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herself and others similarly situated  
8  
9

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
11 **FOR THE COUNTY OF LOS ANGELES**  
12

13 BERENICE DE LA TORRE, on behalf of  
herself and others similarly situated,

14  
15 Plaintiff,

16 v.

17 AMERICAN INTERNATIONAL  
INDUSTRIES, a business entity of unknown  
18 form; and DOES 1 through 100, inclusive,

19 Defendants.  
20  
21  
22

Case No.: 20STCV29551

Assigned for all purposes to:  
Hon. David S. Cunningham  
Dept. 11

**CLASS ACTION**

**PLAINTIFF'S NOTICE OF MOTION  
AND MOTION FOR PRELIMINARY  
APPROVAL OF CLASS AND  
REPRESENTATIVE ACTION  
SETTLEMENT; MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT THEREOF**

[Declaration of Anthony J. Orshansky and  
[Proposed] Order submitted concurrently  
herewith]

**Preliminary Approval Hearing**

Date: TBD  
Time: TBD  
Courtroom: 11

Complaint Filed: August 4, 2020  
First Amended Complaint Filed: November  
24, 2020  
Trial Date: None set

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:**

2 **PLEASE TAKE NOTICE** that, pursuant to Rule 3.769 of the California Rules of Court, on  
3 \_\_\_\_\_ at \_\_\_\_\_ a.m./p.m. in Department 11 of the above-entitled Court, located at  
4 312 N. Spring Street, Los Angeles, California 90012, plaintiff Berenice de la Torre (“Plaintiff” or  
5 “Class Representative”) individually and on behalf of all others similarly situated, will and hereby  
6 does move this Court for:

7 1. Preliminary approval of the proposed Stipulation of Class and Representative Action  
8 Settlement;

9 2. Pursuant to Section 382 of the California Code of Civil Procedure, provisional  
10 certification of the following Class defined as follows:

11 **Class Members** - All current and former hourly-paid or non-exempt employees who  
12 worked for Defendant, and/or its predecessor or merged entities, in the State of  
California at any time during the Class Period (the “Class” or “Class Members”).<sup>1</sup>

13 3. Preliminary appointment of Plaintiff Berenice de la Torre as Class Representative;

14 4. Preliminary appointment of CounselOne, P.C. as Class Counsel;

15 5. The scheduling of a hearing to consider whether the settlement should be finally  
16 approved and award amounts to the Class Representative as an Enhancement Payment,  
17 Administration Costs to the Settlement Administrator, the Private Attorneys General Act payment  
18 to the California Labor and Workforce Development Agency, as well as Attorneys’ Fees and Costs  
19 to Class Counsel;

20 6. Appointment of CPT Group, Inc. as the third-party Settlement Administrator; and

21 7. Approval of the proposed Notice of Pendency of Class and Representative Action  
22 Settlement and entry of the proposed Order instructing the notice to be disseminated to the Class as  
23 provided in the settlement.

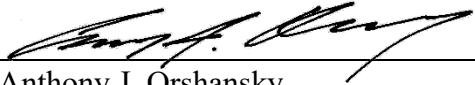
24 This motion is based on this notice of motion, the attached memorandum of points and  
25 authorities, the declaration of Anthony J. Orshansky filed concurrently herewith, and the exhibits  
26 attached thereto, the pleadings and other papers filed in this action, and on any further oral or

27 \_\_\_\_\_  
28 <sup>1</sup> “Settlement Class” or “Settlement Class Members” means all Class Members who do not opt out  
of this settlement. (Settlement Agreement ¶ 31.)

1 documentary evidence or argument presented at the time of hearing. Finally, given the multiplicity  
2 of issues addressed in this Motion, Plaintiff respectfully submits there is good cause to exceed the  
3 20-page limit set forth in California Rules of Court, Rule 3.764(c)(2), and respectfully requests that  
4 the Court consider the attached Memorandum of Points and Authorities.

5  
6 Dated: November 3, 2021

Respectfully submitted,  
COUNSELONE, PC

8  
9 By:   
10 Anthony J. Orshansky  
11 Jennifer L. Connor  
12 Justin Kachadoorian  
13 Attorneys for Plaintiff  
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Berenice de la Torre (“Plaintiff” or “Class Representative”), individually and on  
4 behalf of all others similarly situated,<sup>2</sup> seeks preliminary approval of the Stipulation of Class and  
5 Representative Action Settlement (“Settlement Agreement”) entered with defendant American  
6 International Industries (“Defendant”). The Settlement Agreement between Plaintiff and Defendant  
7 (together, the “Parties”), if approved, will resolve specific claims of the Settlement Class Members  
8 and PAGA Group Members in exchange for Defendant’s agreement to pay a maximum amount of  
9 ***Two Million Four Hundred Thousand Dollars (\$2,400,000) into a non-reversionary common***  
10 ***settlement fund.***<sup>3</sup> There are approximately 592 Class Members employed as hourly, non-exempt  
11 employees during the Class Period.

12 By way of this class and representative lawsuit, Plaintiff pursued her rights against  
13 Defendant for abusing its non-exempt and hourly-paid employees by violating wage-and-hour laws  
14 under the California Labor Code and Business and Professions Code. Plaintiff’s lawsuit thus sought  
15 to recover unpaid wages and overtime, premiums for improper meal and rest breaks, reimbursement  
16 of business expenses, restitution, liquidated damages, penalties for improper wage statements,  
17 waiting time penalties, civil penalties pursuant to the Private Attorneys General Act (“PAGA”),  
18 injunctive and other equitable relief, prejudgment interest, and attorneys’ fees and costs.

19 After engaging in substantial independent investigation and after mediation with Jeffrey  
20 Krivis, Esq. of First Mediation Corporation, and further settlement negotiations, the Parties agreed  
21 to settle the Settlement Class Members’ and PAGA Group Members’ claims alleged in this litigation  
22 for the non-reversionary sum of Two Million Four Hundred Thousand Dollars (\$2,400,000) (“Gross  
23

24 \_\_\_\_\_  
25 <sup>2</sup> “Class Members” are defined as all current and former hourly-paid or non-exempt employees who  
26 worked for Defendant in the state of California at any time between February 1, 2017 through  
27 October 15, 2021. (Settlement Agreement ¶¶ 4, 7.) “PAGA Group Members” are defined as all Class  
28 Members who worked for Defendant any time during the PAGA Period. The PAGA Period is  
defined as the period beginning on July 24, 2019 and ending on October 15, 2021. (Settlement  
Agreement ¶ 23.)

<sup>3</sup> “Settlement Class” or “Settlement Class Members” means all Class Members who do not opt out  
of this settlement. (Settlement Agreement ¶ 31.)

1 Settlement Amount”).<sup>4</sup> A true and correct copy of the fully executed Settlement Agreement is  
2 attached as **Exhibit 1** to Declaration of Anthony J. Orshansky (“Orshansky Decl.”), filed  
3 concurrently herewith. After deductions for Attorneys’ Fees and Costs to Class Counsel,  
4 Enhancement Payment to the Class Representatives, Administration Costs to the Settlement  
5 Administrator, and the PAGA Payment, the remaining amount (the “Net Settlement Amount”) of  
6 approximately \$1,347,500 will be distributed to the Settlement Class Members. (Settlement  
7 Agreement ¶¶ 20, 46(e).) The entire Net Settlement Amount will be paid out to Settlement Class  
8 Members. Settlement Class Members shall automatically receive payments without the need to  
9 submit a claim form, and the PAGA Group Members shall receive PAGA payments irrespective of  
10 whether or not they opt-out. (Settlement Agreement ¶¶ 44, 50.)

11 The settlement is fair, reasonable, and adequate, and in the best interests of Class Members.  
12 Consequently, Plaintiff, with the consent and approval of Defendant, hereby moves for an order: (1)  
13 conditionally certifying the Class for settlement purposes; (2) granting preliminary approval of the  
14 Settlement Agreement; (3) approving the Notice of Pendency of Class and Representative Action  
15 Settlement; and (4) setting a hearing for final approval of the settlement.

## 16 **II. THE EXTENT OF INVESTIGATION AND STAGE OF PROCEEDINGS**

17 On July 24, 2020, Class Counsel provided pre-filing written notice to the LWDA and by  
18 certified mail to Defendant of the above-identified allegations on behalf of Plaintiff and similarly  
19 situated aggrieved employees in accord with the PAGA, California Labor Code § 2698, *et seq.*  
20 (Orshansky Decl. ¶ 26.)

21 On August 4, 2020, Plaintiff filed a Class and Representative Action Complaint asserting  
22 putative class action wage and hour claims, along with representative action claims under the  
23 PAGA.<sup>5</sup> (Orshansky Decl. ¶ 27.)

---

24 <sup>4</sup> Payment of Defendant’s share of employer payroll taxes for payments on the Individual Settlement  
25 Shares allocated as wages shall be separately funded (*i.e.*, outside of the settlement fund) by  
26 Defendant. (Settlement Agreement ¶ 46.)

27 <sup>5</sup> Plaintiff alleged the following claims: (1) Violation of California Labor Code §§ 1194, 1194.2,  
28 §§ 1197, 1197.1, and 1199 (Failure to Pay Minimum Wages); (2) Violation of California Labor Code  
§§ 510, 1198, and 1199 (Failure to Pay All Overtime Wages); (3) Violation of California Labor  
Code §§ 226.7 and 512(a) (Meal Period Liability); (4) Violation of California Labor Code § 226.7  
(Rest Break Liability); (5) Violation of California Labor Code §§ 2800 and 2802 (Failure to

On November 24, 2020, Plaintiff filed her First Amended Complaint that perfected her PAGA claim to allege exhaustion of her administrative agency obligations after awaiting the requisite sixty-five (65) days' notice period. (Orshansky Decl. ¶ 28.) Defendant filed its Answer pleading general denial of wrongdoing and asserting sixteen affirmative defenses. (*Ibid.*)

Defendant denies Plaintiff's allegations of wrongdoing. Defendant does not believe that any liability to Plaintiff or other Class Members exists, or that Plaintiff or Class Members are entitled to any recovery. (Settlement Agreement ¶¶ 41, 43; Orshansky Decl. ¶ 30.) In settling, Defendant does not admit liability with respect to the alleged claims made by Plaintiff and makes no admissions regarding any facts or law related to the lawsuit. (Settlement Agreement ¶¶ 41, 43.)

#### **A. Discovery and Investigation**

Here, the Parties engaged in extensive discovery—exchanging information, documents and reviewing and analyzing extensive data made available by Defendant—which enabled the Parties to thoroughly evaluate Plaintiff's claims, the claims of the putative Class Members, and the aggrieved employees' PAGA claim, along with Defendant's affirmative defenses, and the likely outcomes, risks, and expense of pursuing litigation.

Prior to initiating the lawsuit, counsel for Plaintiff, CounselOne, P.C., independently and thoroughly investigated the claims and considered the facts and circumstances underlying the pertinent issues and applicable law. (Orshansky Decl. ¶ 25.) This required thorough discussions and interviews with Plaintiff and other Class Members as well as research into the various legal issues involved in the case. (*Ibid.*) After conducting their initial investigation, Class Counsel determined that the claims were well suited for class action adjudication owing to what appeared to be a common course of conduct affecting a similarly situated group of employees. (*Ibid.*)

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Reimburse Business Expenses); (6) Violation of California Labor Code § 226(a) (Failure to Provide Accurate Itemized Wage Statements); (7) Violation of California Labor Code §§ 201-204 (Failure to Pay All Wages Owed Timely and Upon Separation of Employment); (8) Violation of California Labor Code Section 1174(d) (Failure to Maintain Accurate Itemized Wage Statements); (9) Violation of California Business and Professions Code Section 17200, *et seq.* (Unfair Business Practices); and (10) Penalties Pursuant to Labor Code Section 2699 (Private Attorneys General Act). (Orshansky Decl. ¶ 27.)

1 Class Counsel conducted substantial discovery, including propounding three sets of Special  
2 Interrogatories, one set of Requests for Production of Documents, one set of Form Interrogatories,  
3 and noticing the depositions of the person most knowledgeable designees for Defendant. (*See*  
4 Settlement Agreement ¶ 38; Orshansky Decl. ¶ 31.) Defendant produced information and  
5 documentation concerning the alleged violations, such as, Defendant's written policies concerning  
6 those claims, including Defendant's employee handbooks, policies and procedures regarding the  
7 payment of wages, the provision of meal and rest breaks, time keeping policies, such as recording  
8 hours, issuance of wage statements, and providing all wages at separation, as well as composite data  
9 regarding the number of Class Members and the mix of current versus former employees, total  
10 number of pay periods, total number of workweeks, and the average hourly rate in effect. (*See*  
11 Settlement Agreement ¶ 38; Orshansky Decl. ¶ 31.) Defendant also produced time and pay records  
12 for Class Members. (*Ibid.*) Counsel met and conferred at length regarding the information and  
13 documents produced. (*Ibid.*) Class Counsel interviewed Class Members, analyzed the documents  
14 and data produced, and spent significant time consulting with an expert, to determine Defendant's  
15 degree of liability and potential amounts due in damages. (Orshansky Decl. ¶ 32.)

#### 16 **B. Mediation and Settlement**

17 Thereafter, the Parties participated in a full-day mediation, where they debated and discussed  
18 their respective positions. (Orshansky Decl. ¶ 33.) The Parties participated in a lengthy mediation  
19 session with Jeffrey Krivis, Esq. of First Mediation Corporation. Mr. Krivis is experienced in  
20 mediating complex general litigation, labor and employment claims, class actions, and PAGA cases,  
21 among others. (*Ibid.*) During the mediation, the Parties exchanged further information and discussed  
22 all aspects of the case, including the risks and delays of litigation and the risk to both Parties for  
23 proceeding with a motion for class certification, liability under the claims asserted, and the  
24 implications of a PAGA representative action. (Orshansky Decl. ¶ 34.) These were contentious  
25 issues because of the factual and legal complexity of the case. (*Ibid.*) The case did not settle at  
26 mediation. (Orshansky Decl. ¶ 35.) However, the Parties continued to negotiate with the assistance  
27 of Mr. Krivis, and after several months, accepted the mediator's proposal. (*See* Settlement  
28 Agreement ¶ 39; Orshansky Decl. ¶ 35.) Thereafter, the Parties engaged in extensive negotiations

1 to draft the long-form Settlement Agreement, along with the Notice of Pendency of Class and  
2 Representative Action Settlement. (Orshansky Decl. ¶ 35.)

3 From Class Counsel’s review of the facts, strengths, and weaknesses of the case, the risks  
4 and delays posed by further litigation, and Class Counsel’s own prior litigation experience, Class  
5 Counsel believe that the recovery being made available to Class Members is fair, reasonable, and  
6 adequate taking into consideration the amounts received in other wage and hour class and  
7 representative actions, the risks inherent in litigation of this genre, and the reasonable tailoring of  
8 each Class Members’ claim to the settlement award he or she will receive, as well as in comparison  
9 to the settlement reached in in *Garcia v. American International Industries*, Los Angeles County  
10 Superior Court Case No. BC560886 (hereafter the “*Garcia Case*”), discussed *infra*. (Orshansky  
11 Decl. ¶ 38.) Class Counsel believe that the settlement serves the best interests of Class Members.  
12 (*Ibid.*) Further, and based on the settlement negotiations, which were hard fought and conducted in  
13 good faith and at arm’s length between attorneys with substantial experience litigating class actions,  
14 representative actions, and wage and hour cases, the settlement was the product of a non-collusive  
15 settlement process in which the Parties were forced to make significant compromises in the interest  
16 of reaching a full and complete settlement of the action. (Orshansky Decl. ¶ 36.) The Parties have  
17 concluded that it is in their best interests to compromise, settle, and accept the terms of the  
18 Settlement Agreement. (*See* Settlement Agreement ¶ 40; Orshansky Decl. ¶ 36.)

### 19 **III. SUMMARY OF BASIC SETTLEMENT TERMS**

20 Under the terms of the Settlement Agreement, Defendant has agreed to pay a ***non-***  
21 ***reversionary*** maximum amount of ***Two Million Four Hundred Thousand Dollars (\$2,400,000)***  
22 into a common fund to settle the specific wage and hour claims of the Settlement Class Members  
23 and PAGA Group Members; this amount is called the “Gross Settlement Amount.” (Settlement  
24 Agreement ¶¶ 16, 46.) This Gross Settlement Amount shall be inclusive of all settlement payments  
25 to Settlement Class Members, the Enhancement Payment to the Class Representative, the  
26 Administration Costs to the Settlement Administrator, the Attorneys’ Fees and Costs to Class  
27 Counsel, and the Private Attorneys General Act (“PAGA”) Payment, including payment to PAGA  
28 Group Members and to the California Labor and Workforce Development Agency (“LWDA”) for

1 civil penalties pursuant to statute. (*Ibid.*) The only monies excluded from the Gross Settlement  
2 Amount is that amount to be paid by Defendant as the employer's share of payroll taxes with respect  
3 to the wage portion of the settlement payments to Settlement Class Members, which shall be paid  
4 separately. (*Ibid.*)

5 The amount available for distribution to Settlement Class Members is determined by  
6 deducting the following from the Gross Settlement Amount:

- 7 • Up to \$800,000 – which is 33.33% of the Gross Settlement Amount – and up to \$25,000  
8 in litigation costs to Class Counsel (the “Attorneys’ Fees and Costs”);
- 9 • Up to \$7,500 to the Class Representative as an Enhancement Payment – as a service award  
10 and in exchange for a general release of claims;
- 11 • Up to \$200,000 allocated as a PAGA Payment – of which 75% of the PAGA Payment is  
12 allocated for payment to the LWDA for civil penalties pursuant to statute and 25% of the  
13 PAGA Payment is to be distributed to PAGA Group Members; and
- 14 • Up to \$20,000 to the Settlement Administrator for Administration Costs to notify Class  
15 Members and administer the settlement.

16 The amount remaining after the foregoing deductions, approximately \$1,347,500, is called  
17 the “Net Settlement Amount.” (Settlement Agreement ¶¶ 20, 46(e).) The entire Net Settlement  
18 Amount will be paid out to Settlement Class Members. Settlement Class Members shall  
19 automatically receive payments without the need to submit a claim form, and the PAGA Group  
20 Members shall receive PAGA payments irrespective of whether or not they opt-out. (Settlement  
21 Agreement ¶¶ 44, 50.)

22 **A. The Settlement Provides for Reasonable Monetary Payments**

23 Although exact recovery amounts depend on each Settlement Class Members’ relative  
24 number of qualifying workweeks, for estimation purposes only, if all of the approximately 592 Class  
25 Members participate in the settlement, then the average Individual Settlement Share would be an  
26 estimated \$2,276.18 per Class Member. (Orshansky Decl. ¶ 11.) Of course, any Class Member who  
27 prefers to preserve his or her right to pursue relief or seek an alternative recovery may opt out. (*Ibid.*;  
28 Settlement Agreement ¶ 53.)

1 The Net Settlement Amount will be the amount that is available for distribution to Settlement  
2 Class Members on a *pro rata* basis, based on workweeks during the Class Period. (Settlement  
3 Agreement ¶¶ 17, 46(e).) Each Individual Settlement Share shall be calculated as follows: The Net  
4 Settlement Amount shall be divided by the total of all Workweeks of Settlement Class Members  
5 during the Class Period in order to yield the “Workweek Value.” (*Ibid.*) The Individual Settlement  
6 Share to each Settlement Class Member shall be calculated by multiplying his or her individual  
7 Workweeks by the Workweek Value. (*Ibid.*)

8 In addition, each PAGA Group Member will receive a proportional share of the 25% of the  
9 PAGA Payment based on his or her pay periods during the PAGA Period. (Settlement Agreement  
10 ¶¶ 19, 46(d).) Specifically, 25% of the PAGA Payment (or \$50,000) shall be divided by the total of  
11 all pay periods worked by PAGA Group Members during the PAGA Period in order to establish the  
12 value of each pay period. (*Ibid.*) The Individual PAGA Payment to be made to each PAGA Group  
13 Member shall be calculated by multiplying the value of a pay period by the number of pay periods  
14 worked by the PAGA Group Member during the PAGA Period, and irrespective of whether he or  
15 she is a Settlement Class Member. (*Ibid.*)

16 After reduction for the employee’s share of taxes on the wage portion,<sup>6</sup> the net payment to  
17 each Settlement Class Member/PAGA Group Member will be the sum of his or her Individual  
18 Settlement Share plus, if applicable, the Individual PAGA Payment (collectively, “Individual  
19 Settlement Payment”). (Settlement Agreement ¶ 46(e); Orshansky Decl. ¶ 10.) As a result of the  
20 distribution formulas, the consideration paid to each Settlement Class Member/PAGA Group  
21 Member is tailored to the impact of Defendant’s alleged violations as well to the claims he or she is  
22 releasing. (*Ibid.*) Further, a Settlement Class Member may submit a written letter to the Settlement  
23 Administrator disputing the number of workweeks credited if he or she believes that count is  
24  
25

26 \_\_\_\_\_  
27 <sup>6</sup> The Parties agreed to allocate twenty five percent (25%) of each Individual Settlement Share to  
28 wages and seventy-five percent (75%) of each Individual Settlement Share to interest, penalties, and  
other non-wage damages. Individual PAGA Payments will be allocated as one hundred percent  
(100%) penalties. (Settlement Agreement ¶ 48(a).)

1 inaccurate. (Settlement Agreement ¶ 51.) Finally, any Class Member who prefers to preserve his or  
2 her right to pursue relief or seek an alternative recovery may opt out.<sup>7</sup> (Settlement Agreement ¶ 53.)

3 **B. Class Representative Enhancement Payment, Attorneys’ Fees, and Expenses**

4 As part of the settlement, Plaintiff will apply for an enhancement payment at the time of  
5 seeking final approval in the amount of \$7,500 for services to the Settlement Class and a general  
6 release of all claims against Defendant. (Settlement Agreement ¶ 46(c); Orshansky Decl. ¶ 12.)  
7 “[I]ncentive awards are fairly typical in class action cases . . . and are intended to compensate class  
8 representatives for work done on behalf of the class [and] to make up for financial or reputational  
9 risk undertaken in bringing the action.” (*In re Cellphone Fee Termination Cases* (2010) 186  
10 Cal.App.4th 1380, 1393-1394.) Plaintiff’s requested enhancement payment is intended to recognize  
11 the significant benefits conferred upon the Settlement Class and be proportional to the time and  
12 effort that Plaintiff expended on behalf of the Class including, providing factual information and  
13 documents to Class Counsel, discussing the claims and theories at issue in the case with Class  
14 Counsel, identifying potential witnesses and reviewing documents, reviewing the Settlement  
15 Agreement, as well as the significant risks Plaintiff undertook by agreeing to serve as a named  
16 plaintiff, and the fact that Plaintiff agreed to a general release of all claims subject to a waiver of  
17 Civil Code § 1542. (See Settlement Agreement ¶¶ 12, 26, 38, 45, 46(c); Orshansky Decl. ¶ 13.)

18 Class Counsel will apply for an attorneys’ fees award of no more than one-third (33.33%)  
19 of the Gross Settlement Amount, and reimbursement of litigation costs in an amount up to \$25,000.  
20 (Settlement Agreement ¶¶ 2, 46(a); Orshansky Decl. ¶ 14.) Plaintiff submits that the requested fee  
21 is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a  
22 purely contingent fee basis. (*Ibid.*) Class Counsel have incurred substantial attorneys’ fees  
23 conducting pre-filing investigation, analyzing Plaintiff’s claims, conducting legal research and  
24 analysis, conducting discovery, meeting and conferring with defense counsel, interviewing putative  
25 class members, analyzing documents produced by Defendant, including corporate policies and  
26 employee time and payroll records, consulting with an expert, building damages models, preparing

27  
28 <sup>7</sup> Again, if approved, PAGA Group Members will receive their Individual PAGA Payment  
irrespective of whether they opt-out of the Class. (Settlement Agreement ¶ 46(d).)

1 for and attending mediation, routine case updates and consultations with the client, and negotiating  
2 and preparing the long-form Settlement Agreement, Notice of Pendency of Class and Representative  
3 Action Settlement, and this motion for preliminary approval and supporting documents. (*Ibid.*) Class  
4 Counsel will also expend future attorney time in attending the hearing on this Motion, overseeing  
5 the notice and administration process, drafting the Final Approval Motion, and supporting  
6 documents, and attending the Final Approval hearing, among other tasks, such as addressing  
7 questions from Class Members. (Orshansky Decl. ¶ 15.)

8 Both California and federal courts have recognized that an appropriate method for awarding  
9 attorneys' fees in class actions is to award a percentage of the "common fund" created as a result of  
10 the settlement. (*See Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 506 ["the  
11 percentage of fund method survives in California class action cases..."]; *Wershba v. Apple*  
12 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 254 [recognizing both the "percentage of recovery" and  
13 "lodestar/multiplier" methods].) Historically, courts have awarded percentage fees in the range of  
14 20% to 50%, depending on the circumstances of the case. (*See* 4 Newberg on Class Actions § 14.6  
15 (4th Ed. 2013) ["No general rule can be articulated on what is a reasonable percentage of a common  
16 fund. Usually, 50% of the fund is the upper limit on a reasonable fee award from a common fund in  
17 order to assure that the fees do not consume a disproportionate part of the recovery obtained for the  
18 class, although somewhat larger percentages are not unprecedented."].)

19 Class Counsel submit that their request for attorneys' fees is reasonable when viewed as an  
20 overall percentage of the settlement amount in light of the substantial risks and significant work  
21 undertaken, the excellent results obtained for the Class Members, and the efficiency with which the  
22 Parties have conducted the litigation. (Orshansky Decl. ¶ 16.) Assuming that the Court grants  
23 preliminary approval, Class Counsel will seek an award of attorneys' fees and litigation costs at the  
24 time of seeking final approval of this settlement.

#### 25 **IV. CERTIFICATION FOR SETTLEMENT PURPOSES IS APPROPRIATE**

26 Express judicial policy favors maintaining wage and hour actions as class actions. (*Prince*  
27 *v. CLS Transp., Inc.* (2004) 118 Cal.App.4th 1320, 1328; *Richard v. Dart Industries, Inc.* (1981) 29  
28 Cal.3d 462 [finding that California public policy "encourages the use of the class action device"].)

1 Any doubt as to the appropriateness of class treatment should be resolved in favor of class  
2 certification, subject to later modification if necessary. (*Id.* at pp. 473-475.) The decision to certify  
3 a class is purely a procedural one and should be based on the allegations in the operative complaint,  
4 and not in the perceived factual or legal merit of the class claims. (*Linder v. Thrifty Oil Co.* (2000)  
5 23 Cal.4th 429, 439-441.)

6 To certify a settlement class, the trial court must find the two primary requirements for  
7 maintaining a class action: (1) there must be an ascertainable class and (2) there must be a well-  
8 defined community of interest in the questions of law and fact involving the parties to be  
9 represented. (*Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 805-809; *Daar v. Yellow Cab*  
10 *Company* (1967) 67 Cal.2d 695, 704; *Daniels v. Centennial Capital Group* (1993) 16 Cal.App.4th  
11 467, 471; *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341.) These criteria  
12 are met here for the reasons set forth below.

13 **A. There Is an Ascertainable and Sufficiently Numerous Class**

14 Whether a class is ascertainable is determined by examining the class definition, the size of  
15 the class and the means available for identifying class members. (*See Vasquez, supra*, 4 Cal.3d at  
16 pp. 821-822; *Reyes v. Board of Supervisors of San Diego County* (1987) 196 Cal.App.3d 1263,  
17 1271; *Miller v. Woods* (1983) 148 Cal.App.3d 862, 873.) Class members are “ascertainable” where  
18 they may be readily identified without unreasonable expense or time.

19 Here, the class definition is “precise, objective and presently ascertainable.” (*Sevidal v.*  
20 *Target Corp.* (2010) 189 Cal.App.4th 905, 919.) Class Members are comprised of all current and  
21 former hourly-paid or non-exempt employees who worked for Defendant in the State of California  
22 at any time during the Class Period. (Settlement Agreement ¶ 4.) Further, the Class Period is defined  
23 as the period between February 1, 2017 through October 15, 2021. (Settlement Agreement ¶ 7.)  
24 Thus, all Class Members are of a specific type (hourly-paid or non-exempt employees) employed  
25 within California. Defendant is required to and does maintain employment records of such persons,  
26 including contact information and Social Security numbers. (Orshansky Decl. ¶ 96.) Documents and  
27 information exchanged reflect a class of approximately 592 current and former hourly non-exempt  
28 employees working in California during the Class Period. (*Ibid.*) Thus, the proposed Class satisfies

1 the ascertainability and numerosity requirements. (*See e.g., Collins v. Rocha* (1972) 7 Cal.3d 232  
2 [finding a class of 44 farm workers sufficiently numerous].)

3 **B. There Is a Well-Defined Community of Interest**

4 A community of interest is established by the preponderance of common issues of law and  
5 fact. (*See Vasquez, supra*, 4 Cal.3d at p. 811.) The requirement of a community of interest:

6 [D]oes not depend upon an identical recovery, and the fact that each member of the  
7 class must prove his separate claim to a portion of any recovery by the class is only  
8 one factor to be considered...The mere fact that separate transactions are involved  
9 does not of itself preclude a finding of the requisite community of interest so long as  
10 every 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 plaintiffs' favor whatever  
questions were common to the class.

11 (*Id.* at p. 809.) litigation is predicated on uniform company policies and systemic top-down business  
12 practices revolving principally around Defendant's timekeeping and pay practices – *e.g.*, off-the-  
13 clock work attributed to understaffing, unreasonable workloads, and/or inequitable rounding, failure  
14 to pay meal and rest break premiums, as well as business expense reimbursements, or lack thereof.  
15 These allegations have given rise to the following claims: failure to pay minimum and overtime  
16 wages; meal period liability; rest break liability; failure to reimburse for business expenses; and  
17 derivative claims arising therefrom. (Orshansky Decl. ¶ 97.)

18 Because Plaintiff has alleged a single top-down compensation scheme where “the relevant  
19 proof[does] not vary among class members” and “clearly present[] a common question fundamental  
20 to all class members.” (*See In Re NASDAQ Market-Makers Antitrust Litigation* (S.D.N.Y. 1997)  
21 172 F.R.D. 119, 123 [citing *In Re NASDAQ Market-Makers Antitrust Litigation* (S.D.N.Y. 1997)  
22 169 F.R.D. 493, 518].) California courts show “no hesitancy” in inferring class-wide causation,  
23 class-wide injury, and class-wide damages when a common course of action has been shown. (*B.W.I.*  
24 *Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1350 [granting class  
25 certification in a manufacturing defect case when a common course of action had been proven].)  
26 This inference “*eliminates* the need for each class member to prove individually the consequences  
27 of the defendants' actions to him or her.” (*Id.* at p. 1351 [emphasis added].) Thus, the outcome of  
28 this matter depends upon questions that are common to members of the Class. (Orshansky Decl. ¶

98.) These types of claims are commonly held to be proper for class certification. (*Ibid.*; *see, e.g., Bluford v. Safeway, Inc.* (2013) 216 Cal.App.4th 864, 871 [reversing denial of rest period claim]; *Benton v. Telecom Network Specialists, Inc.* (2013) 220 Cal.App.4th 701, 726 [certifying meal period claim].)

**C. The Claims of the Named Plaintiff Are Typical**

The typicality requirement is satisfied where class representatives have claims that are typical of those of the rest of the class. (*B.W.I Custom Kitchen, supra*, 191 Cal.App.3d at p. 1347.)

Here, Plaintiff's claims are typical of those held by the members of the Class. (Orshansky Decl. ¶ 99.) Like all other Class Members, Plaintiff was a non-exempt hourly employee working for Defendant in California during the Class Period. (*Ibid.*) As alleged, Plaintiff was not compensated for all hours she worked, not provided with legally compliant meal and rest breaks, and required to incur business expenses necessary to perform her job duties without reimbursement. (*Ibid.*) Plaintiff was therefore impacted by the same challenged policies that allegedly injured the Class as a whole and subject to the same defenses forwarded by Defendant as to the Class, thus her claims are therefore typical. (*Ibid.*)

**D. Named Plaintiff and Class Counsel Will Fairly and Adequately Represent the Settlement Class**

The adequacy of representation requirement examines conflicts of interest between named parties and the class(es) they seek to represent. (*Capital People First v. Department of Developmental Services* (2007) 155 Cal.App.4th 676, 697.) Here, Plaintiff and Class Counsel will adequately represent the Class as there are no conflicts between the named Plaintiff and the Class she seeks to renewpresent. (Orshansky Decl. ¶ 100; *McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450 [finding adequacy satisfied where there was no indication that plaintiff's counsel were not qualified and the named plaintiff had no interests antagonistic to those of the proposed class].) Class Counsel also have extensive experience in wage and hour litigation. (Orshansky Decl. ¶¶ 90-94, 100.)

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1           **E.       A Class Action is Superior to a Multiplicity of Litigation**

2           In making its class certification decision, the court must determine that a class action would  
3 be superior to alternative means for the fair and efficient adjudication of the litigation. By  
4 consolidating hundreds of individual actions into a single proceeding, this Court’s use of the class  
5 action device enables it to manage this litigation in a manner that serves the efficiency interests of  
6 the litigants and the judicial system. (Orshansky Decl. ¶ 101.) Absent class treatment, the only  
7 alternative would be to force these employees to file individual actions. (*Sav-On Drug Stores v.*  
8 *Super. Ct.* (2004) 34 Cal.4th 319, 339, fn. 10 [stating “[t]he relevant comparison lies between the  
9 costs and benefits of adjudicating Plaintiff’s claims in a class action and the costs and benefits of  
10 proceeding by numerous separate actions – not between the complexity of a class suit that must  
11 accommodate some individualized inquires and the absence of any remedial proceeding  
12 whatsoever.”].) Finally, in the context of settlement, the superiority concerns are essentially non-  
13 existent.

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

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

19           A two-step process is followed when considering class settlements...If the proposed  
20 settlement appears to be the product of serious, informed, non-collusive negotiations,  
21 has no obvious deficiencies, does not improperly grant preferential treatment to class  
22 representatives 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.

23           *See* Federal Manual for Complex Litigation (Second) (1985) (“MCL 2d”) at § 30.44. The  
24 preliminary approval of the class action settlement by the trial court is simply a conditional finding  
25 that the settlement appears to be within the range of acceptable settlements. (*See, e.g.,* Newberg, §  
26 11.25; *North County Contractor’s Assn., Inc. v. Touchstone Ins. Services* (1994) 27 Cal.App.4th  
27 1085, 1094-1095; MCL 2d § 30.44 [“Preliminary approval is appropriate if the agreement is ‘fair,  
28 reasonable, and adequate under the circumstances’”].) Thus, the preliminary approval of the class

1 action settlement by the Court is simply a conditional finding that the settlement appears to be within  
2 the range of acceptable settlements. A review of the preliminary approval criteria demonstrates a  
3 substantial basis for granting the preliminary approval requested by this Motion and proceeding to  
4 a full settlement hearing.

5 **VI. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE**

6 As a matter of public policy, courts both encourage the use of the class action device and  
7 favor settlement over continued litigation. (*See, e.g., Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th  
8 429, 434 [“Courts have long acknowledged the importance of class actions as a means to prevent a  
9 failure of justice in our judicial system.”]; *State v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 471;  
10 *Class Plaintiffs v. City of Seattle* (1992) 955 F.2d 1268, 1276 [“[S]trong judicial policy...favors  
11 settlements, particularly where complex class action litigation is concerned.”]; Newberg, § 11.41.)  
12 Settlement is favored, and settlement agreements are realistically assessed. (*Stamburgh v. Superior*  
13 *Court* (1976) 62 Cal.App.3d 231, 236; *Priddy v. Edelman* (6th Cir. 1989) 883 F.2d 438, 447 [“The  
14 fact that plaintiff might have received more if the case had been fully litigated is no reason not to  
15 approve the settlement.”].)

16 To summarize, the settlement here is fair because it offers payment to each Settlement Class  
17 Member/PAGA Group Member for releasing his or her claims, extinguishes the risk of litigation,  
18 and provides a fair and adequate distribution of the settlement proceeds whereby the funds are  
19 allocated proportionally based on the respective number of workweeks/pay periods that he or she  
20 worked during the relevant period. (Orshansky Decl., *passim*.) Furthermore, in addition to the  
21 foregoing, when compared to the settlement reached in the *Garcia* Case, a case previously litigated  
22 against the same Defendant on similar claims, and after which Defendant’s policies were tightened  
23 and improved, further illustrates the proposed settlement here is fair, reasonable, and adequate  
24 (indeed, a much more favorable outcome to the Class). (Orshansky Decl. ¶ 38.) For all of the  
25 foregoing reasons, the proposed settlement should be preliminarily approved.

26 **A. The Settlement Is Entitled to a Presumption of Fairness**

27 Moreover, courts presume the absence of fraud or collusion in the negotiation of a settlement  
28 unless evidence to the contrary is offered. In short, there is a presumption that the negotiations were

1 conducted in good faith. (*See* Newberg, § 11.51; *Rodriguez v. West Publ. Corp.* (C.D. Cal. August  
2 10, 2007) 2007 U.S. Dist. LEXIS 74767, \*24-25; *In re Chicken Antitrust Litigation* (N.D. Ga. 1980)  
3 560 F.Supp. 957, 962; *Priddy v. Edelman* (6th Cir. 1989) 883 F.2d 438, 447; *Mars Steel Corp. v.*  
4 *Continental Illinois National Bank and Trust Co.* (7th Cir. 1987) 834 F.2d 677, 681.) Courts do not  
5 substitute their judgment for that of the proponents, particularly when settlement has been reached  
6 by experienced counsel familiar with the litigation. (*Rodriguez, supra*, 2007 U.S. Dist. LEXIS 74767  
7 at \*24.) As detailed at length in the accompanying Declaration of Anthony J. Orshansky, the  
8 settlement is the result of extensive settlement negotiations between the Parties, conducted at arm's  
9 length, and informed by substantial factual and legal investigations. (Orshansky Decl., *passim*.)

10 **B. Negotiations Were at Arm's-Length before a Respected Mediator**

11 The Parties engaged in a mediation session with Jeffrey Krivis, Esq. of First Mediation  
12 Corporation (Orshansky Decl. ¶ 33.) Mr. Krivis is experienced in resolving complex general  
13 litigation, labor and employment claims, class actions, and PAGA cases, among others. (*Ibid.*) As  
14 noted above, the case did not settle at mediation, but the Parties continued to negotiate with Mr.  
15 Krivis' assistance and later accepted his proposal, after which the Parties continued to engage in  
16 extensive negotiations to draft the Settlement Agreement and the Notice of Pendency of Class and  
17 Representative Action Settlement. (Orshansky Decl. ¶ 35.) The settlement negotiations were hard  
18 fought and conducted in good faith and at arm's length between attorneys with substantial  
19 experience litigating class actions, representative actions, and wage and hour cases. (Orshansky  
20 Decl. ¶ 36.) The settlement was the product of a non-collusive settlement process in which the  
21 Parties were forced to make significant compromises in the interest of reaching a full and complete  
22 settlement of the action. (*Ibid.*)

23 **C. Investigation Was Sufficient to Allow Counsel to Act Intelligently**

24 Throughout this case, Class Members have been represented by counsel who have years of  
25 experience in employment class action litigation. (Orshansky Decl. ¶¶ 90-94.) Class Counsel  
26 devoted a considerable amount of time to the prosecution of this case, including, but not limited to,  
27 conducting pre-filing investigation and research; conducting discovery; noticing the depositions of  
28 the person most knowledgeable designees for Defendant; reviewing Defendant's written policies

1 concerning the claims set forth in the action, including Defendant’s policies and procedures  
2 regarding the payment of wages, the provision of meal and rest breaks, time keeping policies, such  
3 as rounding and recording hours, reimbursement of expenses, issuance of wage statements, and  
4 providing all wages at separation; reviewing and analyzing time and pay records; meeting and  
5 conferring regarding the information and documents produced; interviewing Class Members;  
6 drafting pleadings; researching California law; preparing damages models; consulting with an  
7 expert; preparing for and attending mediation; and negotiating and finalizing the settlement and  
8 related documents. (Orshansky Decl. ¶¶ 14, 25, 31-35.)

9 **D. Class Counsel Are Experienced in Similar Litigation**

10 Class Counsel believe that the settlement is fair and reasonable and serves the best interests  
11 of the Class Members. (Orshansky Decl. ¶ 38.) Although the recommendations of counsel proposing  
12 the class settlement are not conclusive, the Court can properly take the recommendations into  
13 account, particularly if counsel have been involved in litigation for some period of time, appear to  
14 be competent, have experience with this type of litigation, and significant discovery has been  
15 completed. (See Newberg § 11.47.) Here, Plaintiff is represented by competent and experienced  
16 counsel who possess extensive experience litigating wage and hour class actions and have been  
17 appointed as class counsel in numerous cases alleging similar claims. (Orshansky Decl. ¶¶ 90-94.)

18 **E. The Settlement Is Fair, Reasonable, and Adequate**

19 To make a fairness determination, the Court should consider several factors, including “the  
20 strength of plaintiff’s case, the risk, expense, complexity and likely duration of further litigation, the  
21 risk of maintaining class action status through trial, the amount offered in settlement, the extent of  
22 discovery and the stage of proceedings, [and] the experience and views of counsel.” (*Dunk v. Ford*  
23 *Motor Co.* (1986) 48 Cal.App.4th 1794, 1801.) “The list of factors is not exclusive and the court is  
24 free to engage in a balancing and weighing of factors depending on the circumstance of each case.”  
25 (*Wershba, supra*, 91 Cal.App.4th at p. 245.) As discussed below, the proposed settlement is fair,  
26 adequate, and reasonable in light of the overall factors in this case.

27 ///

28 ///

1                   **1.       The Strength of Plaintiff’s Case**

2           Class Counsel carefully vetted the claims at issue to arrive at a comprehensive damages  
3 model for Defendant’s liability. (Orshansky Decl. ¶ 39.) Although Plaintiff steadfastly maintains  
4 that her claims are meritorious, she acknowledges that there are substantial risks and uncertainty in  
5 proceeding with class certification and trial. (*Ibid.*) As explained in further detail in Section VI.E.4  
6 *infra*, Defendant presented numerous defenses to Plaintiff’s claims, both on the merits and with  
7 respect to class certification. (*Ibid.*) For example, Defendant defended against the minimum and  
8 overtime wage claims by relying on written policies that explicitly prohibited Class Members from  
9 engaging in off-the-clock work. (Orshansky Decl. ¶ 40.) Defendant also argued that Class Members  
10 worked in different job positions and had different managers, and that, as a result, Defendant  
11 contended there was variation to the circumstances that could allegedly cause the employees to be  
12 deprived of the opportunity to take legally compliant, duty-free meal and rest periods, and this  
13 variation in circumstances raised highly individualized questions of fact. (*Ibid.*) Additionally, with  
14 regard to Plaintiff’s meal period violation claims, Defendant contended that it utilized a “bell  
15 system” for meal periods, whereby a bell would ring to notify all employees to take their meal period,  
16 and another bell would ring at the end of the meal period to notify all employees to return to work.  
17 (*Ibid.*) Moreover, Defendant alleged it provided 35-minute meal periods rather than the 30 minutes  
18 required by law. (*Ibid.*) Further, Defendant contended Plaintiff would face significant hurdles to  
19 certification given that Class Members signed arbitration agreements with class action waivers as a  
20 condition of their employment, which if enforceable would convert a putative class action (with the  
21 potential for class-wide damages) into an individual dispute and action—effectively forcing Class  
22 Members to retain their own counsel and proceed on the basis of individual claims only. (*Ibid.*)

23           Although Plaintiff was prepared to litigate these claims through class certification and,  
24 ultimately, through trial, given the substantial amount offered in settlement, Class Counsel predicted  
25 that it was far from certain that Plaintiff would be able to recover a greater amount at trial,  
26 particularly after considering the increased litigation costs that would accrue. (Orshansky Decl. ¶  
27 44.) Thus, this factor supports preliminary approval of the settlement.

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## 2. Risk, Expense, Complexity, and Duration of Further Litigation

Although Plaintiff conducted extensive discovery prior to settlement (including propounding three sets of Special Interrogatories, one set of Requests for Production of Documents, one set of Form Interrogatories, and noticing the depositions of the person most knowledgeable designees for Defendant), the Parties agreed to focus on exhausting early settlement efforts before launching into full-fledged and hotly contested litigation. (Orshansky Decl. ¶ 41.) Therefore, absent settlement, the Parties would have needed to conduct substantial additional discovery, such as the production of voluminous records and numerous depositions of experts and percipient witnesses and prepare the case for class certification and trial. (*Ibid.*) The Parties would have had to depose a number of people such as managers, supervisors, human resource representatives, and employees in order to establish liability. (*Ibid.*) Discovery disputes would have been in the offing and liability likely would have entailed a battle of experts. (*Ibid.*) This settlement avoids the considerable time, attorneys' fees and costs, and party resources associated with conducting additional discovery, moving for class certification and potentially summary judgment or adjudication, and ultimately, trial, as well as the risks and the accompanying burden of continued litigation on the Court. (*Ibid.*) Thus, this factor supports preliminary approval of the settlement.

## 3. Risk of Maintaining Class Action Status

Here, settlement was reached prior to class certification and the result was a successful outcome for the Class. (Orshansky Decl. ¶ 42.) Yet, class certification was by no means a foregone conclusion. (*Ibid.*) For example, Class Members worked in different job positions and had different managers, and that, as a result, Defendant contended there was variation to the circumstances that could allegedly cause the employees to work off-the-clock and/or be deprived of the opportunity to take legally compliant, duty-free meal and rest periods, and this variation in circumstances raised highly individualized questions of fact. (*Ibid.*) Defendant disputed Plaintiff's characterization of working conditions, liability, and damages, and possessed documentary and testimonial evidence rebutting Plaintiff's allegations. (*Ibid.*)

In addition, Plaintiff would face significant hurdles to certification given that Class Members signed arbitration agreements with class action waivers as a condition of their employment.

(Orshansky Decl. ¶ 43; *see Epic Sys. Corp. v. Lewis* (2018) 138 S.Ct. 1612 [class action waivers in arbitration agreements are enforceable].) If Defendant’s arbitration agreement defense is successful, it would severely limit the potential relief available to those Class Members who signed arbitration agreements with class action waivers. (Orshansky Decl. ¶ 43) Even if Plaintiff prevailed and certified a class action as to them, there is no guarantee Defendant would not later move for and obtain decertification. (*Ibid.*) If the Court either denied class certification or later decertified it, the Class would recover nothing, and Class Members would be forced to retain their own counsel and proceed on the basis of individual claims only. (*Ibid.*)

Here, Class Members may avoid each of the risks described and receive substantial monetary benefits, which also weighs in favor of preliminary approval.

#### **4. Amount Offered in Settlement Given Realistic Value of Claims**

A settlement is not judged against what might have been recovered had a plaintiff prevailed at trial, nor does the settlement have to provide 100% of the damages to be fair and reasonable. (*Wershba, supra*, 91 Cal.App.4th at pp. 246, 250 [acknowledging that “Compromise is inherent and necessary in the settlement process ... even if the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated, this is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives in the interest of avoiding litigation.”].)

Plaintiff’s estimate of the settlement recovery is a reasonable percentage of possible recoverable damages at trial. Plaintiff’s damages analysis shows that the settlement reflects an ***estimated 27% of the maximum realistic potential damages*** recoverable at trial. (Orshansky Decl. ¶ 45.) Utilizing a class-wide damages study to assess the nature and magnitude of the claims in question, *see Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 123, this case clearly meets requirements establishing that the class settlement is within the “ballpark” of reasonableness. The settlement provides a fair and reasonable monetary recovery for the Class in the face of disputed claims.

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Decl. ¶ 52.) Although Class Counsel conducted multiple Class Member interviews, for Plaintiff to establish the quantity of specific disputed and unrecorded work activities – especially over multiple job titles, at differing pay rates – would have been costly, time-consuming, and daunting. (*Ibid.*)

Defendant further responded that any off-the-clock time is *de minimis*. (Orshansky Decl. ¶ 53.) Plaintiff countered that such defense lacks viability in light of *Troester v. Starbucks Corp.* (2018) 5 Cal.5th 829, given that the California Supreme Court refused to allow the *de minimis* defense to insulate Starbucks from having to pay employees for small amounts of work regularly performed off-the-clock. (Orshansky Decl. ¶ 53.) What is not clear, however, is to what extent the *de minimis* defense would apply where the uncaptured hours were associated with an occasionally recurring activity. (*Ibid.*)

In light of these considerations – especially the evidentiary difficulties of demonstrating off-the-clock work on a class-wide basis – Class Counsel applied a discount that incorporated the risks of non-certification and being unsuccessful on the merits. (Orshansky Decl. ¶ 54.)

#### **Meal and Rest Period Violations**

Plaintiff asserted that there are compliance issues *vis-à-vis* meal breaks—some are late, missed, short, or interrupted. (Orshansky Decl. ¶ 55.) Moreover, notwithstanding Defendant’s otherwise compliant policy, Plaintiff and Class Members were not always allowed to leave the premises during meal periods. (*Ibid.*) Further, Defendant failed to provide Plaintiff and Class Members with second 30-minute meal periods for shifts lasting longer than 10 hours. (*Ibid.*)

On February 25, 2021, in *Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58, the California Supreme Court reversed the Fourth Appellate District and set forth two clear rules: (1) employers are not permitted to round time records when determining if employees are entitled to meal premium pay, and (2) it is the employer’s burden to show that compliant meal periods were provided to employees if the time records show otherwise. Using this opportunity to echo its long stance that California liberally construes the Labor Code and wage orders to favor protection of employees, the California Supreme Court emphasized that meal periods are part of the remedial worker protection framework to protect the health and safety of employees. In an attempt to skirt California law, Defendant employed an automatic meal period deduction policy and did not provide

1 a mechanism by which Plaintiff and Class Members could override the auto-deduction if they did  
2 indeed work during a meal period. (Orshansky Decl. ¶ 56.)

3 According to Defendant’s policy, employees “must accurately record all hours worked,  
4 including the start and stop times at the beginning and end of their shift, as well as the start and end  
5 of their meal periods. Failure to do so will result in disciplinary action.” (Orshansky Decl. ¶ 57.)  
6 However, pursuant to Wage Order 4, section 7(A)(3), an “employer shall keep accurate information  
7 with respect to each employee including the following . . . [t]ime records showing when the  
8 employee begins and ends each work period. Meal periods, split shift intervals and total daily hours  
9 worked shall also be recorded.” Under California law, employers, not employees, have the burden  
10 to record and maintain accurate time records. The California Supreme Court in *Donohue v. AMN*  
11 *Services, LLC, supra*, also reiterated that it is the employer’s duty to maintain accurate time records  
12 for meal periods. (11 Cal.5th at p. 81.)

13 Significantly, there is no indication that Defendant made any payments of a meal period  
14 premium for “missed,” “short,” or “late” meal periods to employees. *C.f.* Wage Order 4-2001, §  
15 11(b). (Orshansky Decl. ¶ 58.) Consequently, Plaintiff alleged that Defendant violated Labor Code  
16 §§ 226.7, 512, and applicable Wage Orders by failing to compensate Plaintiff and Class Members  
17 for short, late, interrupted, and missed meal periods. (*Ibid.*)

18 Defendant, however, contended that it had practices, policies, and procedures to provide meal  
19 and rest breaks every workday to their employees that fully complied with the law. (Orshansky Decl.  
20 ¶ 59.) Defendant vehemently argued that it complied with the requirements articulated by the  
21 California Supreme Court in *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004.  
22 (Orshansky Decl. ¶ 59.) Specifically, Defendant maintained that it “provides” employees with a  
23 reasonable opportunity to take timely meal periods of at least 30 minutes, relieves employees of all  
24 duties during meal periods, and relinquishes control over employees’ activities, including the ability  
25 to leave the premises during meal periods. (*Ibid.*) In fact, Defendant alleged that it employs a “bell  
26 system”, by which a bell rings to notify employees to take their meal periods, where all employees  
27 take their meal periods at the same time, and a bell rings again to notify employees it is time to return  
28 to work. (*Ibid.*) Defendant claimed that because of this system, it cannot be liable for meal period

1 violations given all employees take timely meal periods. (*Ibid.*) Additionally, Defendant maintained  
2 employees certify that they have been provided all meal periods and rest breaks that they were due  
3 on their time sheets or timecards each pay period, except for any instances duly recorded by the  
4 employee on the Missed Meal and Rest Period Sign In Sheet. (*Ibid.*)

5 Further, after the prior similar class and representative action against the same Defendant in  
6 the *Garcia* Case, Defendant contended it has since further tightened its policies and procedures to  
7 ensure compliance with California law, including lengthening the meal periods for all employees  
8 from 30 minutes to 35 minutes. (Orshansky Decl. ¶ 59.) Thus, Defendant argued, the failure of an  
9 employee to take a full meal period cannot be a fault of company policy, as it provides more than  
10 the minimum time prescribed by law for meal periods. (*Ibid.*)

11 Like most employers facing meal period litigation, Defendant argued that employees were  
12 apprised of their right to take meal periods and provided compliant meal periods, but some may  
13 voluntarily have waived them. (Orshansky Decl. ¶ 60.) Defendant contended that the issue of  
14 voluntary waiver would necessarily devolve into a series of individualized mini-trials, precluding  
15 class certification. (*Ibid.*; see *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 25  
16 [holding that the defendant must be provided an opportunity to litigate affirmative defenses, even  
17 when they turn on individual questions].)

18 Based upon the analysis of Class Members' time and payroll records and, in conjunction  
19 with interviews of Plaintiff and Class Members, Plaintiff determined that 40% of eligible shifts were  
20 the subject of unique violations for missed, short, or late meal periods, and calculated the potential  
21 exposure of this claim to be **\$2,355,382.85**. (Orshansky Decl. ¶ 61.)

22 Plaintiff also alleged that Class Members did not receive authorized rest breaks as required  
23 whereby employers "relinquish control over how employees spend their time and relieve employees  
24 of all duties." (Orshansky Decl. ¶ 62; *Augustus v. ABM Security Service, Inc.* (2016) 2 Cal.5th 257,  
25 260.) Due to Defendant's work demands and inadequate staffing, Plaintiff and Class Members did  
26 not receive timely and compliant rest breaks, nor did Defendant relinquish control over how  
27 employees spent their 10-minute rest periods. (Orshansky Decl. ¶ 62.) As with the meal periods,  
28 Plaintiff did not receive rest break premium payments for non-compliant rest breaks, nor is there

1 evidence that Defendant made rest break premium payments to Class Members. (Orshansky Decl. ¶  
2 63.) Thus, Plaintiff alleged that Defendant did not provide premium pay for each non-compliant rest  
3 break as required under Labor Code § 226.7. (*Ibid.*)

4 Here again, Defendant disputed liability and damages. Defendant maintained that it  
5 authorized and permitted duty-free rest breaks of not less than ten minutes for every major fraction  
6 of four hours worked as required by Labor Code § 226.7. (Orshansky Decl. ¶ 64.) Defendant  
7 explained that Class Members had ample opportunity to take, and did take, regular rest breaks. (*Ibid.*)  
8 As with meal periods, Defendant argued that any Class Member who failed to take a rest break, or  
9 took a short or late rest break, did so voluntarily and that all applicable rest breaks were still  
10 authorized and provided. (*Ibid.*) Defendant also attempted to distinguish *Augustus, supra*, which  
11 involved security guards who were required to monitor a pager, phone, or other device as having an  
12 added constraint that is not present in the matter *sub judice*. (*Ibid.*)

13 Unlike meal periods, rest breaks need not be recorded and thus establishing Defendant's  
14 exertion of pressure, control, and resulting violations is likely to be more difficult. (Orshansky Decl.  
15 ¶ 65.) Thus, Class Counsel applied a 20% violation rate based on the narratives of Plaintiff and other  
16 Class Members for a maximum exposure rate of **\$1,177,691.42**. (*Ibid.*) For settlement purposes, and  
17 to account for the difficulties of certifying and proving unrecorded rest break violations, a downward  
18 departure from that maximum exposure was and is warranted. (*Ibid.*)

#### 19 **Unreimbursed Expenses**

20 Plaintiff alleged a cause of action under Labor Code § 2802(a), which states that an employer  
21 must reimburse employees for all necessary expenditures that employees incur in discharging their  
22 duties. (Orshansky Decl. ¶ 66.) Here, Plaintiff and Class Members were required to use their  
23 personal cell phones to communicate with supervisors and coworkers for reasons related to work,  
24 yet Defendant failed to reimburse for these necessary business expenses. (*Ibid.*)

25 Defendant contended that it has a policy and practice of reimbursing employees for  
26 necessary business-related expenses. (Orshansky Decl. ¶ 67.) Defendant also contended that, with  
27 respect to the alleged expenses for which Plaintiff and other Class Members never requested  
28 reimbursement from Defendant, Defendant did not know and had no reason to know that the alleged

1 business-related expenses were incurred. (*Ibid.*) Moreover, to the extent it occurred, Defendant  
2 asserted that this claim is not suitable for class treatment as it would require individualized  
3 determinations as to whether each employee used a personal cell phone for work-related purposes  
4 and, if so, how much of that use was a reasonable percentage of his or her individual monthly phone  
5 bill. (*Ibid.*)

6 Defendant also argued that the California Labor Code only requires reimbursement of  
7 “necessary” expenses—as opposed to any expense that is incurred in the course of performing  
8 work—and argued that distinguishing a necessary expense from an unnecessary one would require  
9 individualized inquiry. (Orshansky Decl. ¶ 68; *see* Labor Code § 2802; *Gattuso v. Harte-Hanks*  
10 *Shoppers, Inc.* (2007) 42 Cal.4th 554.) Furthermore, whether an expense was necessary would  
11 depend in part on the reasonableness of the employee’s choice and would thus have to be established  
12 by way of extensive individual factual inquiry and/or statistical evidence. (*Cochran v. Schwan’s*  
13 *Home Services, Inc.* (2014) 228 Cal.App.4th 1137.)

14 For the foregoing reasons, and taking into account the wide variety of telephone plans,  
15 providers and costs which creates evidentiary complexities on an individual basis, let alone class-  
16 wide, Plaintiff assigned *de minimis* value to this claim. (Orshansky Decl. ¶ 69.)

### 17 **Wage Statement Violations**

18 Plaintiff alleged a cause of action under Labor Code § 226(a) for Defendant’s failure to  
19 provide accurate itemized wage statements. (Orshansky Decl. ¶ 70.) Failure to comply with the  
20 statute entitles employees to recover the greater of all actual damages or fifty dollars (\$50) for the  
21 initial pay period in which a violation occurs and one hundred dollars (\$100) for each violation in a  
22 subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000). (*See*  
23 Labor Code § 226(e).) This cause of action is derivative of the foregoing causes of action because  
24 if Defendant did not provide wages for all hours worked, meal and rest breaks, and so forth, then  
25 the wage statements were inevitably inaccurate. (Orshansky Decl. ¶ 70.)

26 Defendant contended, however, that Labor Code § 226(e) penalties are not automatic.  
27 (Orshansky Decl. ¶ 71.) Rather, the employee must show that Defendant’s non-compliance was  
28 “knowing and intentional.” (*Ibid.*) Defendant suggested that any non-compliance was not knowing

1 and intentional. (*Ibid.*) Moreover, Defendant argued that meal and rest period violations cannot  
2 support derivative wage statement penalties. (*Ibid.*; see *Naranjo v. Spectrum Security Service, Inc.*  
3 (2019) 40 Cal.App.5th 444, 474 [holding that violations of Labor Code’s meal break provisions do  
4 not entitle employees to pursue the derivative wage statement penalties]; *c.f.*, but *review granted*,  
5 *Naranjo v. Spectrum Security Services, Inc.* (Cal., Jan. 02, 2020, No. S258966) 455 P.3d 704, 257  
6 Cal.Rptr.3d 188.)

7 Because the damages for this cause of action are penalties, the statute of limitations is only  
8 one year prior to the filing of the original complaint. (See Code Civ. Proc. § 340.) The Parties  
9 discussed these issues and, based on the \$50 initial violation plus the \$100 per pay period subsequent  
10 violation rates, Plaintiff estimates the total maximum wage statement exposure to be **\$1,508,150**.  
11 (Orshansky Decl. ¶ 72.)

#### 12 **Derivative Waiting Time and UCL Claims**

13 Plaintiff further asserted causes of action against Defendant for failure to timely pay all  
14 wages due employees at separation, for civil penalties under the PAGA, and for engaging in unfair,  
15 unlawful, and fraudulent business practices. (Orshansky Decl. ¶ 73; see Labor Code §§ 203, 2699,  
16 *et seq.* and Cal. Business and Professions Code § 17200, *et seq.*) As with other claims, Defendant  
17 vigorously disagreed that it engaged in any conduct giving rise to liability or entitlement to recovery  
18 of penalties or equitable relief. (Orshansky Decl. ¶ 73.)

19 Defendant argued that waiting time penalties are not appropriate because it attempted to pay  
20 employees all final wages owed in good faith upon their separation, thereby precluding a finding of  
21 willfulness necessary to obtain waiting time penalties. (Orshansky Decl. ¶ 74.) Moreover, Defendant  
22 maintained that no waiting time penalties were recoverable from alleged meal or rest period  
23 violations. (*Ibid.*) Defendant raised the Second Appellate District’s decision in *Naranjo, supra*, 40  
24 Cal.App.5th 444, to argue that meal and rest break violations trigger neither wage statement, nor  
25 waiting time penalties. (Orshansky Decl. ¶ 74.) Yet the *Naranjo* decision is currently pending before  
26 the California Supreme Court, see, *Naranjo, supra, review granted*, Supreme Court Case No.  
27 S258966, 455 P.3d 704 (January 02, 2020), and although fully briefed, the outcome of this important  
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1 case remains to be seen.<sup>8</sup> (Orshansky Decl. ¶ 74.) Finally, Defendant argued that adequate remedies  
2 at law exist to render the action unsuitable for equitable remedies, and again contended that the  
3 allegations underlying the unfair competition claim lacked merit. (*Ibid.*)

4 Based on the count of 223 former employees, Class Counsel calculated the maximum value  
5 of the waiting time claim to be **\$846,686.40**. (Orshansky Decl. ¶ 75.) However, to account for the  
6 uncertainty of proving the underlying claims and risk of an adverse decision in *Naranjo*, Class  
7 Counsel made a realistic allowance with the agreed upon settlement dollar figure. (*Ibid.*)

### 8 **PAGA Penalties**

9 The success of Plaintiff's PAGA claim is wholly dependent upon the success of her  
10 underlying claims occurring within the one-year statute of limitations applicable to the PAGA.  
11 (Orshansky Decl. ¶ 76.) Defendant maintained and continues to maintain it had legally compliant  
12 employment policies and practices throughout the statutory period. (Orshansky Decl. ¶ 77.)  
13 Defendant denied and continues to deny that it ever violated any provision of the California Labor  
14 Code and argued that, even assuming such violations occurred, Defendant will not be treated as  
15 having engaged in subsequent violations giving rise to heightened penalties. (*Ibid.*) In other words,  
16 Defendant argued that heightened civil penalties for subsequent violations would not be assessed  
17 unless it could be shown that Defendant had notice that it was violating the laws, *e.g.*, it had been  
18 cited by a labor agency or adjudged by a court to have done so. (*Ibid.*; *see, e.g., Amaral v. Cintas*  
19 *Corp.* (2008) 163 Cal.4th 1157, 1209.) Thus, Defendant contended that, at best, even if a violation  
20 giving rise to a penalty was shown for each pay period, only the lower civil penalty associated with  
21 initial violations would apply. (Orshansky Decl. ¶ 77.)

22 Moreover, Defendant asserted that, before a PAGA claim could be tried, under existing law,  
23 the court of law would have to be satisfied that the adjudication of the PAGA claim, based on a  
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25 <sup>8</sup> The "Issues Presented" in the Case Summary of the Appellate Courts Case Information webpage  
26 (<https://appellatecases.courtinfo.ca.gov/>) reads: "This case presents the following issues: (1) Does a  
27 violation of Labor Code section 226.7, which requires payment of premium wages for meal and rest  
28 period violations, give rise to claims under Labor Code sections 203 and 226 when the employer  
does not include the premium wages in the employee's wage statements but does include the wages  
earned for meal breaks? (2) What is the applicable prejudgment interest rate for unpaid premium  
wages owed under Labor Code section 226.7?"

1 theory of uniform wage and hour practices relating to a large group of aggrieved employees, is  
2 sufficiently “manageable” so as not to interfere with Defendant’s right to due process. (Orshansky  
3 Decl. ¶ 78.) Defendant reiterated how hourly employees’ job duties and work hours varied.  
4 (Orshansky Decl. ¶ 79.) Defendant contended that there was variation as to the circumstances that  
5 could allegedly cause employees to work off-the-clock or to be deprived of the opportunity to take  
6 legally compliant, duty-free meal and/or rest periods. (*Ibid.*) Defendant further opined that these  
7 issues presented challenges not only to liability but also challenges to Plaintiff’s ability to show that  
8 a PAGA claim could be efficiently and manageably adjudicated without abridging Defendant’s due  
9 process rights. (*Ibid.*)

10 Finally, Defendant maintained that the Court has discretion to reduce any award of PAGA  
11 penalties where it views them as duplicative. (*See* Labor Code § 2699e(2) [the Court may “award a  
12 lesser amount than the maximum civil penalty amount [authorized by PAGA] if, based on the facts  
13 and circumstances of the particular case, to do otherwise would result in an award that is unjust,  
14 arbitrary and oppressive, or confiscatory.”]; Orshansky Decl. ¶ 80.)

15 Although, strictly speaking, class certification requirements are not required to be satisfied  
16 in order to adjudicate a PAGA claim, the state of the law with respect to the adjudication and  
17 valuation of a PAGA claim is uncertain.<sup>9</sup> (Orshansky Decl. ¶ 81.) Thus, Class Counsel applied  
18 discounts for the risks in establishing manageability and possible bifurcation of discovery and/or

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20 <sup>9</sup> Instead, what is clear is that the purpose of the PAGA is not to generate revenue for the State but  
21 rather to facilitate the enforcement of the labor laws. (*Ibid.*; *see, e.g., Williams v. Superior Court*  
22 (2017) 3 Cal.5th 531, 546; *Arias v. Superior Court* (2009) 46 Cal.4th 969, 986; Labor Code §  
23 2699(i).) In assessing the adequacy of the recovery under a PAGA claim, the focus is not the amount  
24 which the LWDA and the aggrieved employees are to receive formally in the form of monetary civil  
25 penalties but instead whether the total settlement amount achieves the PAGA’s objectives. “When  
26 PAGA claims are settled, courts “consider whether the proposed PAGA settlement is fair and  
27 adequate in view of the purposes and policies of the statute[.]” and “[t]hose purposes and policies  
28 include benefit[ing] the public by augmenting the state’s enforcement capabilities, encouraging  
compliance with California Labor Code provisions, and deterring noncompliance.” (*O’Connor v.*  
*Uber Techs., Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1132-33 and 1135.) A “[c]ourt does not  
review the PAGA allocation in isolation, but rather reviews the settlement as a whole, to determine  
whether it is fundamentally fair, reasonable and adequate, with primary consideration for the  
interests of absent class members.” (LWDA’s Comments on Proposed PAGA Settlement in  
*O’Connor v. Uber Techs.* (N.D. Cal. July 29, 2016) No. 13-CV-03826-EMC, Docket No. 736, at  
4:17-19.) “PAGA penalties must be evaluated in terms of their public policy objective and not just  
through the prism of what private relief has been sought or obtained.” (*Id.* at p. 4:14-16.)

1 trial, the risks regarding success on the merits and establishing liability, and the risks with proving  
2 the extent of penalties that are warranted and possible discretionary reduction of penalties by the  
3 Court. (*Ibid.*) As a result, Plaintiff used the “initial” \$100 per pay period violation (as opposed to the  
4 \$200 subsequent per violation rate) to calculate a realistic estimate of **\$1,678,900** in potential PAGA  
5 penalty exposure – of which, by statute, only 25%, or **\$419,725** – would be recoverable by aggrieved  
6 employees. (*Ibid.*)

### 7 Summary

8 After Class Counsel calculated the realistic possible recovery to Class Members for each of  
9 the above claims, the aggregate dollar amount result is **\$8,788,268.93** in realistic total damages and  
10 penalties.<sup>10</sup> (Orshansky Decl. ¶ 82.) Thus, the proposed settlement amount to Class Members of  
11 ***\$2,400,000 represents an approximate 27% of Plaintiff’s potential maximum realistic recovery,***  
12 while avoiding the further expense and serious risk of proceeding toward class certification and trial.  
13 (*Ibid.*) “The fact that a proposed settlement may only amount to a fraction of the potential recovery  
14 does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be  
15 disapproved.” (*Linney v. Cellular Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242 [internal  
16 quotations omitted]; see, e.g., *Altamirano v. Shaw Industries, Inc.* (N.D. Cal. 2015) 2015 WL  
17 4512372, at \*9 [preliminarily approving wage and hour class action settlement stating, “[a]lthough  
18 15% represents a modest fraction of the hypothetical maximum recovery estimated by Plaintiff, that  
19 figure is sufficient for the Court to grant preliminary approval given the merits of Plaintiff’s  
20 claims.”].) Taking into account the risk of non-certification, failure to prevail on the merits, and the  
21 Court’s power to reduce the civil penalties, the proposed settlement falls within the realm of being  
22 fair, reasonable, and adequate. (Orshansky Decl. ¶ 82.)

### 23 **F. Comparison with Settlement Obtained in *Garcia* Case Shows Settlement Here** 24 **is a Favorable Outcome for Plaintiff and the Class**

25 Comparing the proposed settlement here with the claims, outcome and settlement amount in  
26 the *Garcia* Case (*Garcia v. American International Industries*, Los Angeles County Superior Court

27  
28 <sup>10</sup> To wit, \$1,221,458.26 + \$2,355,382.85 + \$1,177,691.42 + \$1,508,150 + \$846,686.40 +  
\$1,678,900= \$8,788,268.93.

Case No. BC560886), a prior class and representative action against the same Defendant, American International Industries, in this court, further illustrates that the proposed settlement here is fair, reasonable and adequate; indeed, it shows that the proposed settlement is a much more favorable outcome for the Class, and thus should be preliminarily approved. (Orshansky Decl. ¶ 83.)

On October 16, 2014, Plaintiffs Martha Garcia, Yolanda Ramirez and Sandra Velasco, on behalf of themselves and other similarly situated, initiated their class and representative action lawsuit against Defendant, asserting similar causes of action. (Orshansky Decl. ¶ 84.) A settlement was reached, consisting of the following:

- Direct Hire Non-Exempt Class: Gross Settlement Amount of \$2,426,000 for approximate class size of 1,202 individuals, consisting of approximately 211,294 Workweeks.
- Temporary Non-Exempt Class: Gross Settlement Amount of \$512,500 for approximate class size of 3,971 individuals, consisting of approximately 44,631 Workweeks.

(Orshansky Decl. ¶ 85 and Exhibit 2 [4/9/18 Joint Supplemental Brief in Support of Motion for Preliminary Approval of Class Action Settlement] at pp. 1-2].) Class Members were defined as “[a]ll current and former hourly non-exempt employees who were directly hired by Defendant in California at any time during the period of October 16, 2010 to February 1, 2017 (‘Direct Hire Non-Exempt Class’) and all current and former hourly non-exempt temporary employees ... in California at any time during the period of October 16, 2010 to July 27, 2016 (‘Temporary Non-Exempt Class’).” (See Orshansky Decl. ¶ 85 and Exhibit 2 at Exh. 3 [Proposed Class Notice].) Preliminary approval was granted on April 18, 2018, and final approval granted, and judgment entered, on July 31, 2018. (See Orshansky Decl. ¶ 86 and Exhibit 3 [4/18/18 Order Granting Preliminary Approval] and 4 [7/31/18 Judgment].)

Using the above information to calculate the Workweek value, the approximate Workweek value for both the Direct Hire Non-Exempt Class and the Temporary Non-Exempt Class in the *Garcia* Case was \$11.48 per Workweek. (Orshansky Decl. ¶ 87.) However, the approximate Workweek value in the proposed settlement is \$25.79 per Workweek. (Orshansky Decl. ¶ 88.) Clearly, the settlement reached and proposed for preliminary approval here, in comparison to the *Garcia* settlement, is a much better result for the Class Members. (*Ibid.*)

1           Additionally, in the *Garcia* Case, the size of the Direct Hire Non-Exempt Class was 1,202  
2 employees. (Orshansky Decl. ¶ 89.) However, in the instant action, the entire Class (all non-exempt,  
3 direct hire employees) is 592 employees, meaning the *pro rata* amount available to Class Members  
4 is substantially more, despite the fact that since the *Garcia* Case, Defendant has tightened its policies  
5 and practices, which arguably would have posed an additional burden on Class Counsel to show  
6 Defendant's liability for the claims at issue. (*Ibid.*)

7       **VII. PROPOSED NOTICE PROVIDES ADEQUATE NOTICE TO THE CLASS**

8           This Court should order distribution of the proposed Notice of Pendency of Class and  
9 Representative Action Settlement, *see* Exhibit 1 to the Settlement Agreement (Exhibit 1 to the  
10 Orshansky Declaration), to the Class by first class mail, postage prepaid, using the last known  
11 mailing address information provided by Defendant. (Orshansky Decl. ¶ 102.) Here, Plaintiff  
12 proposes that the settlement be administered by CPT Group, Inc. ("CPT"), an experienced class  
13 action settlement administrator. (Settlement Agreement ¶¶ 30, 49(a); Orshansky Decl. ¶ 103.) Class  
14 Members' addresses will be ascertainable through Defendant's personnel and payroll records, which  
15 Defendant will provide to CPT within fifteen (15) calendar days after preliminary approval of the  
16 settlement. (Settlement Agreement ¶ 49(b); Orshansky Decl. ¶ 103.) To the extent that any notices  
17 are returned, CPT will run those addresses through the National Change of Address database and/or  
18 conduct skip traces to obtain current address information. (Settlement Agreement ¶ 49(e);  
19 Orshansky Decl. ¶ 103.)

20           The content of the proposed notice satisfies California Rules of Court, Rule 3.766(d) because  
21 it advises Class Members of the nature of the claims, basic contentions and denials of the Parties,  
22 the key terms of the Settlement Agreement, the uniform 60-day deadline to submit a dispute, opt-  
23 out, or object to the class settlement and the procedure by which to do so, and explains the recovery  
24 formula and credited number of workweeks and pay periods for each Class Member. (Orshansky  
25 Decl. ¶ 104.) The proposed notice will also notify Class Members of the final approval hearing date,  
26 provide the contact information for Class Counsel, and advise Settlement Class Members that they  
27 may enter an appearance through counsel if they wish. (Orshansky Decl. ¶ 105.) This manner of  
28 giving notice satisfies California Rules of Court, Rule 3.766(e) as the most reliable and cost-

1 effective method of reaching Class Members. Thus, the proposed method of notice is reasonably  
2 calculated to reach Class Members by the best means practicable and should be approved. (*Ibid.*)

3 **VIII. THE COURT SHOULD SET A FINAL APPROVAL HEARING**

4 Finally, this Court should set a hearing for final approval of the settlement on a date  
5 appropriately scheduled to follow the deadline by which Class Members must file objections to the  
6 settlement or opt out. (*See* California Rules of Court, Rule 3.769.)

7 **IX. CONCLUSION**

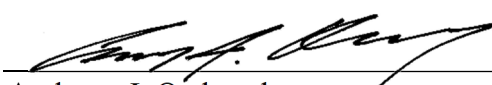
8 Based upon the foregoing, and because the proposed settlement is fair, reasonable, and  
9 advantageous to the Class Members, Plaintiff respectfully requests that the Court enter an Order:

- 10 1. Preliminarily approving the Settlement Agreement as fair, reasonable, and adequate;
- 11 2. Preliminarily approving the form and content of the Notice of Pendency of Class and  
12 Representative Action Settlement, attached as Exhibit 1 to the Settlement Agreement;
- 13 3. Provisionally certifying the Settlement Agreement's proposed Class comprised of the  
14 Class Members identified during the Class Period under Civil Code § 382 for settlement purposes  
15 only;
- 16 4. Approving and appointing Plaintiff Berenice de la Torre as the Class Representative;
- 17 5. Approving and appointing the law firm of CounselOne, P.C. as Class Counsel;
- 18 6. Approving and appointing CPT Group, Inc. as the Settlement Administrator;
- 19 7. Setting a date for the Final Approval Hearing; and
- 20 8. Any further relief the Court deems just and proper.

21  
22 Dated: November 3, 2021

Respectfully submitted,

COUNSELONE, PC

24 By: 

25 Anthony J. Orshansky  
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27 Justin Kachadoorian  
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