

1 DAVID YEREMIAN & ASSOCIATES, INC.
2 David Yeremian (SBN 226337)
3 David@yeremianlaw.com
4 Natalie Haritounian (SBN 324318)
5 natalie@yeremianlaw.com
6 2540 Foothill Blvd., Suite 201
7 La Crescenta, CA 91214
8 Telephone: (818) 230-8380
9 Facsimile: (818) 230-0308

6 DAVTYAN LAW FIRM, INC.
7 Emil Davtyan (SBN 299363)
8 emil@davtyanlaw.com
9 400 N. Brand Blvd, Suite 700
10 Glendale, CA 91203
11 Telephone: (818) 875-2008
12 Facsimile: (818) 722-3974

10 Attorneys for Plaintiff MARY JEAN SMITH,
11 on behalf of herself and all others similarly situated

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

14 MARY JEAN SMITH, an individual, on
15 behalf of herself and others similarly situated,

16 Plaintiff,

17 vs.

18 NOIA RESIDENTIAL SERVICES, INC., a
19 California corporation; and DOES 1 through
20 50, inclusive,

21 Defendants.

Case No.: 20CECG01820

CLASS ACTION

Assigned for All Purposes To:
Hon. Kimberly Gaab
Dept.: 503

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

*[Filed concurrently with Plaintiff's Notice of
Motion and Motion; Declaration of David
Yeremian; Declaration of Emil Davtyan;
Declaration of Mary Jean Smith; Declaration of
Jarrett Gorlick; and [Proposed] Order]*

Date: April 4, 2023
Time: 3:30 p.m.
Dept: 503

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Mary Jean Smith (“Plaintiff” or “Class Representative”) filed a class action
4 complaint in the Superior Court of the State of California, Fresno County, Case No
5 20CECG01820 against Defendant NOIA Residential Services, Inc. (“Defendant”). Plaintiff
6 alleged the following causes of action: (1) Failure to Pay Minimum Wages; (2) Failure to Pay
7 Wages and Overtime Under Labor Code § 510; (3) Meal Period Liability Under Labor Code §
8 226(a); (4) Rest-Break Liability Under Labor Code § 226.7; (5) Failure to Reimburse Expenses
9 Under Labor Code § 2802; (6) Violation of Labor Code § 226(a); (7) Violation of Labor Code
10 §221; (8) Violation of Labor Code §203; (9) Violation of Labor Code §204; (10) Violation of
11 Business & Professions Code § 17200 *et seq.* and (11) Penalties under Private Attorney General
12 Act (“PAGA”).

13 Pursuant to the proposed Joint Stipulation of Class Action Settlement (“Settlement” or
14 “Settlement Agreement”), filed concurrently herewith, the class consists of “all current and
15 former non-exempt employees who worked for Defendant in California at any time between June
16 24, 2016 and October 8, 2021.” After engaging in substantial investigation and extensive
17 negotiations with the assistance of a respected third-party neutral, Honorable Carl J. West (Ret.),
18 the parties have agreed to settle all claims alleged in the lawsuit on a class-wide non-reversionary
19 basis for Seven Hundred Fifty Thousand Dollars and Zero Cents (\$750,000.00), inclusive of all
20 fees and costs. All 141 Class Members shall receive a settlement share unless they opt out.

21 The proposed settlement reflected in the Settlement Agreement is fair, reasonable, and
22 adequate, and in the best interests of the Class. Consequently, Plaintiff, with the consent of
23 Defendant, hereby move this Court for an order: (1) granting preliminary approval of the
24 proposed class action settlement, as embodied in the Joint Stipulation of Class Action Settlement
25 (“Settlement” or “Settlement Agreement”) filed concurrently herewith; (2) approving the Notice
26 of Class Action Settlement to be sent to Class Members, and the notification schedule as set forth
27 in the Settlement Agreement and the Proposed Order, also filed concurrently herewith; and (3)
28 setting a hearing for final approval of the class action settlement.

II. STATUS OF THE LITIGATION

A. Procedural History

On June 24, 2020, Plaintiff filed a class action complaint against Defendant alleging ten causes of action: (1) Failure to Pay Minimum Wages; (2) Failure to Pay Wages and Overtime Under Labor Code § 510; (3) Meal Period Liability Under Labor Code § 226(a); (4) Rest-Break Liability Under Labor Code § 226.7; (5) Failure to Reimburse Expenses Under Labor Code § 2802; (6) Violation of Labor Code § 226(a); (7) Violation of Labor Code § 221; (8) Violation of Labor Code § 203; (9) Violation of Labor Code § 204; and (10) Violation of Business & Professions Code § 17200 *et seq.* (Declaration of David Yeremian (“Yeremian Decl.”), filed concurrently herewith, ¶ 10) Plaintiff alleges Defendant failed to pay minimum wages and overtime for all hours worked, failed to provide compliant meal and rest breaks, failed to pay premium wages for missed meal and rest breaks, failed to furnish accurate wage statements, failed to timely pay wages including final wages, and failed to reimburse for necessary business expenses. (*Id.*)

On June 5, 2020, Plaintiff submitted a Private Attorneys General Act (“PAGA”) notice letter to the Labor Workforce Development Agency (“LWDA”) and served Defendant. (Yeremian Decl., ¶ 11) The LWDA did not express an interest in investigating Plaintiff’s claims within the 65 day period. (*Id.*) Therefore, on September 11, 2020, Plaintiff filed a First Amended Complaint adding a cause of action for penalties under the Private Attorneys General Act (“PAGA”). (*Id.*)

B. Investigation

Before filing the lawsuit, Class Counsel investigated and researched the facts and circumstances underlying the pertinent issues and the law applicable thereto. (Yeremian Decl., ¶ 12) This required thorough discussions and interviews between Class Counsel and Plaintiff, as well as preliminary research into the various legal issues involved in the case. (*Id.*) After conducting their initial investigation, Class Counsel determined that Plaintiff’s claims were well-suited for class and representative action adjudication owing to what appeared to be a common course of conduct affecting a similarly situated group of employees. (*Id.*)

After filing the lawsuit, Class Counsel conducted a thorough investigation of the facts and

1 claims giving rise to the action, including: (1) conducting informal and formal discovery, and
2 meeting and conferring with defense counsel about same; (2) reviewing and analyzing time and
3 pay records as well as employment handbooks, Plaintiff's personnel files, relevant policies and
4 other documentation; (3) researching the applicable law and potential defenses; (4) constructing
5 damage models based on interpretations of California law; and (5) reviewing information
6 provided by Defendant at the mediation. (Yeremian Decl., ¶ 13) The Class enumerated in this
7 action is ascertainable because the Class Members may be readily identified by reference to
8 Defendant's records. (*Id.*) Defendant have agreed to share the information from these records
9 with the Settlement Administrator in order to identify and contact the Class Members. (*Id.*) There
10 are approximately 141 total Class Members. (*Id.*)

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

16 **C. Settlement Efforts**

17 On August 9, 2021, the parties mediated this case with Honorable Carl J. West (Ret.), a
18 respected and highly experienced mediator in wage and hour class actions. (Yeremian Decl., ¶ 15)
19 During mediation, Plaintiff's and Defendant's counsel discussed all aspects of the case, including
20 the risks of litigation and the risks to both parties of proceeding with a motion for class
21 certification as well as the law relating to unpaid wages, meal periods, rest periods, wage
22 statements, and final pay. (*Id.*) As a result of the mediation, the parties agreed to settle the lawsuit
23 according to the terms set forth in the Settlement Agreement. (*Id.*; See Exhibit 1 attached to
24 Yeremian Decl., "Settlement" or "Settlement Agreement".)

25 From Class Counsel's review of the facts, strengths, and weaknesses of the case, the risks
26 and delays posed by further litigation, and Class Counsel's own prior litigation experience, Class
27 Counsel believes that the recovery for each Class Member is fair and reasonable taking into
28 consideration the amounts received in other wage and hour class actions, the risks inherent in

1 litigation of this genre, and the reasonable tailoring of each Class Member's claim to the
2 settlement award he or she will receive. (*Id.*) Further, and based on the settlement negotiations,
3 which were extensive, and conducted in good faith and at arm's length between attorneys with
4 substantial experience litigating class actions and wage and hour cases, the Settlement Agreement
5 was the product of a non-collusive settlement process in which the parties were forced to make
6 significant compromises in the interest of reaching a full and complete settlement of the lawsuit.
7 (*Id.*)

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

9 Under the terms of the proposed Settlement Agreement, the Defendant have agreed to pay
10 Seven Hundred Fifty Thousand Dollars and Zero Cents (\$750,000.00) ("Gross Settlement
11 Amount") on a non-reversionary basis to settle and release all claims asserted by Plaintiff in the
12 Class Action and PAGA Action on behalf of the proposed Class. (Yeremian Decl., ¶ 16; Exh. 1,
13 §13) The Settlement Agreement defines the "Class Members" as "all current and former non-
14 exempt employees who worked for Defendant in California at any time between June 24, 2016
15 and October 8, 2021." (Yeremian Decl., ¶ 17; Exh. 1, §6) The "Net Settlement Amount,"
16 available for distribution to Class Members, shall be the Gross Settlement Amount, less the
17 Attorneys' Fees and Costs, the Class Representative Enhancement Payment, Settlement
18 Administration Costs, and seventy-five percent (75%) of the LWDA Payment. (Yeremian Decl., ¶
19 18; Exh. 1, §14) These amounts are detailed as follows:

- 20 • not more than Hundred Fifty Thousand Dollars and Zero Cents (\$250,000.00) to
21 Class Counsel for attorneys' fees, and not more than Seventeen Thousand Dollars
22 and Zero Cents (\$17,000.00) to Class Counsel for reasonable litigation costs;
23 ((Yeremian Decl., ¶ 18; Exh. 1, §33);
- 24 • not more than Six Thousand Dollars and Zero Cents (\$6,000.00) for the Settlement
25 Administration Costs; ((Yeremian Decl., ¶ 18; Exh. 1, §35);
- 26 • not more than Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00)
27 for a Class Representative Enhancement Payment; and ((Yeremian Decl., ¶ 18;
28 Exh. 1, §34); and

- Thirty Thousand Dollars and Zero Cents (\$25,000.00) for civil penalties under the PAGA, where 75% (\$18,750.00) will be paid to the LWDA and 25% (\$6,250.00) will be included in the Net Settlement Amount and distributed to Settlement Class Members). ((Yeremian Decl., ¶ 18; Exh. 1, §36)

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

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

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

Attached to the Settlement Agreement as Exhibits A, B, C, and D is the Notice of Class Action Settlement, Objection Form, Request for Exclusion Form, and Dispute Form (“Notice Packet”). Class Members shall each receive a Notice Packet which will include the Class Notice, Objection Form, Request for Exclusion Form, and Dispute Form via first class mail (after the Settlement Administrator conducts a national change of address search). (Yeremian Decl., ¶ 22; Exh. 1, §41) Class Members will have an opportunity to dispute the information provided in their Notice Packet by filling out the Dispute Form and they may produce evidence to support the information is inaccurate. (Yeremian Decl., ¶ 23; Exh. 1, § 44; *see also* Class Notice, **Exhibit A** attached to the Settlement Agreement.) The Settlement Administrator shall decide the dispute and may ask Defendant to produce the personnel and payroll files of the Class Member disputing their credited workweeks in order to resolve the dispute. (Yeremian Decl., ¶ 23; Exh. 1, §44) Class Members wishing to opt-out from the Settlement Agreement must sign and postmark the Request for Exclusion Form to the Settlement Administrator within the Notice Period. (Yeremian Decl., ¶ 24; Exh. 1, §45) The Notice Period will be forty five (45) calendar days from the initial mailing

1 of the Notice Packet. (*Id.*)

2 Class Members wishing to object to the Settlement Agreement must sign and postmark the
3 Objection Form to the Settlement Administrator within the Notice Period. (Yeremian Decl., ¶ 25;
4 Exh. 1, §48) The Notice Period will be forty five (45) calendar days from the initial mailing of the
5 Notice Packet. (*Id.*)

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

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

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

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

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

25 Whether a class is ascertainable is determined by examining the class definition, the size
26 of the class and the means available for identifying class members. (*See Vasquez, supra*, 4 Cal. 3d
27 at 821-22; *Reyes v. Board of Supervisors of San Diego County* (1987) 196 Cal. App. 3d 1263,
28 1271.) Class members are “ascertainable” where they may be readily identified without

1 unreasonable expense or time.

2 Plaintiff contends, and Defendant do not dispute for settlement purposes only, this
3 requirement and the requirement of numerosity is met. Class Members are “all current and former
4 non-exempt employees who worked for Defendant in California at any time between June 24,
5 2016 and October 8, 2021” (Yeremian Decl., ¶ 71(a)) Documents and information exchanged
6 between the parties reflect a class of approximately 141 Class Members. (Yeremian Decl., ¶
7 71(a)) The Class Members have already been identified by reference to Defendant’s payroll and
8 personnel records. (Yeremian Decl., ¶ 71(b))

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

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

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

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

19 *Id.* at 809.

20 Plaintiff contends, and Defendant do not dispute for settlement purposes only, that
21 common issues of fact and law predominate as to each of the claims alleged by Plaintiff, and the
22 Class is united in its proof. (Yeremian Decl., ¶ 71(e)) Because Plaintiff has alleged a single
23 scheme, “the relevant proof [does] not vary among class members” and “clearly presents a
24 common question fundamental to all class members.” (*See In Re NASDAQ Market-Makers*
25 *Antitrust Litigation* (SDNY 1997) 172 F.R.D. 119, 123 (citing *In Re NASDAQ Market-Makers*
26 *Antitrust Litigation*, (SDNY 1997) 169 F.R.D. 493, 518).) California courts show “no hesitancy”
27 in inferring class-wide causation, class-wide injury, and class-wide damages when a common
28 course of action has been shown. (*B.W.I. Custom Kitchen*, 191 Cal. App. 3d at 1350.) This

1 inference ““eliminates the need for each class member to prove individually the consequences of
2 the defendants’ actions to him or her.”” (*Id.* at 1351 (quoting *Rosack v. Volvo of America Corp*
3 (1982) 131 Cal. App. 3d 741, 753 [emphasis added])).)

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

16 C. The Named Plaintiff’s Claims Are Typical

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

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

1 basis and are based on the same legal theories. (Yeremian Decl., ¶ 79(c); *See* Declaration of Mary
2 Jean Smith in Support of Motion for Preliminary Approval (“Smith Decl.”)) Plaintiff was
3 employed by Defendants during the Class Period, and was subject to the allegedly unlawful meal
4 and rest policies and pay practices at issue in this litigation. ((Yeremian Decl., ¶ 79(c); Smith
5 Decl., ¶ 12) Accordingly, Plaintiff is a member of the Class. (*Id.*) The central issues of this
6 litigation (whether Defendants failed to pay all wages, whether Defendants failed to provide meal
7 and rest periods, etc.), which would arise if this was an individual action, applies to the other
8 Class Members as well. The answer to these questions would determine Defendants’ liability to
9 the putative class. (*Id.*) Thus, the claims of Plaintiff are typical of the claims of the putative class.
10 (*Id.*) Accordingly, the typicality requirement is satisfied.

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

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

17 **E. Predominance and Superiority**

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

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

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

26 A two-step process is followed when considering class settlements...
27 If the proposed settlement appears to be the product of serious,
28 informed, non-collusive negotiations, has no obvious deficiencies,
does not improperly grant preferential treatment to class
representative or segments of the class, and falls within the range of

possible approval, then the court should direct that notice be given to the class members of a formal fairness hearing, at which evidence may be presented in support of and in opposition to the settlement.

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

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

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

VI. THE SETTLEMENT IS FAIR AND ADEQUATE

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

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

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

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

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

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

23 Plaintiff alleges that Defendant failed to pay minimum wages and overtime for all hours
24 worked, failed to provide compliant meal and rest breaks, failed to pay premium wages for
25 missed meal and rest breaks, failed to furnish accurate wage statements, failed to timely pay
26 wages including final wages, and failed to reimburse for necessary business expenses all in
27 violation of California law. (Yeremian Decl., ¶ 27)

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

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

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

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

21 Plaintiff alleged that Defendant failed to pay Plaintiff and Class Members minimum
22 wages for all hours worked, in violation of minimum wage laws. (Yeremian Decl., ¶ 31; Smith
23 Decl., ¶ 6-7) Plaintiff contended Class Members would work before their scheduled shifts began
24 and also after their scheduled shifts ended, but they were required to manually record their hours
25 conforming to their scheduled shift times instead of the actual hours they worked. (*Id.*) Plaintiff
26 also contended that Defendant failed to incorporate non-discretionary pay into the regular rate of
27 pay used to calculate and pay overtime compensation as well as sick pay. (*Id.*)

28 Defendant contended that they paid for all reported hours worked, that Class Members

1 were trained to record all hours worked, and that they paid proper minimum wages. (*Id.* at 32)
2 Defendant also maintained that the allegations regarding failure to pay wages for hours worked in
3 excess of eight hours in a day did not constitute a basis for violation of Labor Code § 510.
4 Defendant argued that given their written policies and practices, any unrecorded hours were likely
5 subject to individualized inquiry and unlikely to be certified. Given the difficulty in certifying this
6 claim, Class Counsel had to apply a significant discount to damages based on this theory.

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

8 In order to establish liability for these penalties, Plaintiff would first have to establish
9 liability for the underlying claims. Moreover, Defendant argued that meal violations, even if
10 established, could not be the predicate for a Labor Code § 226 wage statement or § 203 waiting
11 time claim. (Yeremian Decl., ¶¶ 41, 44) For example, the California Supreme Court has recently
12 held that claims for meal period penalties do not constitute “action[s] brought for the nonpayment
13 of wages” for the purpose of determining statutory fees. (*Kirby v. Immoos Fire Prot., Inc.* (2012)
14 53 Cal.4th 1244, 1259.) In *Ling v. P.F. Chang’s China Bistro* (2016) 245 Cal.App.4th 1242, the
15 Court of Appeal noted an action for unlawful meal periods “cannot support a section 203 penalty
16 because section 203, subdivision (b) tethers the waiting time penalty to a separate action for
17 wages.” Authority is divided on this point. Moreover, although authority is divided, many district
18 court rulings support the conclusion that any unpaid meal period premium pay cannot give rise to
19 derivative wage statement liability. (*See, e.g., Culley v. Lincare Inc.* (E.D. Cal. 2017) 236
20 F.Supp.3d 1184, 1195-96; *Soto v. Motel 6 Operating, L.P.* (2016) 4 Cal.App.5th 385, 392-393
21 (noting a wage statement need only document compensation *actually received* and the hours used
22 to calculate that compensation).) Thus, it is unclear if the Court would have permitted untimely
23 wage penalties or wage statement violations for Defendant’s alleged failure to provide meal
24 period penalties.

25 In addition, Plaintiff would have to establish that Defendant’s conduct was willful to
26 recover waiting time penalties. (Labor Code § 203.) With these penalties, there is always the risk
27 that the trier of fact would not have held that Defendant’s actions were done “willfully.” A good
28 faith belief in a legal defense can preclude a finding of willfulness. (*Gonzalez v. Downtown LA*

1 *Motors* (2013) 215 Cal.App.4th 36, 54; 8 C.C.R. § 13520.) As discussed above, Plaintiff alleges
2 that Defendant failed to pay for all hours worked and premiums for non-compliant meal and rest
3 breaks. Plaintiff contended the Class Members are entitled to these wages and premiums, which
4 they allege was not paid at the time of their termination or resignation. If Plaintiff is successful on
5 their claims, the penalties pursuant to Labor Code § 203 shall attach. Defendant, however,
6 contended they provided employees with the reasonable opportunity to take meal and rest breaks,
7 asked Class Members to confirm the accuracy of their time records, and therefore had good-faith
8 defenses under *Brinker* and its progeny. As such, there was some risk associated with waiting
9 time penalties that Class Counsel had to consider. (Yeremian Decl., ¶¶ 44-47)

10 Additionally, Defendant argued the claims for paystub violations and waiting time
11 penalties had little or no value. *See e.g.*, *Naranjo v. Spectrum Security Services, Inc.*, 40 Cal.
12 App. 5th 444 (2019), *rev. granted Naranjo v. Spectrum Security Services, Inc.*, No. S258966,
13 2020 Cal. LEXIS 167 (Jan. 2, 2020) ((noting, for example, that the remedy for a meal period/rest
14 break violation is an extra hour of pay, but that does not transform the remedy into a wage for
15 triggering section 203 waiting time penalties; similar analysis applied in rejecting a derivative
16 claim for paystub penalties); *see also Maldonado v. Epsilon Plastics, Inc.*, 22 Cal. App. 5th 1308,
17 1336-1337 (2018) (wage statements that accurately report wages paid to employees do not violate
18 Labor Code § 226, even if it is later determined that employer did not properly pay all wages
19 due).

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

21 Labor Code § 2699.3 gives aggrieved employees the right to recover civil penalties for
22 specific Labor Code violations by way of a civil action. The PAGA provides a penalty amount of
23 one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation
24 and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent
25 violation. Labor Code § 2699(e)(2). However, if a civil penalty is provided in a specified amount
26 by the Labor Code section relating to the underlying alleged Labor Code violation, that amount
27 shall apply. (*Id.*) The PAGA also gives the Court discretion to award any lesser amount than the
28 maximum civil penalty. (*Id.* [“...a court may award a lesser amount than the maximum civil

1 penalty amount specified by this part if, based on the facts and circumstances of the particular
2 case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or
3 confiscatory.”]); *See, e.g., Lopez v. Friant & Assocs., LLC*, 15 Cal. App. 5th 773, 788 (2017), *rev.*
4 *denied* (2018), (recognizing court’s ability to reduce PAGA penalties). Courts have held that
5 situations similar to the current one (e.g. injuryless violations, technical errors, and substantial
6 compliance) should lead to reductions in penalties. *See Thurman v. Bayshore Transit*
7 *Management, Inc.*, 203 Cal. App. 4th 1112, 1134-1135 (2012) (holding that reduction was
8 justified when employer “attempted to comply with the law”); *Fleming v. Covdien, Inc.*, No. ED
9 CV10-01487 RGK (OPx), 2011 U.S. Dist. LEXIS 154590 at *8-9 (C.D. Cal. August 12, 2011)
10 (reducing PAGA penalties more than 80% – from \$2.8 million to \$500,000 – when “employees
11 suffered no injury” employers were “not aware” of the violation and “took prompt steps to correct
12 all violations once notified”).

13 Plaintiff discounted potential penalties under this claim given this authority, and for other
14 reasons. The PAGA claims are premised on the same underlying unpaid wages, meal and rest
15 break, wage statement, and waiting time claims, and thus subject to the same disputes and
16 defenses. There is also a dispute as to whether violations in later pay periods trigger the \$200
17 penalty under PAGA as a “subsequent violation.” (*Amaral v. Cintas Corp. No. 2*, 163 Cal. App.
18 4th 1157, 1203 (2008).) As such, there is a fair amount of risk associated with PAGA claims.
19 (Yeremian Decl., ¶¶ 48-51) The parties also considered that the purpose of PAGA is to “achieve
20 maximum compliance with state labor laws,” and that through the proposed settlement,
21 Defendant has agreed to ensure policies comply with California law. (*Iskanian v. CLS Transp.*
22 *Los Angeles, LLC* (2014) 59 Cal. 4th 348, 379.) This makes the settlement’s contemplated PAGA
23 payment of \$25,000 appropriate.

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

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

27 Given the risks outlined above, the issues in this case were complex and the risk for
28 Plaintiff and the Class Members associated with this litigation was high. (Yeremian Decl., ¶¶ 50-

1 53) A class trial would have required the retention of expensive expert witnesses, the accrual of
2 extensive litigation costs, and the parties would have had to spend a substantial amount of time.
3 (Yeremian Decl., ¶¶ 12, 56)

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

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

8 In class actions, decertification is always a possibility. There is always a risk that a trial of
9 this magnitude can become unmanageable. (*Id.*) Given cases like *Duran v. U.S. Bank Nat. Assn.*,
10 59 Cal. 4th 1, 34 (2014) that deal with the complexity of using statistical samples in class actions,
11 decertification is a real risk that Class Counsel must take into account.

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

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

19 There are approximately 141 total Class Members. Class Counsel estimated the following
20 maximum exposures: unpaid wage claim at \$75,724, meal period claim at \$937,620, rest period
21 claim at \$683,062, wage statement claim at \$340,000, waiting time penalties at \$202,022,
22 reimbursement claim at zero, and on PAGA, Plaintiff estimated the maximum exposure at
23 \$390,500. (*Id.*)

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

28 Once Class Counsel was able to determine the maximum potential damages, it was able to

1 determine a fair and reasonable settlement for the Class. (*Id.* at ¶¶ 55-58) Class Counsel analyzed
2 the likelihood of success on the merits. (*Id.*) It believes that the Class had a reasonable likelihood
3 of success on the core claims. (*Id.*) However, Defendant dispute this contention, denies all
4 wrongdoing in this matter and are confident they have strong legal and factual defenses to
5 Plaintiff' claims. Moreover, Class Counsel determined that the likelihood of success on the claims
6 for unpaid wages and waiting time penalties were not as strong, because various defenses
7 including issues not suitable for class treatment, no detriment to the class members over time, and
8 *de minimis* defenses. Defendant may have had the opportunity to establish that they had a good
9 faith belief that they were complying with law. (*Id.*) After taking into account the likelihood of
10 success on each claim and the challenges faced with certifying these claims, Class Counsel
11 determined that the settlement amount of \$750,000.00 was fair and reasonable.

12 Under the Settlement, each of the approximately 141 Class Members will receive on
13 average, assuming they worked throughout the class period, \$3,196 after expenses. (*Id.* at ¶ 54)
14 Plaintiff feels that this Settlement is fair, reasonable, and advantageous to the class. (*Id.*)

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

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

24 Class Counsel has devoted a considerable amount of time to the prosecution of this case,
25 including but not limited to, interviewing Plaintiff on repeated occasions; drafting pleadings;
26 conducting considerable discovery, and meeting and conferring with defense counsel about same;
27 reviewing and analyzing time records and various handbooks and policies, Plaintiff' personnel
28 file, and other documentation; researching California law; interviewing numerous class members

1 regarding their experiences; preparing for and attending mediation; and negotiating and finalizing
2 the Settlement Agreement and related documents. (Yeremian Decl., ¶¶ 11-14)

3 Among those matters considered during the course of settlement negotiations were the
4 strength of Plaintiff’ case versus the amounts offered in settlement; the risks, expenses, and length
5 of further litigation, including class certification and the appeals process; the present state of the
6 law as it applies to wage and hour class actions, particularly in light of *Brinker*; the present value
7 of a settlement versus the long wait necessitated by any potential judgment in class members’
8 favor; the burdens of proof necessary to establish liability against Defendant; and Defendant’s
9 defenses to the action. (Yeremian Decl., *passim*).

10 These factors each indicated that the interests of Class Members are best served by a
11 settlement of this action in the manner and upon the terms set forth in the Settlement Agreement.
12 The Settlement Agreement confers a substantial benefit on the class of up to \$750,000.00.
13 Moreover, the settlement awards for each Class Member will be tailored to their workweeks
14 during the class period. (*Id.* at ¶ 19) In addition Class Counsel secured prospective relief for the
15 class in that Defendant will ensure their policies comply with California law.

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

22 **VII. THE CLASS REPRESENTATIVE ENHANCEMENTS ARE FAIR AND** 23 **REASONABLE**

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

27 Plaintiff is entitled to reasonable service payments for her efforts and initiative in bringing
28 and helping to prosecute this class action. Plaintiff spent significant time better apprising herself

1 of her rights, deciding whether remedial action should be taken, how it should be taken, searching
2 for attorneys, and contacting Class Counsel, who spent many hours with Plaintiff discussing their
3 case and the law. (Yeremian Decl., ¶¶ 66-70) In the end, Plaintiff decided to vindicate not only
4 her own rights but also those of her co-workers by filing a class action lawsuit.

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

12 But Plaintiff did not allow her fear of the potential repercussions of being a class
13 representative deter her from acting for the benefit of Class Members. (*Id.*) To the contrary,
14 Plaintiff has been intimately involved in this case since its inception. (*Id.*) She has devoted a
15 substantial amount of time to helping Class Counsel effectively develop and prosecute this action
16 at every stage of the litigation. (*Id.*) Both before and after the filing of this lawsuit, Plaintiff
17 conferred with Class Counsel to discuss every aspect of this case; Plaintiff has provided Class
18 Counsel with information about Defendant and about the industry generally, reviewed documents,
19 identified witnesses, consulted Class Counsel throughout the litigation, participated in the
20 mediation process, monitored the progress of the litigation with Class Counsel, and reviewed and
21 signed the settlement agreement. (*Id.*)

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

27 In light of the foregoing, Class Counsel believes that the incentive award in the amount of
28 \$7,500.00 to the Class Representative is fair and reasonable. (*Id.*)

1 **VIII. THE PROPOSED CLASS NOTICE PROVIDES ADEQUATE NOTICE TO THE**
2 **CLASS MEMBERS.**

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

10 The Notice Packet meets constitutional standards because it provides all the information a
11 reasonable person would need to make a fully informed decision about the settlement. It will
12 notify all class members of the terms of the settlement, of its effect on their rights, of their options
13 as class members (i.e., participate, object, opt out, do nothing), and of the consequences of
14 exercising those options. (Yeremian Decl., ¶¶ 59-61) Moreover, the Notice Packet will
15 specifically direct any class members who have questions or concerns to contact the Settlement
16 Administrator, CPT Group, Inc., or Class Counsel. (*Id.*)

17 The standard for determining the adequacy of notice is whether the notice has "a
18 reasonable chance of reaching a substantial percentage of the class members." (*Cartt v. Superior*
19 *Court* (1975) 50 Cal.App.3d 960, 974.) The Judicial Council of California's Deskbook on the
20 Management of Complex Civil Litigation (Matthew Bender 2003), § 3.74 notes that individual
21 notice by mail is preferred when possible and dissemination of combined certification/settlement
22 notice is a common and accepted practice. (*In re Vitamin Cases* (2003) 107 Cal.App.4th 820,
23 828.)

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

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

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

5 Non-settling parties and third parties periodically may attempt to object to proposed class
6 action settlements, but the right of non-settling parties to object at the final settlement approval
7 hearing, let alone the preliminary approval hearing, is quite limited. As a general rule, only class
8 members have standing to object to a proposed settlement. “Beginning from the unassailable
9 premise that settlements are to be encouraged, it follows that to routinely allow non-class
10 members to inject their concerns via objection at the settlement stage would tend to frustrate this
11 goal.” (*Gould v. Alleco, Inc.* (4th Cir. 1998) 883 F.2d 281, 284.) Since an application is being
12 filed to obtain a good faith determination, no persons other than class members have standing to
13 object to the proposed settlement. (*In re School Asbestos Litigation* (3rd Cir. 1990) 921 F.2d
14 1330.)

15 **X. THE STIPULATED AWARD OF ATTORNEYS’ FEES AND COSTS IS**
16 **REASONABLE AND SHOULD BE APPROVED.**

17 Under the Settlement Agreement, subject to approval by this Court, Class Counsel will
18 seek an award of fees of no more than Three Hundred Thousand Dollars and Zero Cents
19 (\$300,000.00), approximately thirty-three percent of the Gross Settlement Amount, and not more
20 than Seventeen Thousand Dollars and Zero Cents (\$17,000.00) in costs. The requested fees are
21 fair compensation for a law firm involved in undertaking complex, risky, expensive, and time-
22 consuming litigation solely on a contingent basis. (Yeremian Decl. ¶¶ 63-65) Defendant will not
23 oppose Class Counsel’s fees and cost request.

24 California courts routinely look to the federal courts on class action approvals. The Ninth
25 Circuit has recognized that an appropriate method for awarding attorneys’ fees in class actions is
26 to award a percentage of the “common fund” created as a result of the settlement. (*Vincent v.*
27 *Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769.) The purpose of the common
28 fund/percentage approach is to “spread litigation costs proportionally among all the beneficiaries

1 so that the active beneficiary does not bear the entire burden alone.” (*Id.*) Accordingly, courts
2 have discretion to choose either the percentage-of-the-fund method or the lodestar method. (*In re*
3 *Wash. Pub.Power Supply Sys. Sec. Litigation* (9th Cir. 1994) 19 F.3d 1291, 1295-96.)

4 Several courts have, however, expressed frustration with the “lodestar” approach for
5 deciding fee awards, which usually involves wading through voluminous time records. Thus, the
6 percentage approach can be preferable to the lodestar in certain situations because: (1) it aligns
7 the interests of class counsel and absent class members; (2) it encourages efficient resolution of
8 the litigation by providing an incentive for early, yet reasonable, settlement; and (3) it reduces the
9 demands on judicial resources. (*In re Activision Securities Litigation*, (N.D. Cal. 1989) 723
10 F.Supp. 1373, 1378-79.) The Ninth Circuit has used the percentage of the common fund approach
11 to determine the award of attorneys’ fees. (*In re Pacific Enterprises Securities Litigation* (9th Cir.
12 1994) 47 F.3d 373, 378-79 (approving attorneys’ fee of 33 1/3% of settlement fund).)

13 Class Counsel’s application for attorneys’ fees in light of the facts and circumstances
14 surrounding this case is well within the range of reasonableness. Historically, courts have
15 awarded percentage fees in the range of 20% to 50% of the common fund, depending on the
16 circumstances of the case. (*Newberg*, at §14.03; *see also In re Activision Securities Litigation*,
17 723 F. Supp. at 1378.) *Newberg* further notes: “[A]chievement of a substantial recovery with
18 modest hours expended should not be penalized but should be rewarded for considerations of
19 time saved by superior services performed.” (*Id.* at §§ 14-10:14-11.)

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

1 In wage and hour class actions in particular, California trial courts have customarily
2 approved attorney's fees consistent with or greater than the percentage of the common fund
3 requested in this case. (*See Evans v. Coca-Cola*, Los Angeles County Super. Ct. Case No. BC
4 220525 (Hon. Richard C. Hubbell) (Dec. 2001) (approving an award of attorneys' fees of at least
5 33-1/3% of the settlement); *see also Estrada v. Dr. Pepper/Seven-Up*, Los Angeles County Super.
6 Ct. Case No. BC 262247 (May 2005) (Hon. Anthony J. Mohr); *Moreno v. Miller Brewing*, Los
7 Angeles County Super.Ct. Case No.BC 278170 (April 2004) (Hon. David M. Minning); *Josiah*
8 *Eaton v. Adolph Coors Company* (2003) Orange County Super. Ct. Case No. 01CC00140 (Hon.
9 Stephen J. Sundvold); *Kimbell v. Abercrombie & Fitch Stores, Inc.*, Los Angeles County
10 Super.Ct. Case No.BC 277359 (Sept. 2006) (Hon. Kenneth R. Freeman); *Daum v. Claim Jumper*
11 *Restaurants*, Orange County Super.Ct. Case No.02CC10201 (2006) (Hon. Ronald L. Bauer).)

12 Here, Class Counsel has borne the entire risk and costs of litigation and will not receive
13 any compensation until recovery is obtained. (*See Yeremian Decl.*, ¶¶ 65-67) The Court should
14 also consider the benefit obtained by Class Counsel on behalf of class members. Thus, the
15 requested award for Class Counsel is reasonable.

16 **XI. ACTION REQUESTED AS A PART OF THE MOTION FOR PRELIMINARY**
17 **APPROVAL**

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

- 20 1. Review and approve the Settlement Agreement;
- 21 2. Review and approve the Notice Packet, attached to the Settlement Agreement as
22 Exhibit A;
- 23 3. Consider and determine that the proposed class action settlement as set forth in the
24 Settlement Agreement preliminarily appears fair, reasonable, and adequate;
- 25 4. Enter an order conditionally certifying the action as a class action for settlement
26 purposes only and preliminarily approving the proposed class action settlement and the
27 Settlement Agreement;
- 28 5. Approve and appoint David Yeremian of David Yeremian & Associates, Inc. to serve

1 as Class Counsel for settlement purposes;

2 6. Approve and appoint CPT Group, Inc. as the Settlement Administrator to handle the
3 notice and claims procedures as set forth in the Settlement Agreement;

4 7. Approve the proposed settlement's allocation of funds to claims made under PAGA;

5 8. Order Defendant to disclose to CPT Group, Inc. the names, last-known addresses,
6 telephone numbers, dates of employment, and social security numbers of class members as set
7 forth in the Settlement Agreement;

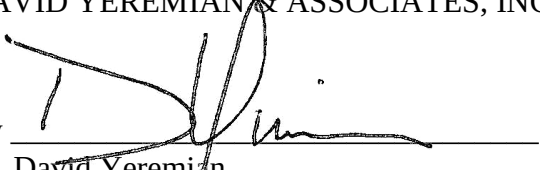
8 9. Order that CPT Group, Inc. mail the Notice Packet to class members; and

9 10. Set a date for the Final Approval Hearing.

10 Dated: March 10, 2023

Respectfully submitted,

11 DAVID YEREMIAN & ASSOCIATES, INC.

12
13 By 

David Yeremian

14 Attorneys for Plaintiff MARY JEAN SMITH
15 on behalf of herself and others similarly situated
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