement because all of the Settlement Class Members will automatically receive a payment unless they affirmatively opt-out. There are approximately 421 Settlement Class Members and 19,831 workweeks in the Class Period, and the average payment to participating Settlement Class Members from the *Net Settlement Amount*, which does not include PAGA penalties, is projected to be approximately Four Hundred Sixty-Six Dollars and Forty-Seven Cents (\$466.47). The Settlement was reached only after the parties mediated this action with the Honorable Carl J. West., a well-respected jurist and mediator of wage and hour class actions. In connection with the mediations, Defendant produced a sampling of timekeeping and payroll records for the putative classes members, as well as applicable documents regarding its various wage and hour policies. After extensive research and analysis, and a full-day of mediation on April 26, 2022, the parties ultimately agreed to a class-wide resolution. If the Settlement is approved, Defendant will pay a non-reversionary Gross Settlement Amount (“GSA”) of \$396,000.00. After deducting administration costs, Plaintiffs’ Class Representative Service Award, attorneys’ fees and costs, and payment of PAGA penalties to the California Labor and Workforce Development Agency (“LWDA”), the remaining Net Settlement Amount (“NSA”) of approximately One Hundred Ninety-Six Thousand Three Hundred Eighty-Two Dollars

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

1 (\$196,382.00⁵) will be distributed to all Settlement Class Members who do not opt-out of the
2 Settlement. This proposed Settlement is well-within the range of possible approval in light of the
3 significant legal and factual obstacles that Plaintiffs faced, the risks and costs of further
4 litigation, and the tangible monetary benefits to be received by the Settlement Class. For the
5 reasons discussed herein, Plaintiffs respectfully requests that the Court grant preliminary
6 approval of the Settlement.

7 **II. SUMMARY OF THE LITIGATION**

8 **A. THE PARTIES**

9 Defendant Walnut is a licensed cultivator and distributor of cannabis (or “marijuana”).
10 Defendant maintains, and maintained during the relevant time period, a location in the County of
11 Los Angeles. (See Declaration of Adam N. Bouayad (“Bouayad Decl.”), ¶10.) Plaintiff Tien
12 Pham alleges he was employed from May 2019 until July 2019 as a second lead supervisor
13 engaged in building Walnut’s grow areas (e.g. install lighting and irrigation; setting up grow
14 tables, etc...) prior to opening. (See Declaration of Tien Pham (“Pham Decl.”), ¶2) During Mr.
15 Pham’s employment with Walnut he was treated as an independent contractor. (Pham Decl. ¶2)
16 Plaintiff Chasity Bennett alleges she worked for Walnut from October 2019 until November
17 2021 as a Lead Maintenance Tech. (See Declaration of Chasity Bennett (Bennett Decl. ¶2).)
18 During Ms. Bennett’s employment she was treated as a non-exempt W-2 employee. (Bennett
19 Decl., ¶2.)

20
21 On August 19, 2020, Plaintiff Pham filed a Private Attorney General Act complaint
22 against Walnut in Los Angeles Superior Court. (Bouayad Decl. ¶1) Pursuant to a stipulation
23 between the parties, and the Court’s approval, on May 26, 2022, a First Amended Complaint was
24 filed adding Class Representative Chasity Bennett and alleging class claims on behalf of both
25 Plaintiffs. (Bouayad Decl. ¶1)

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5 This does not include the Settlement Class’ PAGA penalty awards.

1 **B. PLAINTIFFS' CLAIMS AND DEFENDANT'S DEFENSES**

2 **1. *Failure to Pay Straight Time/Minimum Wages***

3 Plaintiffs allege that during their employment, Walnut failed to compensate them for all
4 hours worked. (Bouayad Decl. ¶6) Walnut's failure to pay for all hours worked resulted from the
5 following alleged policies and/or practices. In Plaintiff Pham's case, he and the members of his
6 Independent Contractor Sub-Class did not receive all straight time/minimum wages as a result of
7 Walnut's failure to track any of their hours worked. (Id.) For Plaintiff Bennett and the
8 members of the W-2 Worker Sub-Class, Walnut failed to pay for pre and post-shift work
9 performed off the clock; they were not compensated all straight time wages due to Walnut's
10 employee time rounding practices, which rounded employee hours worked in favor of Walnut;
11 they were not paid for hours worked during rest breaks and while employees are punched out for
12 their meal period; and/or they were not paid reporting time when they reported to work but were
13 furnished with less than half their usual or scheduled day's work. (Id.)

14
15 Walnut contends the Independent Contractor Sub-Class was properly classified as
16 independent contractors and as such, paying them a flat rate for all hours worked in a day was
17 not unlawful. (Id.) As to the W-2 Worker Sub-Class, Walnut contends it maintains lawful
18 policies and practices whereby employees are not permitted to work before clocking in, and meal
19 and rest breaks are timely provided in full and uninterrupted. (Id.) Walnut denies that it
20 rounded employee hours, and contends that it paid all W-2 worker sub-class members
21 appropriately for their hours worked. (Id.) Defendant further asserts that Plaintiff would be
22 unable to certify a rounding or off-the-clock claim given the individualized inquiries⁶ that would
23 be required. (Id.) Finally, Walnut refutes that employees ever reported to work but were
24 furnished with less than half their usual or scheduled day's work. (Id.)

25
26 ⁶ Walnut's operations include many different employees, which are divided into different
27 departments and are answerable to different supervisors. Examples of the positions available at
28 Walnut include Cultivation Technician, Fertigation Technician, Security, Sanitation, Water
Room Technician, Logistics Technicians, Distribution Drivers, Shipping and Receiving, and
Temporary Employees. (Bouayad Decl., ¶6, fn. 1.)

1 **2. *Failure to Pay Overtime***

2 Plaintiffs allege Walnut regularly caused them to work in excess of 8 hours in a workday
3 and/or 40 hours in a workweek but did not properly compensate them at one and one-half their
4 regular rate of pay for such hours. In Plaintiff Pham’s case, he and the other Independent
5 Contractor Sub-Class members worked more than eight hours in a workday; however, they were
6 paid a flat daily rate no matter how many hours they worked. In Plaintiff Bennett’s case, she and
7 the other W-2 Worker Subclass members did not receive overtime due to Walnut’s policies
8 and/or practices of paying straight time/minimum wage for all hours worked in day and/or week;
9 not paying for pre and post-shift work; working on a seventh consecutive days without overtime;
10 failing to record, altering or changing the amount of time worked; and generally not paying for
11 all hours worked while subject to Walnut’s control. (Bouayad Decl. ¶7)

12 Walnut contends the Independent Contractor Sub-Class was properly classified as
13 independent contractors and as such, paying them a flat rate for all hours worked in a day was
14 not unlawful. (Id.) As to the W-2 Worker Sub-Class, Walnut contends they received all overtime
15 wages to which they were entitled as it maintains lawful policies and practices whereby
16 employees are paid the applicable lawful rate of pay for all hours worked, which is tracked. (Id.)

17 **3. *Meal Period Claim***

18 Plaintiffs allege Walnut maintains a general policy and/or practice of informing its
19 employees when they are permitted to take their meal periods, i.e. employees cannot take a meal
20 period until Walnut permits them to. (Bouayad Decl. ¶8) In administering said policy, Walnut
21 regularly failed to provide Plaintiffs and the Class Members with all required and compliant meal
22 periods. (Id.) This was due, in part, to the work demands and practices imposed by Walnut due
23 to the insufficient help and a high volume of work. (Id.) Plaintiffs and similarly situated Class
24 Members were regularly required to take their meal periods after more than five hours worked
25 during shifts of more than six (6) hours. Further, Walnut regularly failed to provide Plaintiffs
26 and similarly situated Class Members with a thirty (30) minute uninterrupted meal period for
27 every five (5) hours worked; failed to permit a thirty (30) minute meal period to be taken at all
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1 when required; required Plaintiffs and similarly situated Class Members to eat meals while
2 working; prohibited Plaintiffs and similarly situated Class Members from leaving the premises
3 during their meal periods; regularly interrupted Plaintiffs and similarly situated Class Members
4 during their meal periods; regularly failed to permit Plaintiffs and similarly situated Class
5 Members to take a full thirty (30) minute meal period; and failing to provide compliant second
6 meal periods for shifts over ten (10) hours. (Id.) For instance, the Independent Worker Sub-
7 Class regularly worked over ten (10) hours in day; however, they never received a second meal
8 period.

9
10 Walnut counters there can be no liability in connection with the Independent Contractor
11 Sub-Class because they were properly classified and there's no requirement that it make meal
12 periods available to them. (Id.) As to the W-2 Worker Subclass, Walnut contends it has always
13 provided non-exempt employees with an opportunity to take legally compliant meal periods, and
14 any non-compliant meal periods reflected in employee timekeeping records were solely the result
15 of employee choice, rather than any policy or practice of Walnut. (Id.) Walnut points out that
16 under Brinker Restaurant Corp. v. Superior Court (2012) 53 Cal. 4th 1004, it is only required to
17 "provide" the opportunity to take meal periods, "ensure" meal periods are taken, and that they
18 have always done so. (Brinker, *supra*, 53 Cal.4th at 1038 [rejecting "ensure" standard].) Walnut
19 further argues that its employees in the W-2 Worker Subclass rarely worked more than 10.
20 Finally, Walnut contends Plaintiffs' meal period claim is not suited for class certification, since
21 individual inquiries would be required to assess which employees took non-compliant meal
22 periods, how many meal periods were non-compliant or missed, and the reasons why a particular
23 employee took a non-compliant meal period or missed a meal period during a particular shift.
24 (Id.)

25 **4. Rest Break Claim**

26 Plaintiffs allege Walnut failed to authorize and permit them and other Class Members to
27 take legally compliant rest breaks. This was due, in part, to the work demands and practices
28 imposed on Plaintiffs and other similarly situated Class Members. (Bouayad Decl. ¶9.) For

1 Plaintiff Pham and the other Independent Contractor Sub-Class members, they were not provided
2 uninterrupted rest breaks and were simply expected to work during their entire shift. (Id.) As to
3 Plaintiff Bennett and the other W-2 Worker Sub-Class, Walnut regularly failed to provide full
4 ten (10) minute rest breaks; failed to provide any rest breaks during a shift; failed to provide
5 uninterrupted ten (10) minute rest breaks; and (4) failed to provide the legally required amount of
6 rest breaks in a shift. (Id.)

7 Walnut counters there can be no liability in connection with the Independent Contractor
8 Sub-Class because they were properly classified and there's no requirement that it make rest
9 breaks available to them. (Id.) For the W-2 Worker Subclass, Walnut contends it has always
10 maintained and enforced lawful rest period policies and practices, and those employees were
11 authorized and permitted to take all off-duty rest periods in compliance with California law. (Id.)
12 Further, Walnut argues Plaintiffs' rest period claim is inherently unsuited for class treatment as it
13 requires an individualized inquiry into whether each Settlement Class Member was in fact
14 authorized and permitted to take a compliant rest period, which would devolve into an
15 unmanageable series of mini-trials. (Id.)

16 **5. Failure to Pay Sick Leave**

17 Plaintiffs allege that at all times Walnut maintained an absence control policy that
18 counted sick leave taken pursuant to Labor Code §233 as an absence subject to discipline,
19 discharge, demotion, or suspension. This is because Walnut did not have a policy or practice
20 that allowed employees to accrue sick leave for their hours worked. As such, Plaintiffs and other
21 Class Members did not accrue sick leave for hours worked; were not provided with written
22 notice of the amount of paid sick leave they otherwise should have accrued and had available for
23 their hours worked; and did not receive paid sick leave for their hours worked pursuant to Labor
24 Code §246. (Bouayad Decl. ¶10)

25 Walnut denies Plaintiffs' claims. As to the Independent Contractor Sub-Class, Walnut
26 contends there can be no liability because sick leave hours do not accrue for independent
27 contractors. (Id.) As to the W-2 Worker Subclass, Walnut counters it does maintain a lawful
28

1 paid sick leave practice pursuant to Labor Code §246. (Id.)

2 **6. Wage Statement Claim**

3 Plaintiffs allege Walnut knowingly and intentionally failed to provided them and other
4 Class Members with accurate and complete wage statements. In Plaintiff Pham’s case, he and the
5 other Independent Contractor Sub-Class were paid with a live company check, which reflected
6 little to none of the information required under Labor Code §226(a). As to Plaintiff Bennett, she
7 and other W-2 Worker Sub-Class members received payroll checks; however, the checks did not
8 comply with §226(a). For instance, their checks did not reflect their off the clock hours.
9 (Bouayad Decl. ¶11.)

10 Walnut counters that Independent Contractor Sub-Class members were not entitled
11 §226(a) complaint wage statements because they were not employees. (Id.) As for the W-2
12 Worker Sub-Class, Walnut contends their wage statements did comply with §226(a). (Id.)
13 Further, Walnut argues the wage statement violations could not be shown to be “knowing and
14 intentional,” and that Plaintiff cannot show that she or any other employee “suffer[ed] injury” as
15 a result of the alleged wage statement violations, as required by Labor Code § 226(e) for
16 imposition of penalties. (Id.)

17 **7. Failure to Reimburse**

18 Plaintiffs allege Walnut has maintained a policy and/or practice during the relevant
19 period of not paying Class Members for costs and expenses necessarily incurred by them as a
20 direct consequence of their duties as employees of Defendants. (Bouayad Decl. ¶12.) Such
21 expenses included, but were not limited to, the cost of tools and protective equipment necessary
22 for the performance of their jobs. (Id.) Further, Plaintiffs allege Walnut maintains a policy and/or
23 practice of illegally deducting wages, earned bonuses and/or incentive pay from Class Members.
24 (Id.)

25 Walnut denies all such claims. As to the Independent Contractor Sub-Class, Walnut
26 counters that any expenses incurred while performing work for Walnut is not subject to
27 reimbursement under Labor Code §2802 because they were not employees. (Id.) As to the W-2
28 Worker Sub-Class, Walnut contends that all necessary tools and protective equipment are

provided such that their purchase would not be considered a “necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties” pursuant to Labor Code §2802. (Id.)

8. Waiting Time Penalty Claim

Plaintiffs allege Walnut is also liable for waiting time penalties under Labor Code section 203 as a result of its failure to pay all wages due to its employee off the clock work and timekeeping policy. (Bouayad Decl., ¶13.)

Walnut asserts it has strong defenses to the waiting time claim because there are good-faith disputes as to Plaintiffs’ underlying claims, precluding the imposition of penalties. (Id., See also 8 Cal. Code Regs. § 13520 [a “good faith dispute that any wages are due will preclude imposition of waiting time penalties”]; Kao v. Joy Holiday, (2017)12 Cal.App.5th 947, 963 [holding that “good faith dispute” over whether employee was exempt precluded imposition of waiting time penalties over contested wages owed]).

a. PAGA Civil Penalties

Plaintiffs also seek civil penalties under the PAGA as a result of the foregoing alleged Labor Code violations. (Bouayad Decl., ¶14) Walnut argues that Plaintiffs’ PAGA claim will fail for the same reasons that their underlying claims will fail. (Id; (see Price v. Starbucks Corp. (2011) 192 Cal.App.4th 1136, 1147 [“Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail.”]). Walnut also maintains that, given its good faith defenses, this Court would exercise its discretion to substantially reduce any PAGA penalties if it were to find Walnut liable for any of Plaintiffs’ claims. (Id.; see Labor Code § 2699(e)(2); Thurman v. Bayshore Transit Mgmt., Inc. (2012) 203 Cal.App.4th 1112, 1135 (affirming reduction of PAGA penalties); Fleming v. Covidien Inc. (C.D. Cal. 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 [reducing PAGA penalties from \$2.8 million to \$500,000].) Furthermore, because Defendant has never been subject to penalties for labor code violations pursuant to PAGA, any penalty should be below the \$100 threshold.

C. DISCOVERY AND MEDIATION

In connection with the parties’ mediation, Walnut produced a sample of time records and

1 payroll data, as well as its wage and hour policies and other relevant documents and information.
2 (Bouayad Decl., ¶5) Specifically, Walnut provided Plaintiffs a sample of payroll and time
3 records; and contact information, for sixty (60) current and former independent contractors and
4 W-2 employees. (Id.) Additionally, Walnut provided the dates of employment/pay periods for
5 the four hundred and twenty-one (421) Class Members. (Id.)

6 After the detailed review of the payroll and time records; wage and hour policies; and
7 extensive telephone interviews with employee witnesses, Class Counsel drew on their extensive
8 experience in similar cases to assess the strengths and weaknesses of Plaintiffs' case. (Id.) This
9 discovery allowed the parties to assess the merits and value of Plaintiffs' claims and defenses
10 thereto, if a settlement could not be reached. (Id.)

11 On April 26, 2022, the parties participated in a full day mediation with the Honorable
12 Carl J. West., a well-respected jurist and mediator of wage and hour class actions. (Bouayad
13 Decl., ¶¶2-3) During mediation, the parties vigorously debated their opposing legal positions, the
14 likelihood of certification of Plaintiffs' claims and the legal basis for the claims and defenses.
15 (Id.). Ultimately, the parties agreed in principle on a class-wide resolution. (Id.) In the weeks
16 that followed, the parties finalized the terms of settlement and executed the Settlement. (Id.)

17 **III. THE PROPOSED SETTLEMENT A. ESSENTIAL TERMS OF THE** 18 **SETTLEMENT**

19 If the Court preliminarily approves this Settlement, Walnut will pay a Gross Settlement
20 Amount ("GSA") of \$396,000.00. (Bouayad Decl., ¶3, Exh. A (Settlement, ¶3). Significantly,
21 this Settlement is non-reversionary, and no Settlement Class Member will have to submit a claim
22 form to receive their Settlement Share. (Settlement at ¶4.) Each Settlement Class Member will
23 automatically receive a Settlement share unless he or she affirmatively opts out of the
24 Settlement. (Settlement at ¶ 9(E). The monetary terms of the Settlement are summarized below:

25	<u>Gross Settlement Amount ("GSA"):</u>	<u>\$396,000.00</u>
26	Minus Court-approved attorneys' fees (1/3 of GSA):	\$131,868.00
27	Minus Court-approved, verified costs (up to):	\$15,000.00
28	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

Minus PAGA payment: \$25,000.00

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, for this purpose, shall be defined as the date on which the Court enters an Order granting Final Approval of the Settlement Agreement) (“Final Approval Order”) (which, for this purpose, 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. (Settlement ¶ 3(B).)

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 will be disbursed to all Settlement Class Members who do not timely opt out.⁷ (Bouayad Decl. ¶3, Exh. A) (Settlement, ¶9)). For purposes of calculating applicable taxes and withholdings, each Settlement Award shall be allocated as follows: eighty percent (80%) as penalties and interest; and twenty percent (20%) as wages. (Settlement, ¶4(D).) The Net Settlement Amount shall be allocated to Class Members, as follows: The Claims Administrator will calculate each Settlement Class Member’s Individual

⁷ Walnut will pay the employer’s share of payroll taxes separately and apart from the Gross Settlement Amount. (See Settlement ¶3D.)

1 Settlement Award from the Net Settlement Amount based on the following formula:

2 Twenty-Five Percent (25%) of the NSA will be allocated to the “Independent Contractor
3 Sub-Class”; and Seventy-Five (75%) of the NSA will be allocated to the “W-2 Worker Sub-
4 Class” (Settlement, ¶4(B)(a)(b).) This amount will be allocated as follows:

5
6 For the “Independent Contractor Sub-Class”, each Sub-Class member shall receive a
7 proportionate settlement share that will be calculated by (1) dividing Twenty Five Percent (25%)
8 of the Net Settlement Amount by the total number of workweeks worked by all members of the
9 Independent Contractor Sub-Class, and (2) multiplying the result by the number of workweeks
10 worked by each individual member of the Independent Contractor Sub-Class during the Class
11 Period. (Settlement, ¶4(B)(a).)

12
13 For the “W-2 Worker Sub-Class”, each Sub-Class member shall receive a proportionate
14 settlement share that will be calculated by (1) dividing Seventy Five Percent (75%) of the Net
15 Settlement Amount by the total number of workweeks worked by all members of the W-2
16 Worker Sub-Class, and (2) multiplying the result by the number of workweeks worked by each
17 individual member of the W-2 Worker Sub-Class during the Class Period. (Settlement,
18 ¶4(B)(b).)

19
20 Additionally, Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00) of the Gross
21 Settlement Amount has been designated as the “PAGA Amount”. Per Labor Code § 2699(i),
22 seventy-five percent (75%) is penalties, or Eighteen Thousand Seven Hundred and Fifty Dollars
23 and Zero Cents (\$18,750.00) will be payable to the Labor & Workforce Development Agency
24 (“LWDA”), and the remaining twenty-five percent (25%), or Six Thousand Two Hundred and
25 Fifty Dollars and Zero Cents (\$6,250.00), will be payable to Settlement Class Members as
26 follows: each Class Member who worked for Defendant during the PAGA Period shall receive a
27
28

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 by each Class Member during the PAGA Period. (Settlement ¶4(B)(c).)

If there are approximately 421 total Settlement Class Members and 19,831 workweeks during the Class Period⁸, the average payout to each Class Member from the *Net Settlement Amount* is projected to be approximately 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., $\$196,382.00/158 \text{ weeks}$. (Bouayad Decl., ¶25.) This is not an insignificant sum of money.

Settlement Class Members will have Forty-Five (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. (Settlement, ¶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,

⁸ 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 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).)

through the date of preliminary approval of the Settlement. (Settlement Agreement, ¶¶1,2.)

The California State Controller's Office is the Designated Cy Pres Recipient

The Settlement provides that any uncashed funds will escheat to the California State Controller's Office. (See Settlement Agreement, ¶4(F) ["Each member of the Settlement Class who receives an Individual Settlement Award must cash the check(s) within 180 days from the date the Settlement Administrator mails it/them. Any funds payable to Settlement Class Members whose checks were not cashed or otherwise negotiated within 180 days after mailing will escheat to the California State Controller's Office to be held as 'Unclaimed Property' under the unclaimed property laws in the name of the Settlement Class Members."]).

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. The amounts requested reflect each Plaintiffs' level of service to the Settlement Class.

"[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.)

As will be fully briefed at the time of final approval, Plaintiffs' requested Class Representative Service Awards are intended to recognize the time and effort Plaintiffs 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. (See Bouayad Decl., ¶¶16-19; Pham Decl., ¶¶7-9; Bennett Decl. ¶¶5-7.)

Class Counsel will also apply for an attorneys' fees award of one-third of the GSA, which is currently estimated to be \$131,868.00, and up to \$15,000.00 in verified costs reimbursement. (Settlement, ¶3(C)(4); Bouayad Decl., ¶¶ 28-30, **Exh. F** thereto.) Plaintiffs submit the requested fee is fair compensation for undertaking complex, risky, expensive, and time-consuming

1 litigation on a purely contingent fee basis. (Bouayad Decl., ¶23.) Class Counsel has incurred
2 substantial attorney fees conducting pre-filing investigation, analyzing Plaintiffs' claims,
3 conducting legal research, litigating discovery disputes, reviewing Defendant's documents and
4 policies, analyzing Settlement Class Members' timekeeping data and payroll records, preparing
5 for and attending mediation, negotiating and preparing the long-form Settlement Agreement,
6 preparing this Motion, and otherwise litigating the case. (Bouayad Decl., ¶29.) Class Counsel
7 expects to expend additional attorney time in attending the hearing on this Motion, overseeing
8 the Notice process and fielding questions from Settlement Class Members, preparing the final
9 approval papers and attending the Final Approval hearing. (Id.)

10 California courts recognize an appropriate method for awarding attorneys' fees in class
11 actions is to award a percentage of the "common fund" created as a result of a settlement. (See
12 e.g., Laffitte v. Robert Half Int'l, Inc., (2016) 1 Cal.5th 480, 506 [holding "the percentage of
13 fund method survives in California class action cases"].) Class Counsel's request for fees of one-
14 third of the MSA is well within the range of reasonableness, and indeed is considered the typical
15 rate for common fund settlements. Historically, courts have awarded percentage fees in the range
16 of 20% to 50%, depending on the circumstances of the case. (See 4 Newberg on Class Actions §
17 14.6 (4th Ed. 2013).) Should the Court grant preliminary approval, Class Counsel will seek an
18 award of attorneys' fees and verified litigation costs when seeking final approval

19 **IV. ARGUMENT**

20 **A. PRELIMINARY APPROVAL IS WARRANTED**

21 California Rule of Court 3.769 conditions settlement of a class action on court approval,
22 which is generally evaluated under the federal standards applicable under Rule 23 of the Federal
23 Rules of Civil Procedure. (See Reed v. United Teachers Los Angeles (2012) 208 Cal.App.4th
24 322 [requires trial court to determine "that the settlement is fair, reasonable and adequate to all
25 concerned"]; Hanlon v. Chrysler Corp. (9th Cir. 1998) 150 F.3d 1011, 1026 [requires the trial
26 court to determine "whether a proposed settlement is fundamentally fair, adequate, and
27 reasonable"].)

28 Settlement is the preferred means of dispute resolution, particularly in complex class

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

7 **B. STANDARD FOR PRELIMINARY APPROVAL**

8 To make a fairness determination, the Court should consider several factors, including:
9 “the strength of plaintiff’s case, the risk, expense, complexity and likely duration of further
10 litigation, the risk of maintaining class action status through trial, the amount offered in
11 settlement, the extent of discovery completed and the stage of the proceedings, [and] the
12 experience and views of counsel.” (Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th 1794, 1801.)
13 “The list of factors is not exclusive and the court is free to engage in a balancing and weighing of
14 the factors depending on the circumstances of each case.” (Wershba v. Apple Computer, Inc.
15 (2001) 91 Cal.App.4th at 245.) As discussed below, the proposed Settlement is fair, adequate,
16 and reasonable in light of the overall balance of factors in this case.

17 **a. The Strength of Plaintiffs’ Case**

18 Although Plaintiffs maintain their claims are meritorious, Plaintiffs acknowledge that
19 there are substantial risks and uncertainty in proceeding with litigation. As described above,
20 Defendants presented multiple defenses to Plaintiffs’ claims, both on the merits and with respect
21 to class certification. Thus, while Plaintiffs were prepared to litigate these claims through class
22 certification, and ultimately trial, success was far from certain.

23 **b. Risk, Expense, Complexity, and Duration of Further Litigation**

24 Although the parties engaged in extensive informal discovery in advance of mediation,
25 the parties still have significant discovery to complete in formal litigation had the matter not
26 settled. (Bouayad Decl., ¶25.)

27 Moreover, Plaintiffs still have to file for class certification, and face the prospect of
28 appeals in the wake of a disputed class certification ruling for Plaintiffs and/or an adverse

summary judgment ruling. (Id.)

Even if the classes sought to be certified by Plaintiffs were in fact certified, the parties would incur considerably more attorneys' fees and costs through a possible decertification motion, trial, and possible appeal. (Id.) This settlement avoids those risks and the accompanying expense. Thus, this factor supports preliminary approval.

c. Risk of Maintaining Class Action Status

Plaintiffs have not yet filed their motion for class certification, and as such, the extent to which Plaintiffs' proposed classes were certifiable is somewhat speculative. In light of the various defenses asserted by Defendant, absent settlement, there was a risk that there would not be a certified class at the time of trial. Thus, this factor supports preliminary approval.

d. Amount Offered in Settlement Given Realistic Value of Claims

The Settlement provides a fair and reasonable monetary recovery for the Settlement Class Members in the face of disputed claims. Plaintiffs conducted an analysis of the alleged unpaid wages due to Defendant's allegedly unlawful wage and hour practices and PAGA civil penalties. Plaintiffs' analysis of the maximum and realistic expected recoveries for each of the theories of liability pled is set forth below:

Failure to Pay Straight Time/Minimum Wages: As stated above, Plaintiffs contend that Walnut failed to compensate them for all hours worked. (Bouayad Decl. ¶6) Specifically, Walnut's failure to pay for all hours worked resulted from the following alleged policies and/or practices. In Plaintiff Pham's case, he and the Independent Contractor Sub-Class members did not receive all straight time/minimum wages as a result of Walnut's failure to track any of their hours worked. (Bouayad Decl. ¶6) For Plaintiff Bennett and the members of the W-2 Worker Sub-Class, Walnut failed to pay for pre and post-shift work performed off the clock; they were not compensated all straight time wages due to Walnut's employee time rounding practices, which rounded employee hours worked in favor of Walnut; they were not paid for hours worked during rest breaks and while employees are punched out for their meal period; and/or they were not paid reporting time when they reported to work but were furnished with less than half their

1 usual or scheduled day's work. (Bouayad Decl. ¶6)

2 However, Plaintiffs' failure to pay straight time claim faces significant obstacles on the
3 merits and on class certification. As stated, Walnut contends the Independent Contractor Sub-
4 Class was properly classified as independent contractors and as such, paying them a flat rate for
5 all hours worked in a day was not unlawful. (Bouayad Decl. ¶6) As to the W-2 Worker Sub-
6 Class, Walnut contends it maintains lawful policies and practices whereby employees are not
7 permitted to work before clocking in, and meal and rest breaks are timely provided in full and
8 uninterrupted. (Bouayad Decl. ¶6) Walnut denies that it rounded employee hours, and contends
9 that it compensated the W-2 Worker Subclass properly for all hours of work. (Bouayad Decl.,
10 ¶6) As to certification, Walnut contends Plaintiffs are unable to certify an off-the-clock claim
11 given the individualized inquiries that would be required, given its practices are lawfully and
12 facially neutral. (Bouayad Decl., ¶6) Finally, Walnut contends there is no evidence employees
13 reported to work but were furnished with less than half their usual or scheduled day's work.
14 (Bouayad Decl. ¶6)

15 Based on the very real risks identified above, a resolution pursuant to the terms of the
16 Settlement Agreement makes sense.

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

27 In its defense, Walnut contends the Independent Contractor Sub-Class was properly
28

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

8 Based on the very real risks identified above, a resolution pursuant to the terms of the
9 Settlement Agreement makes sense.

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

27
28 Walnut counters there can be no liability in connection with the Independent Contractor

1 Sub-Class because they were properly classified and there's no requirement that it make meal
2 periods available to them. (Bouayad Decl. ¶8) As to the W-2 Worker Subclass, Walnut contends
3 it has always provided non-exempt employees with an opportunity to take legally compliant
4 meal periods, and any non-compliant meal periods reflected in employee timekeeping records
5 were solely the result of employee choice, rather than any policy or practice of Walnut.
6 (Bouayad Decl., 8).

7 Plaintiffs' theory of liability carries significant risks of both non-certification and
8 reduction on the merits, based on Walnut's arguments that it always provided the opportunity for
9 employees to take timely meal periods, their written policies provided for timely and compliant
10 meal periods, as well as the significant individualized issues that could arise based on differences
11 as to whether, how often, and why a particular employee took a particular meal period, late, took
12 a short meal periods, or missed a particular meal period on a particular shift. (Bouayad Decl.
13 ¶8.)

14 Due to the foregoing arguments and associated uncertainties, a resolution pursuant to the
15 terms of the Settlement Agreement makes sense.

16 Rest Break Claim: as mentioned above, Plaintiffs and other Class Members were not
17 permitted or authorized to take all rest breaks for every four hours worked, or major fraction
18 thereof. (Bouayad, Decl., ¶9) Walnut argues it had no duty to make rest breaks available to
19 anyone in the Independent Worker Sub-Class. (Bouayad Decl., ¶9) As to the W-2 Worker Sub-
20 Class, Walnut argues it always provided the opportunity for employees to take timely rest
21 breaks; and its written policies provided for timely and compliant rest breaks. (Bouayad Decl.,
22 ¶9) Further, Walnut argues there exists significant individualized issues that could arise based on
23 differences as to whether, how often, and why a particular employee took a particular rest break,
24 late, took a short rest break, or missed a particular rest break on a particular shift. (Bouayad
25 Decl., ¶9.)

26 In light of the of Walnut's claims and defenses, a resolution pursuant to the Settlement
27 Agreement makes sense.
28

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

3 In its defense, Walnut claims there can be no liability as to the Independent Contractor
4 Sub-Class because they don't accrue sick time under the Labor Code. As to the W-2 Worker
5 Subclass, Walnut counters it does maintain a lawful paid sick leave practice pursuant to Labor
6 Code §246. (Bouayad Decl., ¶10)

7 To date, Plaintiffs have not found evidence to support there claim, as such, a resolution of
8 this matter should not have impacted the Settlement Agreement at issue. (Bouayad Decl., ¶10.)

9 Wage Statement Claim – This claim is mostly a derivative that fails or succeeds based on
10 a finding of liability in connection with Plaintiffs' other claims. As such, due to the foregoing
11 arguments and associated uncertainties, a resolution pursuant to the terms of the Settlement
12 Agreement makes sense. (Bouayad Decl., ¶11)

13 Failure to Reimburse - As mentioned above, Plaintiffs claim Walnut has maintained a
14 policy and/or practice during the relevant period of not paying Class Members for costs and
15 expenses necessarily incurred by them as a direct consequence of their duties as employees.
16 (Bouayad Decl., ¶12)

17 Walnut argues the Independent Contractor Sub-Class members are not subject to
18 reimbursement under Labor Code §2802. (Bouayad Decl., ¶12) As to the W-2 Worker Sub-
19 Class, Walnut argues that all necessary tools and protective equipment are provided such that
20 their purchase would not be considered "necessary expenditures or losses incurred by the
21 employee in direct consequence of the discharge of his or her duties" pursuant to Labor Code
22 §2802. (Bouayad Decl., ¶12) Further, Walnut denies deducting wages, earned bonuses and/or
23 incentive pay from Class Members. (Bouayad Decl., ¶12) Further, Walnut argues there exists
24 significant individualized issue that must take account of each position's duties and department
25 to determine the work required and the tools necessary to complete the work. (Bouayad Decl.,
26 ¶12)

27 In light of the uncertainties regarding this claim, settlement pursuant to the terms of the
28 Settlement Agreement makes sense.

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

3 In sum, the settlement roughly equates to 25% of Walnut’s estimated exposure based on
4 employee interviews; review of Walnut’s employee personnel documents; and employee payroll
5 and time records, which is a reasonable settlement based on the arguments and defenses at issue.
6 (Bouayad Decl., ¶13)

7 **e. The Experience and Views of Counsel**

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

14 Class Counsel conducted an in-depth review of Defendant’s policies and timekeeping and
15 payroll records and drew on their extensive experience in similar cases to assess the strengths
16 and weaknesses of Plaintiffs’ case. (Bouayad Decl., ¶¶5, 21.) The Settlement was also reached
17 with the assistance of an experienced and respected wage and hour class action mediator.
18 (Bouayad Decl., ¶2) This factor strongly supports preliminary approval of the Settlement. (See
19 Kullar, supra, 168 Cal.App.4th at 130.)

20 **2. The Preliminary Approval Standard Is Met**

21 At this stage, the Court can grant preliminary approval of the settlement and direct that
22 notice be given if the proposed settlement: (1) falls within the range of possible approval; (2)
23 appears to be the product of serious, informed and non-collusive negotiations; and (3) has no
24 obvious deficiencies. (See Manual for Complex Litigation § 30.41(3rd Ed. 1995); 4 Newberg on
25 Class Actions § 11:24-25 (4th Ed. 2013).)

26 **a. The Settlement Is Within the Range of Possible Approval**

27 The proposed settlement is reasonable in light of the significant litigation risks, and will
28 provide tangible monetary compensation for strenuously disputed claims. Indeed, the percentage

of the liability exposure recovered in this case, i.e., 25%, meets percentages routinely approved by courts. (See, e.g., Glass v. UBS Finan. Servs. (N.D. Cal. 2007) Case No. C-06-4068 MMC, 2007 WL 221862, *4 [approving settlement representing 25% to 35% of potential damages]; Dunleavy v. Nadler (9th Cir. 2000) 213 F.3d 454, 459 [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”].

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

b. The Settlement Resulted from Serious, Informed Negotiations

The Settlement resulted from an exchange of substantial information/records, arm’s-length negotiations by counsel and a full day mediation before an experienced wage and hour mediator. Thus, the Settlement is entitled to an initial presumption of fairness. (See Kullar, *supra*, 168 Cal.App.4th at 130.)

As discussed above, Plaintiffs carefully vetted the claims at issue, interviewed witnesses and reviewed extensive timekeeping records and payroll data to arrive at a reasonable settlement. (Bouayad Decl., ¶5.) The parties attended an all-day mediation and subsequently finalized the Settlement. (Bouayad Decl., ¶3.) Thus, this factor supports preliminary approval.

c. The Settlement Is Devoid of Obvious Deficiencies

Preliminary approval of the Settlement is also warranted because there are no obvious deficiencies. The Settlement will provide monetary relief to Settlement Class Members. The amounts proposed for Class Counsel’ attorneys’ fees and costs, and service awards are all reasonable and appropriate based on the facts of this case. Because the Settlement is devoid of obvious deficiencies, this factor supports preliminary approval.

C. THE COURT SHOULD CERTIFY THE SETTLEMENT CLASS

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

8 **1. The Proposed Class Is Ascertainable and Numerous**

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

12 Here, the proposed classes are defined as:

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

17 "Independent Contractor Sub-Class": All current and former individuals who
18 worked for Walnut in California during the time period of
19 August 17, through the date of preliminary approval of this
20 settlement.

21 Therefore, Settlement Class Members can be identified from Walnut's personnel and
22 employment records. Defense counsel represents that the Settlement Class consists of
23 approximately 421 current and former non-exempt employees and independent contractors.
24 (Bouayad Decl., ¶5.) It would therefore be impracticable to bring all Settlement Class Members
25 before the Court, or for each Settlement Class Member to bring an individual lawsuit. The
26 proposed Settlement Class therefore satisfies numerosity. (See, e.g., Bowles v. Sup. Ct. (1955)
27 44 Cal.2d 574 [holding a class representing 10 beneficiaries of a trust sufficiently numerous].)
28

1 **2. Common Issues of Law and Fact Predominate**

2 The focus in a certification dispute is not the merits, but rather on what types of
3 questions, “common or individual,” are likely to arise in the action. (See Sav-On Drug Store, Inc.
4 v. Superior Court (Rocher) (2004) 34 Cal.4th 319, 327.) Plaintiffs’ primary claims are predicated
5 on Defendant’s alleged timekeeping practices; and meal period policies and practices. These
6 types of claims are commonly held to be proper for class certification. (See e.g., Benton v.
7 Telecom Network Specialists, Inc. (2013) 220 Cal.App.4th 701, 726; Williams v. Superior Court
8 (2013) 221 Cal.App.4th 1353, 1371 [certifying class based on uncompensated work time]);
9 Bluford v. Safeway Inc. (2013) 216 Cal.App.4th 864, 871 [reversing denial for certification of
10 rest period claim].

11 **3. The Claims of the Named Plaintiff Are Typical**

12 The typicality requirement is satisfied where class representatives have claims that are
13 typical of those of the rest of the class. (B.W.I. Custom Kitchen v. Owens-Illinois, Inc. (1987)
14 191 Cal.App.3d 1341, 1347 [finding typicality satisfied where named Plaintiff purchased the
15 same goods as the putative class in a consumer class action].) Here, Plaintiffs’ claims are typical
16 of those held by the members of the proposed Class. *First*, Plaintiffs were employed by
17 Defendant during the Class Period as a non-exempt employee (Bennett); and an independent
18 contractor (Pham), who were subject to Walnut’s wage and hour policies at issue in this case.
19 (See Pham Decl., ¶2; Bennett Decl., ¶2.)

20 *Second*, Plaintiffs were injured by the same challenged policies that allegedly injured the
21 Classes as a whole. For example, Plaintiffs assert they were not paid correctly (or at all) for all
22 hours worked; and were not provided legally required meal and rest periods. (See Pham Decl. ¶2;
23 Bennett Decl. ¶2.) Plaintiffs further assert they were not provided paid sick time or reimbursed
24 for expenses. (See Pham Decl. ¶2; Bennett Decl. ¶2.) Finally, each received inaccurate wage
25 statements, similar to those received by the Settlement Class Members. (See Pham Decl. ¶2;
26 Bennett Decl. ¶2.)

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

1 **4. Plaintiff and Class Counsel Will Fairly and Adequately Represent the**
2 **Class**

3 The adequacy requirement examines conflicts of interest between named parties and the
4 class(es) they seek to represent. (Capital People First v. State Dept. of Developmental Services
5 155 (2007) Cal.App.4th 676, 697.) Plaintiffs and their counsel will adequately represent the
6 Settlement Class, as there are no conflicts between Plaintiffs and the proposed Settlement Class.
7 Plaintiffs possess claims that are in line with those of the Settlement Class. (See McGhee v. Bank
8 of America (1976) 60 Cal.App.3d 442, 450-51 [adequacy satisfied where there was no indication
9 that Class Counsel were not qualified and the named plaintiff had no interests antagonistic to
10 those of the proposed class]). Class Counsel also have extensive experience in wage and hour
11 class action litigation. (Bouayad Decl., ¶21.)

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

13 This Court should order distribution to the Settlement Class of the proposed Notice
14 Packet by U.S. Mail, postage prepaid, using last known mailing address information provided by
15 Defendant. (See Settlement, ¶9(A)). The proposed Notice Packet to be mailed will include the
16 Class Notice and Notice of Settlement Award. This manner of giving notice is the “best notice
17 practicable” under the circumstances because it provides “individual notice to all members who
18 can be identified through reasonable effort.” (See Eisen v. Carlisle & Jacquelin (1974) 417 U.S.
19 156, 173.) Here, Plaintiffs propose that the Settlement be administered by CPT Group, Inc.,
20 (“CPT”) which is an experienced class action settlement administrator. (See generally
21 Declaration of Julie Green (“Green Decl.”) and attached exhibits.) Settlement Class Members’
22 addresses will be ascertainable through Defendant’s personnel and payroll records, which
23 Defendant will provide to CPT within thirty (30) business days of preliminary approval of the
24 Settlement. (See Settlement, ¶9(A).) Within ten (10) business days of receipt of the Settlement
25 Class Members’ addresses, CPT will run the addresses through the United States Postal Service
26 Notice of Change of Address database (which provides updated addresses for any individual who
27 has moved in the previous four years and has notified the U.S. Postal Service of a forwarding
28 address) and mail the notices to Settlement Class Members. (See Settlement, ¶ 9(B).) To the

1 extent that any notices are returned, CPT will perform a “skip trace” to track any Settlement
2 Class Member’s current mailing address. Id., at ¶9(C).

3 The content of the proposed Notice Packet satisfies California Rule of Court 3.766(d)
4 because it advises Class Members of the nature of the claims, basic contentions and denials of
5 the parties, and the key terms of the Settlement, the Forty-Five (45) day deadline to opt-out or
6 object to the Settlement and the procedures by which to do so, explains the recovery formula and
7 expected recovery amount for each Settlement Class Member, and advises them that they will be
8 bound by the terms of the Settlement if they do not opt-out. (Bouayad Decl. ¶3, Exh. A and B to
9 the Settlement.) The proposed Notice Packet will also notify Settlement Class Members of the
10 final approval hearing date and provides Settlement Class Members the contact information for
11 Class Counsel, and advises Settlement Class Members that they may enter an appearance
12 through counsel if they wish to. This manner of giving notice satisfies California Rule of Court
13 3.766(e) as the most reliable and cost-effective method of reaching Settlement Class Members.

14 **E. THE COURT SHOULD SET A FINAL APPROVAL HEARING**

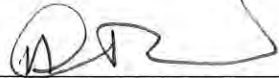
- 15 • Finally, this Court should set a hearing for final approval of the Settlement on a
16 date appropriately scheduled to follow the deadline by which Settlement Class
17 Members must file objections to the Settlement or opt-out. See California Rule of
18 Court 3.769.

19 **V. CONCLUSION**

20 For the foregoing reasons, Plaintiffs respectfully request that the Court preliminarily
21 approve the proposed Settlement, provisionally certify the Settlement Class, and enter the
22 Proposed Order submitted concurrently herewith.

23
24 WORKPLACE RIGHTS LAW GROUP, LLP

25 Dated: October 6, 2022

26 By: 

27 ADAM N. BOUAYAD
28 GREGORY D. WOLFLICK
THEODORE S. KHACHATURIAN
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 **October 6, 2022**, 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**

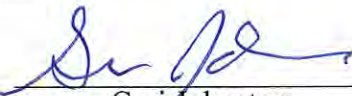
on the interested parties set out as follows, by the method indicated below:

Brian M. Noh, Damien DeLaney Akerman LLP 601 West 5 th Street, Suite 300 Los Angeles, CA 90071 Tel: 213-553-5940 brian.noh@akerman.com damien.delaney@akerman.com carol.corder@akerman.com Attorneys for Defendants	
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XXX (BY EMAIL) Pursuant to California Rules of Court rule 2.251 and Code of Civil Procedure section 1010.6.

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 **October 6, 2022**, at Glendale, California.


Geri Johnston



Make a Reservation

TIEN PHAM vs SEVEN POINTS MANAGEMENT, et al.

Case Number: 20STCV31808 Case Type: Civil Unlimited Category: Other Employment Complaint Case
Date Filed: 2020-08-19 Location: Stanley Mosk Courthouse - Department 76

Reservation

Case Name:	Case Number:
TIEN PHAM vs SEVEN POINTS MANAGEMENT, et al.	20STCV31808
Type:	Status:
Motion re: (MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION/PAGA SETTLEMENT)	RESERVED
Filing Party:	Location:
Tien Pham (Plaintiff)	Stanley Mosk Courthouse - Department 76
Date/Time:	Number of Motions:
11/02/2022 8:30 AM	1
Reservation ID:	Confirmation Code:
667485556686	CR-WYSFPCHF3UTYCCFNY

Fees

Description	Fee	Qty	Amount
Motion re: (name extension)	60.00	1	60.00
Credit Card Percentage Fee (2.75%)	1.65	1	1.65
TOTAL			\$61.65

Payment

Amount:	Type:
\$61.65	Visa
Account Number:	Authorization:
XXXX9186	031752

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