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and Proposed Class Counsel

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

GLENN LAWRENCE GALLUCCIO, on
behalf of himself and all others similarly
situated,

Plaintiffs,

v.

PPG ARCHITECTURAL FINISHES, INC.
a Delaware Corporation, PPG
INDUSTRIES, INC. a Pennsylvania
Corporation, and DOES 1 through 50
inclusive,

Defendants.

BRYAN CIOFFI, on behalf of himself and
all “aggrieved employees” pursuant to Labor
Code § 2698 et seq.,

Plaintiffs,

v.

PPG ARCHITECTURAL FINISHES, INC.,
a Delaware corporation, and DOES 1
through 10, inclusive.

Defendants.

Case No.: 20STCV36799
Related Case No. 20VECV01052

*Assigned for All Purposes to Hon. William F.
Highberger, Dept. SS-10*

CLASS ACTION

**NOTICE OF UNOPPOSED MOTION AND
UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

DATE: April 18, 2023
TIME: 1:30 p.m.
DEPT.: SS-10

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5 Attorneys for Plaintiff Glenn Lawrence Galluccio
and Proposed Class Counsel

PLEASE TAKE NOTICE THAT on April 18, 2023 at 1:30 p.m., or as soon thereafter as the matter may be heard, in Department SS-10 of the above-entitled Court, located at 312 N. Spring Street, Los Angeles, California 90012, Plaintiffs Glenn Lawrence Galluccio and Bryan Cioffi will and hereby do move unopposed for an Order (1) preliminarily approving the proposed class action settlement in the above-captioned cases, (2) provisionally certifying the settlement class, (3) provisionally approving the appointment of Plaintiffs Glenn Lawrence Galluccio and Bryan Cioffi as Class Representatives, (4) provisionally approving the appointment of Jake D. Finkel, Esq. of the Finkel Firm and Daniel F. Gaines, Esq., Alex P. Katofsky, Esq., and Evan S. Gaines, Esq. of Gaines & Gaines, APLC as Class Counsel as Class Counsel, (5) provisionally approving the appointment of CPT Group, Inc. as settlement administrator, (6) approving and directing distribution of notice to the settlement class, and (7) setting a final fairness and approval hearing.

This unopposed Motion is made pursuant to Rule 3.769 of the *California Rules of Court*, which provides for court approval of the settlement of a purported class action and allows the Court to preliminarily certify the class for settlement purposes only.

The basis for this unopposed Motion is that the proposed settlement is fair, adequate, and reasonable and in the best interests of the settlement class as a whole, and that the procedures proposed by the Parties are adequate to ensure the opportunity of class members to participate in, opt out of, or object to the settlement.

This Motion will be based on the Memorandum of Points and Authorities set forth herein, the Class Action and PAGA Settlement Agreement (the “Settlement”), the Declarations of Daniel F. Gaines, Jake D. Finkel, Glenn Lawrence Galluccio and Bryan Cioffi, such evidence or oral argument as may be presented at the hearing, and on the complete record and file herein.

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1 DATED: March 8, 2023

GAINES & GAINES,
A Professional Law Corporation

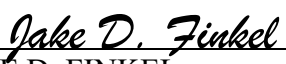
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DANIEL F. GAINES

ALEX P. KATOFISKY

Attorneys for Plaintiff Bryan Cioffi and Proposed
Class Counsel

7 LAW OFFICES OF JAKE D. FINKEL

8
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10 By: 

JAKE D. FINKEL

Attorneys for Plaintiff Glenn Lawrence Galluccio and
Proposed Class Counsel

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4886-9694-9074.1 / 034801-2230

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 **A. Case Summary and Procedural History**

4 Plaintiffs Glenn Lawrence Galluccio (“Galluccio”) and Bryan Cioffi (“Cioffi”) (together,
5 “Plaintiffs”) and Defendants PPG Architectural Finishes, Inc. (“PAF”) and PPG Industries, Inc.
6 (together, “Defendants”) (collectively, the “Parties”) have reached a resolution of this class action
7 and hereby submit their settlement agreement to the Court for its preliminary approval.

8 On September 22, 2020, Plaintiff Cioffi filed a representative PAGA action against
9 Defendant PAF for alleged wage and hour violations. On December 14, 2020, Plaintiff Cioffi filed
10 a First Amended Complaint adding class action causes of action. The First Amended Complaint is
11 the operative complaint in the Cioffi matter (the “Cioffi Operative Complaint”). Settlement ¶ 2.1.

12 On September 24, 2020, Plaintiff Galluccio filed a class and representative PAGA action
13 against Defendants for various wage and hour violations. The Complaint is the operative complaint
14 in the Galluccio matter (the “Galluccio Operative Complaint”). Settlement ¶ 2.2.

15 Defendants deny the allegations in the Galluccio Operative Complaint and the Cioffi
16 Operative Complaint, deny any failure to comply with the laws identified in in the Operative
17 Complaint and deny any and all liability for the causes of action alleged. Settlement ¶ 2.3.

18 Pursuant to Labor Code section 2699.3, subd.(a), Plaintiffs gave timely written notice to
19 Defendants and the LWDA by sending the PAGA Notice. Settlement ¶ 2.4.

20 On June 16, 2022, the Parties participated in an all-day mediation presided over by Lisa
21 Klerman, and had further settlement discussions after the mediation which led to their Agreement
22 to settle the Action via a mediator’s proposal. Settlement ¶ 2.5.

23 Prior to mediation, Plaintiffs obtained, through informal discovery, documents and
24 information, including copies of applicable wage and hour policies, Class-related statistics, and
25 time and pay records for a sample set of Class Members. Plaintiffs’ investigation was sufficient to
26 satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48
27 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-
28 130 (“Dunk/Kullar”). Settlement ¶ 2.6.

1 The Court has not granted class certification. The Parties stipulate and agree to the class
2 certification of this Action for purposes of this Settlement only. Should the Settlement not become
3 final and effective as herein provided, class certification shall immediately be set aside, and the
4 Settlement Class immediately decertified. The Parties' willingness to stipulate to class certification
5 as part of the Settlement shall have no bearing on, and shall not be admissible in or considered in
6 connection with, the issue of whether a class should be certified in a non-settlement context in this
7 Action and shall have no bearing on, and shall not be admissible or considered in connection with,
8 the issue of whether a class should be certified in any other lawsuit. Settlement ¶ 2.7.

9 The Parties, Class Counsel and Defense Counsel represent that they are not aware of any
10 other pending matter or action asserting claims that will be extinguished or affected by the
11 Settlement. Settlement ¶ 2.8.

12 The Parties thereafter jointly prepared the Settlement. Gaines Decl. at ¶ 13; Exhibit C. A
13 redline comparing the Settlement to the Los Angeles Superior Court's standard form agreement is
14 attached to the Gaines Declaration as Exhibit D.

15 **II. LEGAL ANALYSIS**

16 **A. The Proposed Settlement Terms**

17 The Parties have agreed upon a settlement class: all current and former non-exempt
18 employees who have worked in California for PPG Architectural Finishes, Inc. at any time during
19 the Class Period September 22, 2016 to November 15, 2022. Settlement at ¶ 1.5. Defendants
20 represent that from September 24, 2016 to April 24, 2022, there are approximately 396 Class
21 Members who collectively worked no more than a total of 53,814 Workweeks, and 257 Aggrieved
22 Employees who worked no more than a total of 19,726 PAGA Pay Periods. Settlement at ¶ 4.1.

23 The Parties stipulate to the conditional certification of the Settlement Class for settlement
24 purposes only. Settlement at ¶ 12.1.

25 The Settlement Agreement provides that Defendants shall pay the total, non-reversionary
26 fund in the sum of \$935,000 (the "Gross Settlement Amount"), which will be used to pay Individual
27 Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees,
28 Class Counsel Expenses, Class Representative Service Payments and the Administrator's

1 Expenses. Settlement at ¶ 1.24. It expressly excludes Employer Taxes, which shall be paid by
2 Defendants separate and apart from the Gross Settlement Amount. Settlement at ¶ 3.1.

3 Class Members need not submit a claim form to receive their share of the Settlement. Class
4 Members who timely exclude themselves from the Settlement will not be part of the final
5 Settlement Class and not bound by the releases herein. Settlement at ¶ 7.5.

6 The Settlement Agreement further provides that Plaintiffs' counsel may request an award
7 of attorneys' fees not to exceed \$311,666.66 (i.e., one-third of the Gross Settlement Amount) and
8 seek reimbursement of litigation costs necessarily incurred in pursuing this Action, not to exceed
9 \$30,000. Settlement at ¶ 3.2.3. It also provides that Plaintiffs will seek, and Defendants will not
10 oppose, a service payment to each named Plaintiff Glenn Lawrence Galluccio ("Galluccio") and
11 Bryan Cioffi in the amount of \$5,000 (for a total of \$10,000).¹ Settlement at ¶¶ 3.2.1, 3.2.2.

12 The Parties have agreed that CPT Group, Inc., an experienced and competent settlement
13 administration company, will administer the settlement. CPT Group, Inc.'s credentials are attached
14 as Exhibit E to the Gaines Declaration. Up to \$20,000 has been allocated to compensate CPT
15 Group, Inc. for its work related to the administration.

16 **B. Settlement of Claims Pursuant to Labor Code § 2699 et. seq. (PAGA)**

17 Pursuant to PAGA, the Parties have agreed that \$50,000 of the Gross Settlement Amount
18 will be allocated to settle the claims brought under Labor Code § 2699 *et. seq.* Pursuant to Labor
19 Code § 2699(i), "civil penalties recovered by aggrieved employees shall be distributed as follows:
20 75 percent to the Labor and Workforce Development Agency...and 25 percent to the aggrieved
21 employees." As such, 75 percent of the apportioned PAGA settlement amount – or \$37,500 – shall
22 be payable to the Labor and Workforce Development Agency. The remaining 25 percent, or
23 \$12,500, will be allocated to the Individual PAGA Payments. Settlement at ¶ 3.2.6.

24 As required by Labor Code § 2699(l)(2), concurrent with Plaintiffs' submission of the
25 Settlement Agreement to the Court, they are transmitting it, together with this Motion, to the
26 LWDA. Gaines Decl. at ¶ 38.

27 ¹ Galluccio and Cioffi both asserted individual termination related claims, which have been
28 memorialized through separate agreements with Defendants that encompass a general release of all
claims in exchange for additional consideration. Gaines Decl. at ¶ 31.

1 **C. Two-Step Approval Process**

2 Any settlement of class litigation must be reviewed and approved by the Court. Cal. R. Ct.
3 3.769; Fed. R. Civ. P. 23(e).² This is done in two steps: (1) an early (preliminary) review by the
4 trial court, and (2) a final review after notice has been distributed to the Class Members informing
5 them of the terms of the settlement and allowing them to exclude themselves from, participate in
6 and/or object to the settlement. The Manual for Complex Litigation (Third) § 30.41 states:

7 Approval of class action settlements involves a two-step process.
8 First, counsel submit the proposed terms of settlement and the court
9 makes a preliminary fairness evaluation. If the preliminary
10 evaluation of the proposed settlement does not disclose grounds to
11 doubt its fairness or other obvious deficiencies, such as unduly
12 preferential treatment of class representatives or of segments of the
 class, or excessive compensation for attorneys, and appears to fall
 within the range of possible approval, the court should direct that
 notice ... be given to the class members of a formal fairness hearing,
 at which arguments and evidence may be presented in support of and
 in opposition to the settlement.

13 Thus, the preliminary approval by the trial court is simply a conditional finding that the
14 settlement appears to be within the range of acceptable settlements. *See Wershba v. Apple*
15 *Computer* (2001) 91 Cal.App.4th 224, 234-35. “The strength of the findings made by a judge at a
16 preliminary hearing or conference concerning a tentative settlement proposal may vary. The court
17 may find that the settlement proposal contains some merit, is within the range of reasonableness
18 required for a settlement offer, or is presumptively valid subject only to any objections that may be
19 raised at a final hearing.” 4 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions*, § 11.26
20 (4th ed. 2002).

21 The procedures for the Parties’ submission of a proposed settlement for preliminary
22 approval by the Court also are discussed in 4 *Newberg on Class Actions*:

23 When the parties to an action reach a monetary settlement, they will
24 usually prepare and execute a joint stipulation of settlement, which
25 is submitted to the court for preliminary approval. The stipulation
26 should set forth the essential terms of the agreement, including but
 not limited to, the amount of settlement, form of payment, manner of
 determining the effective date of settlement and any recapture clause.

27 ² The California Supreme Court has authorized California's trial courts to use Federal Rule 23 and
28 cases applying it for guidance in considering class issues. *See Vasquez v. Superior Court* (1971)
4 Cal.3d 800, 821; *Green v. Obledo* (1981) 29 Cal.3d 126, 145-146. Where appropriate, therefore,
Plaintiffs cite Federal Rule 23 and federal case law in addition to California law.

1 *Id.* at § 11.24.

2 Here, the Parties have reached such an agreement and have submitted the Settlement
3 Agreement herewith which fully sets forth all terms of the agreement reached among the Parties.
4 *See* Gaines Decl., Exhibit C; Gaines Decl. ¶ 13.

5 **D. Procedures for Settlement Before Class Certification.**

6 Pursuant to California Rules of Court, Rule 3.769(d), parties also may, at the preliminary
7 approval stage, request that the court provisionally approve certification of the class – conditioned
8 upon final approval of the settlement. “[P]re-certification settlements are routinely approved if
9 found to be fair and reasonable.” *Wershba, supra*, 91 Cal. App. 4th at 240. *Accord Dunk, supra*,
10 48 Cal. App. 4th at 1803 (although the settlement was reached before any “adversary certification,”
11 the court was satisfied that it was “fair, adequate and reasonable.”). *See also In re Baldwin-United*
12 *Corp.* (S.D.N.Y. 1984) 105 F.R.D. 475, 478³ (“many courts have employed this practice in the
13 name of judicial efficiency in order to facilitate apparently beneficial settlement proposals.”)

14 The strength of the findings made by a judge at a preliminary hearing
15 or conference concerning a tentative settlement proposal . . . may be
16 set out in conditional orders granting tentative approval to the various
17 items submitted to the court. Three basic rulings are often
conditionally entered at this preliminary hearing. These conditional
rulings may approve a temporary settlement class, the proposed
settlement, and the class counsel’s application for fees and expenses.

18 4 *Newberg on Class Actions*, at §11.26.

19 1. **The Settlement Class Should Be Certified for Settlement Purposes**

20 It is well established that trial courts should use a lower standard for determining the
21 propriety of certifying a settlement class, as opposed to a litigation class. *Dunk, supra*, 48 Cal.
22 App. 4th at 1807, n. 19. The reason for this is that no trial is anticipated in a settlement class, so
23 the case management issues inherent in determining if the class should be certified need not be
24 confronted. *Amchem Products, Inc. v. Windsor* (1987) 521 U.S. 591, 620. The proposed settlement
25 class meets all requirements for certification, as discussed below.

26
27
28 ³ In determining the fairness and reasonableness of a proposed settlement, California courts may
look to federal cases for guidance. *See Wershba*, 91 Cal. App. 4th at 239-40.

1 a. **The Settlement Class is Ascertainable**

2 The proposed settlement class is ascertainable. The class definition, the size of the class
3 and the means for identifying the members of the class determine whether the class is ascertainable.
4 *Reyes v. Board of Supervisors* (1987) 196 Cal. App. 3d 1263, 1274. In this case, the Class Members
5 are identifiable from Defendants' records. Further, the settlement class is sufficiently numerous to
6 warrant certification. According to Defendants' records, the Class is comprised of approximately
7 396 individuals. Gaines Decl. ¶ 33.

8 b. **Questions of Law or Fact Common to Members of the Settlement**
9 **Class Predominate**

10 The Class Members' claims all stem from a common source: all Class Members allege that
11 Defendants violated the same Labor Code and Wage Order provisions in connection with their
12 work for Defendant PAF. The same Labor Code and Wage Order violations are alleged on behalf
13 of all persons encompassed in the settlement class, including claims for failure to pay wages
14 (including minimum wages, regular wages, overtime wages, failure to pay overtime at the regular
15 rate, double time wages, reporting time wages, vacation wages & shift differentials), failure to
16 provide compliant meal periods and associated premium pay, failure to provide compliant rest
17 periods and associated premium pay, failure to provide compliant wage statements, failure to timely
18 pay wages upon termination of employment, failure to timely pay wages during employment,
19 failure to maintain requisite payroll records, and unreimbursed business expenses. All arising out
20 of the Labor Code violations referenced in the Complaints. All members of the Settlement Class
21 seek the same legal remedies under the same state laws, all related to their employment under
22 uniform policies and practices. Under these circumstances, the commonality requirement is
23 satisfied for purposes of certifying the settlement class for settlement. Gaines Decl. ¶ 34.

24 c. **The Proposed Class Representatives' Claims are Typical of the**
25 **Class Members' Claims**

26 A class representative's claims are typical when they arise from the same event or course
27 of conduct that gives rise to the claims of the class, and are based on the same legal theory.
28 *Classen v. Weller* (1983) 145 Cal. App. 3d 27, 46-47. In this case, the named Plaintiffs and

1 proposed Class Representatives Glenn Lawrence Galluccio and Bryan Cioffi are former non-
2 exempt employees of Defendant PAF whom, Plaintiffs allege, were not paid all wages (including
3 minimum wages, regular wages, overtime wages, failure to pay overtime at the regular rate, double
4 time wages, reporting time wages, vacation wages & shift differentials), were not provided
5 compliant meal periods and associated premium pay, were not provided compliant rest periods and
6 associated premium pay, were not provided compliant wage statements, were not timely paid wages
7 upon termination of employment, were not timely paid wages during employment, and were not
8 reimbursed business expenses incurred. Plaintiffs allege the same claims as those that the members
9 of the Settlement Class would reasonably be expected to bring based on the course of conduct
10 alleged herein. Gaines Decl. ¶ 35.

11 Plaintiffs have also demonstrated that they will aggressively and competently assert the
12 interests of the proposed Settlement Class; they have taken active roles in this litigation and have
13 no apparent conflicts with other class members. Plaintiffs participated actively in the litigation,
14 including participation in a full day mediation. Gaines Decl. ¶ 36. Furthermore, Plaintiffs have
15 retained competent counsel, experienced in litigating class action claims in the employment
16 context. See Gaines Decl. ¶¶ 2-5.

17 **E. The Settlement Is Fair and Reasonable and Not the Result of Fraud or**
18 **Collusion**

19 Courts presume the absence of fraud or collusion in the negotiation of a settlement unless
20 evidence to the contrary is offered. *Priddy v. Edelman* (6th Cir. 1989) 883 F.2d 438, 447; *Mars*
21 *Steel Corp. v. Continental Illinois Nat'l Bank & Trust Co.* (7th Cir. 1987) 834 F.2d 677, 682; *In re*
22 *Chicken Antitrust Litig.* (N.D. Ga. 1980) 560 F. Supp. 957, 962. Courts do not substitute their
23 judgment for that of the proponents, particularly where, as here, settlement has been reached with
24 the participation of experienced counsel familiar with the litigation. *Nat'l Rural Telecomms.*
25 *Coop. v. DIRECTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 528; *Hammon v. Barry* (D.D.C. 1990)
26 752 F. Supp. 1087, 1093; *Steinberg v. Carey* (S.D.N.Y. 1979) 470 F. Supp. 471, 478; *In re Armored*
27 *Car Antitrust Litig.* (N.D. Ga. 1979) 472 F. Supp. 1357, 1368; *Sommers v. Abraham Lincoln*
28 *Federal Sav. & Loan Ass'n* (E.D. Pa. 1978) 79 F.R.D. 571, 580.

1 While the recommendations of counsel proposing the settlement are not conclusive, the
2 Court can properly take them into account, particularly where, as here, such counsel have been
3 involved in informal discovery and negotiations for some period of time, appear to be competent,
4 have experience with this type of litigation, and have exchanged substantial evidence with the
5 opposing party. *See Newberg on Class Actions, supra*, § 11.47; *In re Paine Webber Ltd. P'ships*
6 *Litig.* (S.D.N.Y. 1997) 171 F.R.D. 104, 125 (“[s]o long as the integrity of the arm’s-length
7 negotiation process is preserved, however, a strong initial presumption of fairness attaches to the
8 proposed settlement . . . [citations] and ‘great weight’ is accorded to the recommendations of
9 counsel, who are most closely acquainted with the facts of the underlying litigation”); *see* Gaines
10 Decl. ¶¶ 2-5, 18-31.

11 Here, the Parties’ counsel have a great deal of experience in class action litigation and
12 specialize in employment wage and hour matters. Moreover, counsel for both Parties conducted
13 an extensive investigation of the factual allegations involved in this case. The Parties have engaged
14 in a broad exchange of documents, statistics, records and other information. Each side has apprised
15 the other, informally and at a formal mediation, of their respective factual contentions, legal
16 theories and defenses, resulting in extensive arms-length negotiations taking place among the
17 Parties. *See* Gaines Decl. ¶ 2-5, 18-31.

18 1. **The Settlement Falls Within The “Ballpark” of Reasonableness**

19 The Court must make an “independent assessment of the reasonableness of the terms of the
20 settlement” prior to granting preliminary and final approval. *Clark v. American Residential*
21 *Services LLC* (2009) 175 Cal.App.4th 785, 799; *Kullar v. Foot Locker Retail, Inc.* (2008) 168
22 Cal.App.4th 116, 127-28, 130, 133. To do so requires the Parties to submit “basic information
23 about the nature and magnitude of the claims in question and the basis for concluding that the
24 consideration being paid for the release of those claims represents a reasonable compromise.”
25 *Clark, supra*, 175 Cal.App.4th at 800. However, the Court should *not* “attempt to decide the merits
26 of the case or to substitute its evaluation of the most appropriate settlement for that of the attorneys.”
27 *Kullar, supra*, 168 Cal.App.4th at 133.

28 \\\

1 Plaintiffs contend that Defendants failed to permit or authorize Plaintiffs and Class
2 Members to take timely 30-minute meal periods for shifts greater than 5 hours in length, in violation
3 of Labor Code §§ 226.7, 510, 512, 558, and 1194 and applicable IWC Wage Order. Labor Code §
4 512 provides that employers (like Defendants) may not employ an employee for a work period of
5 more than 5 hours without providing a 30-minute meal period starting no later than the end of the
6 5th hour. Plaintiffs and Class Members allege that they were routinely unable to take a proper meal
7 break when they worked shifts in excess of 5 hours in duration and a second meal break when they
8 worked shifts in excess of 10 hours in duration. When they were able to take a meal period, they
9 were oftentimes late, cut short or they would be required to work through them. Plaintiffs also
10 argue that their time records were altered, such that meal periods were marked as taken when
11 employees worked through them, thus implicating violations of Labor Code §§ 510, 1194, and
12 1194.2 for failing to pay all minimum and overtime wages due. Likewise, Plaintiff Galluccio
13 further contends that he was hardly able to take his meal periods. Gaines Decl. ¶ 19.

14 Based on an analysis of a wage and time data provided by Defendants through informal
15 discovery, Plaintiffs believe their claims are prevalent among Defendants' workforce. Plaintiffs
16 have ascertained a facial meal period violation rate of 70.7%, with 86.9% of all pay periods during
17 the PAGA Period exhibiting some form of meal period violation. Many of the violations are for
18 late breaks and the failure to properly compute proper premiums based on the regular rate of pay,
19 rather than the base hourly rate. Plaintiffs calculate Defendant's class wide meal period liability –
20 net of premium payments paid – to exceed \$3,025,000 as well as \$1,713,500 in related PAGA civil
21 penalties. Gaines Decl. ¶ 20.

22 Plaintiffs also allege that Defendants failed to provide Plaintiffs and Class Members with
23 legally compliant rest periods, or premium wages of one hour's pay in lieu thereof, as required by
24 Labor Code §§ 226.7 and 558 and applicable IWC Wage Order. Plaintiffs and Class Members were
25 allegedly too busy to take their rest periods or would be required to work through them. When they
26 were able to take a rest period, Defendants' policies impermissibly require that Plaintiffs and Class
27 Members remain on the company premises, purportedly violating the Supreme Court's mandate in
28 *Augustus v. ABM Security Services, Inc.* (2016) 5 Cal. 5th 257, 269 (holding that the rest period

1 requirement “obligates employers to permit and authorizes employees to take off-duty rest periods.
2 That is, during rest periods employers must relieve employees of all duties and relinquish control
3 over how employees spend their time.” An employer may not place any limitations on where
4 employees may go or not go during their rest periods).. Plaintiffs’ estimate a 25% violation rate
5 for rest periods, which yields classwide rest period liability at approximately \$1,331,000, as well
6 as up to \$1,970,400 in related PAGA civil penalties. Gaines Decl. ¶ 21.

7 Defendants allegedly failed to issue Plaintiffs and Class Members accurately itemized wage
8 statements. As detailed above, Plaintiffs and Class Members contend that they were not paid all
9 minimum overtime, and premium meal and rest period, wages due. As such, the wage statements
10 provided by Defendant would fail to accurately state all gross wages earned, in violation of Labor
11 Code §§ 226(a)(1) and 226.3, total hours worked, in violation of Labor Code §§ 226(a)(2) and
12 226.3, net wages earned, in violation of Labor Code §§ 226(a)(5) and 226.3, and all applicable
13 hourly rates in effect during the pay period and the corresponding number of hours worked at each
14 hourly rate, in violation of Labor Code §§ 226(a)(9) and 226.3. Plaintiffs calculate the class wide
15 statutory damage liability of this claim at \$1,028,000 (based on \$50 for the initial violation and
16 \$100 per subsequent violation) in addition to \$1,972,600 in PAGA civil penalties. Gaines Decl. ¶
17 22.

18 Defendants allegedly failed to pay Plaintiffs and Class Members all wages due upon
19 separation of employment, in violation of Labor Code §§ 201-203. As Defendant failed to pay
20 Plaintiffs and Class Members all wages due during the course of employment, as discussed above,
21 these wages remained due and owing upon separation of employment. Plaintiffs calculate the class
22 wide liability of this claim at up to \$1,007,046 in addition to \$216,400 in PAGA civil penalties.
23 Gaines Decl. ¶ 23.

24 A discount on the maximum value of Class members’ claims was required (and warranted)
25 to resolve the matter at this stage of the litigation. Gaines Decl. ¶ 24.

26 First and most important, arbitration agreements and a collective bargaining agreement may
27 defeat the class litigation here altogether. The state of the law is in flux as to whether PAGA claims
28 may also be precluded on a non-individual basis as well. This enormous risk – which, if litigated

1 unsuccessfully, could result in few, if any, Class Members obtaining any recovery – strongly
2 supports the compromised settlement amount. Gaines Decl. ¶ 25.

3 Class certification is a substantial risk in any class action case. Here, while Plaintiffs
4 maintain that the requirements of class certification are met, Defendants proffer various arguments
5 why class treatment is not appropriate here, including but not limited to that individualized inquires
6 among class members predominate over common ones. If Defendants were to defeat Plaintiffs’
7 class certification motion, there would be no class wide relief whatsoever, and most class members
8 would likely not file individual claims. Gaines Decl. ¶ 26.

9 Plaintiffs also faced the risk of a loss on the merits on their claims. Plaintiffs’ wage
10 statement claims, for example, are derivative of their underlying wage claims. It is possible that
11 the Court would find that Defendants substantially complied with the requirements of Labor Code
12 section 226(a) such that no penalties would be awarded. It is also possible that the Court would
13 agree with Defendants’ position that their policies and practices complied with the requirements of
14 California law. In such a case, the value of most of Plaintiffs’ claims would be zero. Gaines Decl.
15 ¶ 27.

16 Defendants strongly contend that their policies and practices do not violate any laws. They
17 contend that they provided all required wages in a timely manner. Gaines Decl. ¶ 28.

18 When the costs and risks of non-certification and loss on the merits are considered,
19 Plaintiffs’ counsel are of the opinion that the settlement reached is clearly a favorable one. Gaines
20 Decl. ¶¶ 19-29.

21 The settlement for each participating Class Member is fair, reasonable and adequate, given
22 the inherent risk of litigation, the risk relative to class certification and the costs of pursuing such
23 litigation. The settlement shall finally resolve all claims of the Class Members as alleged in the
24 Action. Gaines Decl. ¶ 30.

25 2. **Despite the Asserted Fairness of the Settlement Terms, Class Members**
26 **May Request Exclusion From, Or Object To, The Settlement**

27 Despite the asserted fairness of the settlement terms, any potential Class Member who
28 objects to the terms of the settlement set forth in the Settlement Agreement has the right to submit

1 a request for exclusion (*i.e.*, opt out) from the settlement, pursuant to which the class member would
2 retain any claim he or she may have against Defendants.

3 Moreover, Class Members who do not opt out may attend the final fairness and approval
4 hearing for the purpose of objecting to one or more of the settlement terms set forth in the
5 Settlement Agreement.

6 **III. CONCLUSION**

7 Based on the foregoing, as part of its preliminary approval of the settlement, the Parties
8 request that the Court:

- 9 1. Review the proposed Settlement Agreement setting forth the settlement terms.
- 10 2. Consider whether the proposed settlement preliminarily appears to be fair,
11 reasonable and adequate, and whether the proposed settlement class preliminarily appear to meet
12 the applicable certification criteria.
- 13 3. Appoint Plaintiffs Glenn Lawrence Galluccio and Bryan Cioffi as the Class
14 Representatives.
- 15 4. Appoint Jake D. Finkel, Esq. of the Finkel Firm and Daniel F. Gaines, Esq., Alex P.
16 Katofsky, Esq., and Evan S. Gaines, Esq. of Gaines & Gaines, APLC as Class Counsel.
- 17 5. Approve CPT Group, Inc. as Settlement Administrator with regard to handling the
18 notice procedure as set forth more particularly in the Settlement Agreement.
- 19 6. Enter an Order provisionally approving the proposed settlement class on a non-
20 mandatory basis, approve forms to be distributed to the settlement class, direct notice to be given
21 to the settlement class, and set the following schedule of settlement proceedings:

22 \\\

23 \\\

24 \\\

25 \\\

26 \\\

27 \\\

28 \\\

<u>EVENT</u>	<u>TIMING</u>
Last day for Defendants to provide the Administrator with information with respect to each Settlement Class Member, including the Class Member's name, last-known mailing address, Social Security number, and number of Class Period Workweeks and PAGA Pay Periods ("Class Data")	15 calendar days after entry of Court's Order granting preliminary approval of Settlement
Last day for Administrator to mail Notice to Class Members	14 calendar days after Administrator's receipt of the Class List
Last day for Class Members to submit a written request for exclusion to the Administrator	45 calendar days after the initial mailing of the Class Notice to Class Members
Last day for Class Members to submit a written Objection to the Administrator	45 calendar days after the initial mailing of the Class Notice to Class Members
Last day for Class Counsel to file and serve moving papers in support of final settlement approval and request for attorneys' fees and costs	No later than 16 Court days before the final approval hearing
Last day for Class Counsel to file with the Court and serve declaration by Administrator specifying the due diligence undertaken with regard to the mailing of the Notice	No later than 16 Court days before the final approval hearing
Final settlement approval hearing	_____, at _____. The Parties suggest the final approval hearing be held approximately 120 days after the preliminary approval order is entered.

1 DATED: March 8, 2023

GAINES & GAINES,
A Professional Law Corporation

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3
4 By: 

DANIEL F. GAINES

ALEX P. KATOFISKY

Attorneys for Plaintiff Bryan Cioffi and Proposed Class
Counsel

7 LAW OFFICES OF JAKE D. FINKEL

8
9
10 By: *Jake D. Finkel*

JAKE D. FINKEL

Attorneys for Plaintiff Glenn Lawrence Galluccio and
Proposed Class Counsel