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12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA

14 BRYAN A. RODRIGUEZ, on behalf
15 of himself and others similarly
16 situated,

17 Plaintiff,

18 v.

19 G2 SECURE STAFF, L.L.C., a Texas
20 limited liability company; and
21 DOES 1 through 100,

22 Defendants.

Case No. 2:20-cv-07589-GW-PLA

[Hon. George H. Wu]

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

Date: June 23, 2022

Time: 8:30 a.m.

Location: United States District Court
Central District
350 W. 1st Street
9th Floor, Courtroom 9D
Los Angeles, CA 90012

*[Filed Concurrently with Declaration of
Anthony J. Orshansky; Declaration of
Julie Green; and [Proposed] Order]*

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

PLEASE TAKE NOTICE THAT on June 23, 2022 at 8:30 a.m. at the United States District Court for the Central District of California located at 350 W. 1st Street, Courtroom 9D, 9th Floor, Los Angeles, California, Plaintiff Bryan A. Rodriguez, individually and on behalf of those similarly situated will, and hereby does, move this Court to:

1. Grant preliminary approval of the class and representative action settlement reached between Plaintiff Bryan A. Rodriguez (“Plaintiff”) and Defendant G2 Secure Staff, L.L.C. (“Defendant”) (Plaintiff and Defendant collectively referred to as the “Parties”) as set forth in the Parties’ Joint Stipulation of Class and Representative Action Settlement (the “Settlement Agreement” or “Agreement”), which is attached as **Exhibit A** to the Declaration of Anthony J. Orshansky, filed concurrently herewith in support of Plaintiff’s Motion for Preliminary Approval of Class and Representative Action Settlement (“Orshansky Decl.”);

2. Conditionally certify the Class for settlement purposes, defined as: “[a]ll current and former nonexempt individuals who were employed by Defendant G2 Secure Staff, L.L.C. in California from October 9, 2016 through the Preliminary Approval Date of the Settlement” (the “Class” or “Settlement Class”);

3. Approve the Notice of Proposed Settlement of Class and Representative Action (in the form set forth as **Exhibit A** to the Settlement Agreement);

4. Approve Bryan A. Rodriguez as the Class Representative;

5. Approve CounselOne, P.C. as Class Counsel;

6. Approve CPT Group, Inc. as the Settlement Administrator;

7. Approve the establishment of a Qualified Settlement Fund pursuant to Treas. Reg. § 1.468B-1;

8. Schedule the date for the final approval hearing; and

9. Enter the [Proposed] Order Granting Motion for Preliminary Approval

1 of Class and Representative Action Settlement filed herewith.

2 This Motion is unopposed as based on the Settlement Agreement. This Motion
3 is made on the grounds that:

- 4 a. The Settlement Class meets all of the requirements for class certification
5 for purposes of settlement pursuant to Rule 23(a) and (b)(3) of the
6 Federal Rules of Civil Procedure;
- 7 b. The Settlement is fair, adequate, and reasonable as required under Rule
8 23(e) of the Federal Rules of Civil Procedure;
- 9 c. Plaintiff and his counsel are adequate to represent the Settlement Class,
10 as required by Rule 23(a)(4) and (g) of the Federal Rules of Civil
11 Procedure;
- 12 d. The notice procedures and related forms comport with all relevant due
13 process requirements and the requirements of Rule 23(c)(2)(B) of the
14 Federal Rules of Civil Procedure; and
- 15 e. Based on the foregoing, notice should be directed to Class Members and
16 a final fairness hearing should be scheduled.

17 This Motion is based upon: (1) this Notice of Motion and Motion; (2) the
18 Memorandum of Points and Authorities in Support of Plaintiff's Motion for
19 Preliminary Approval of Class and Representative Action Settlement; (3) the
20 Declarations of Anthony J. Orshansky and Julie Green; (4) the Settlement
21 Agreement; (5) the Notice of Proposed Class and Representative Action Settlement;
22 (6) the [Proposed] Order Granting Preliminary Approval of Class and Representative
23 Action Settlement; (7) the records, pleadings, and papers filed in this action; and (8)
24 such other documentary and oral evidence or argument as may be presented to the
25 Court at or prior to the hearing of this Motion.

26 Further, pursuant to Central District Local Rule 11-6, Plaintiff respectfully
27 requests that this Court grant Plaintiff's relief from the twenty-five-page (25) limit
28 and permit the filing of the attached Memorandum of Points and Authorities not to

1 exceed thirty (30) pages. Such additional page length is needed to fully address the
2 issues raised in this motion.

3 Dated: April 28, 2022

COUNSELONE, P.C.

4
5 By /s/ Anthony J. Orshansky
Anthony J. Orshansky, Esq.
6 Attorneys for Plaintiff
BRYAN RODRIGUEZ
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TABLE OF CONTENTS

	Page
I. INTRODUCTION.....	1
II. BACKGROUND AND PROCEDURE	2
A. Relevant Procedural Facts.....	2
1. <i>Procedural Background</i>	2
2. <i>Relevant Time Periods</i>	2
3. <i>The Parties Completed Substantial Discovery and</i> <i>Investigation</i>	3
4. <i>Mediation and Subsequent Negotiations</i>	4
III. PLAINTIFF’S CLAIMS	4
IV. SUMMARY OF THE SETTLEMENT TERMS	7
A. Composition of the Settlement Class	7
B. Settlement Consideration and Calculation of Settlement Payments	7
C. Release by the Settlement Class	9
V. THE COURT SHOULD CONDITIONALLY CERTIFY THE PROPOSED SETTLEMENT CLASS	10
A. The Settlement Class and Subclasses are Sufficiently Numerous and Ascertainable.....	11
B. There Are Questions of Law and Fact Common to the Class.	11
C. The Representative Plaintiff’s Claims Are Typical of the Claims of the Class and Subclasses.....	12
D. Plaintiff and Plaintiff’s Counsel Will Adequately Represent the Class.	13
E. The Class Can Be Conditionally Certified Because the Requirements of FRCP Rule 23(b)(3) Are Satisfied.	13
1. <i>Common Issues of Law and Fact Predominate</i>	14
2. <i>The Class Action Mechanism is Superior to Any Other</i> <i>Methods of Adjudication</i>	14
VI. THE PROPOSED CLASS ACTION SHOULD RECEIVE PRELIMINARY APPROVAL AS IT MEETS ALL OF THE REQUIREMENTS OF RULE 23	15
A. The Class Representative and Class Counsel Have Adequately Represented the Class.	15
B. The Settlement Is the Product of Arms-Length Negotiations and Is Therefore Entitled to a Presumption of Fairness.	15
C. The Relief Provided to the Class Is Adequate	16
1. <i>Costs, Risks, and Delay of Trial and Appeal</i>	16

TABLE OF CONTENTS

(continued)

	Page
2. <i>Defendant Has Asserted Defenses Creating Risk that the Class Will Receive No Recovery If the Claims at Issue Are Not Settled</i>	17
3. <i>Exposure Analysis</i>	19
4. <i>Allocation to LWDA for PAGA Penalties</i>	24
5. <i>Benefits to Early Resolution</i>	24
D. The Method of Distributing Relief to the Class Is Effective.....	25
E. Attorneys' Fees Are Reasonable.....	26
F. There Are No Agreements Made in Connection with the Settlement Other than What Plaintiff Already Identified	27
G. The Settlement Provides for Equitable Treatment of Class Members.....	28
H. The Court Should Approve CPT Group, Inc. as Settlement Administrator	29
VII. CONCLUSION	29

TABLE OF AUTHORITIES

Page(s)

FEDERAL CASES

<i>Amey v. Cinemark</i>	
2015 WL 2251504 (N.D. Cal. May 13, 2015)	23
<i>Bellinghausen v. Tractor Supply Co.</i>	
306 F.R.D. 245 (N.D. Cal. 2015)	28
<i>Bolton v. U.S. Nursing Corp.</i>	
No. 12-CV-4466-LB, 2013 WL 5700403 (N.D. Cal. Oct. 18, 2013)	21
<i>Bowers v. First Student, Inc.</i>	
2015 WL 1862914 (C.D. Cal. Apr. 23, 2015).....	23
<i>Brewer v. Gen. Nutrition Corp.</i>	
No. 11-CV-3587-YGR, 2015 WL 5072039 (N.D. Cal. Aug. 27, 2015).....	19
<i>China Agritech, Inc. v. Resh</i>	
138 S. Ct. 1800 (2018)	28
<i>Cicero v. DirecTV, Inc.</i>	
No. 07-CV-1182, 2010 WL 2991486 (C.D. Cal. July 27, 2010).....	27
<i>Eisen v. Carlisle & Jacqueline</i>	
417 U.S. 156 (1974)	25
<i>Galeener v. Source Refrigeration & HVAC, Inc.</i>	
No. 3:13-CV-04960-VC, 2015 U.S. Dist. LEXIS 193096 (N.D. Cal. Aug. 21, 2015).....	28
<i>Galvan v. KDI Distrib., Inc.</i>	
No. 08-CV-0999-JVS-ANX, 2011 WL 5116585 (C.D. Cal. Oct. 25, 2011).....	12
<i>Garner v. State Farm Mut. Auto. Ins. Co.</i>	
No. 08-CV-1365-CW-EMC, 2010 U.S. Dist. LEXIS 49477 (N.D. Cal. Apr. 22, 2010).....	29
<i>Glass v. UBS Fin. Servs., Inc.</i>	
No. 06-CV-4068 MMC, 2007 WL 221862 (N.D. Cal. Jan. 26, 2007)	29

1	<i>Hamilton v. Wal-Mart Stores, Inc.</i>	
2	No. 17-CV-01415-AB-KKX, 2018 WL 4813082 (C.D. Cal. Aug. 21, 2018).....	5
3	<i>Hanlon v. Chrysler Corp.</i>	
4	150 F.3d 1011 (9th Cir. 1988).....	12, 14, 17
5	<i>Heaggans v. G2 Secure Staff, L.L.C., et al.,</i>	
6	No. 2:17-cv-09206-GW-PLA (C.D. Cal.).....	3, 4, 8, 9, 10
7	<i>Hopson v. Hanesbrands Inc.</i>	
8	No. 08-00844, 2009 U.S. Dist. LEXIS 33900 (N.D. Cal. Apr. 3, 2009)	24
9	<i>In re Apple Computer, Inc. Derivative Litig.</i>	
10	No. 06-CV-4128-JF-HRL, 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008).....	16
11	<i>In re Bluetooth Headset Prods. Liab. Litig.</i>	
12	654 F.3d 935 (9th Cir. 2011).....	26
13	<i>In re Capacitors Antitrust Litig.</i>	
14	No. 3:14-CV-03264-JD, 2018 WL 4790575 (N.D. Cal. Sept. 21, 2018)	26
15	<i>In re Mego Fin. Corp. Sec. Litig.</i>	
16	213 F.3d 454 (9th Cir. 2000).....	13, 27
17	<i>In re Pac. Enters. Sec. Litig.</i>	
18	47 F.3d 373 (9th Cir. 1995).....	27
19	<i>In re Tableware Antitrust Litig.</i>	
20	484 F. Supp. 2d at 1080.....	17
21	<i>In re Volkswagen “Clean Diesel” Mktg., Sales Practices, and Prods. Liab. Litig.</i>	
22	2016 WL 4010049 (N.D. Cal. July 26, 2016).....	15
23	<i>International Union of Operating Engineers-Employers Canst. Industry Pension, Welfare and Training Trust Funds v. Karr</i>	
24	994 F. 2d 1426 (9th Cir. 1993).....	10
25	<i>Johnson v. Gen. Mills, Inc.</i>	
26	No. 10-CV-00061-CJC, 2013 WL 3213832 (C.D. Cal. June 17, 2013).....	27
27	<i>Levy v. Medline Indus, Inc.</i>	
28	716 F.3d 510 (9th Cir. 2013).....	10

1	<i>Linney v. Cellular Alaska P'ship</i>	
2	151 F.3d 1234 (9th Cir. 1998).....	25
3	<i>Milburn v. PetSmart, Inc.</i>	
4	No. 1:18-CV-00535-DAD, 2019 WL 5566313 (E.D. Cal. Oct. 29, 2019).....	27
5	<i>Moore v. PetSmart, Inc.</i>	
6	2015 WL 5439000 (N.D. Cal. Aug. 4, 2015).....	28
7	<i>Moore v. Ulta Salon, Cosms. & Fragrance, Inc.</i>	
8	311 F.R.D. 590 (C.D. Cal. 2015)	5
9	<i>Morris v. Lifescan, Inc.</i>	
10	54 Fed. App'x. 663 (9th Cir. 2003).....	27
11	<i>Ortiz v. CVS Caremark Corp.</i>	
12	2014 WL 1117614 (N.D. Cal. Mar. 19, 2014).....	22
13	<i>Parsons v. Ryan</i>	
14	754 F.3d 657 (9th Cir. 2014).....	11
15	<i>Singletary v. Teavana Corp.</i>	
16	2014 WL 1760884 (N.D. Cal. Apr. 2, 2014).....	22
17	<i>Staton v. Boeing Co.</i>	
18	327 F.3d 938 (9th Cir. 2003).....	28
19	<i>Stearns v. Ticketmaster Corp.</i>	
20	655 F.3d 1013 (9th Cir. 2011).....	14
21	<i>Vedachalam v. Tata Consultancy Servs., Ltd</i>	
22	No. 06-CV-0963-CW, 2013 WL 3941319 (N.D. Cal. July 18, 2013).....	27
23	<i>Viking River Cruises, Inc. v. Moriana</i>	
24	142 S. Ct. 734, 2021 WL 5911481 (2021)	4, 23
25	<i>Viking River Cruises, Inc. v. Moriana</i>	
26	U.S. Supreme Court Case No. 20-1573.....	4, 18, 23
27	<i>Viking River Cruises, Inc. v. Moriana</i>	
28	2021 WL 1944938	4, 23

1	<i>Vizcaino v. Microsoft Corp.</i> ,	
2	142 F. Supp. 2d 1299 (W.D. Wash. 2001),	
3	<i>aff'd</i> , 290 F.3d 1043 (9th Cir. 2002)	27
4	<i>Wal-Mart Stores, Inc. v. Dukes</i>	
5	131 S. Ct. 2541 (2011)	10, 11
6	CALIFORNIA CASES	
7	<i>Augustus v. ABM Security Servs., Inc.</i>	
8	2 Cal. 5th 257 (2016).....	21
9	<i>Carrington v. Starbucks Corp.</i>	
10	30 Cal. App. 5th 514 (2014).....	20
11	<i>Delgado v. New Albertson's, Inc.</i>	
12	Case No. SACV08-806	8
13	<i>Ferra v. Loews Hollywood Hotel, LLC</i>	
14	11 Cal. 5th 858 (2021).....	5, 20
15	<i>Gomez v. Amadeus Salon, Inc.</i>	
16	Case No. BC392297 (L.A. Super. Ct.).....	8
17	<i>Laffitte v. Robert Half Int'l, Inc.</i>	
18	1 Cal. 5th 480 (2016).....	26
19	<i>Lim v. Victoria's Secret Stores, Inc.</i>	
20	Case No. 04CC00213 (Orange County Super. Ct.).....	8
21	<i>Marshall v. G2 Secure Staff, L.L.C.</i>	
22	Los Angeles County Superior Court Case No. BC541579	<i>passim</i>
23	<i>Reed v. Thousand Oaks Toyota,</i>	
24	No. 56-2012-00419282-CU-OE-VTA,	
25	2013 WL 8118716 (Cal. Super. Ct. Apr. 8, 2013).....	20
26	<i>Wesson v. Staples</i>	
27	68 Cal. App. 5th 746 (Sep. 9, 2021).....	23
28	FEDERAL STATUTES	
	45 U.S.C. § 151.....	18
	45 U.S.C. § 181-182	18

1	Federal Rule of Civil Procedure 23	<i>passim</i>
2	CALIFORNIA STATUTES	
3	California Business & Professions Code §§ 17200, <i>et seq.</i>	2, 9
4	California Labor Code §§ 201-204.....	9
5	California Labor Code § 201.3	9
6	California Labor Code § 223	9
7	California Labor Code § 226	9
8	California Labor Code § 226.7	2, 5, 9, 22
9	California Labor Code § 510	9
10	California Labor Code § 512	9
11	California Labor Code § 514	19, 21
12	California Labor Code § 558	9
13	California Labor Code § 1174	2, 9
14	California Labor Code § 1194	9
15	California Labor Code § 1194.2	9
16	California Labor Code § 1197	9
17	California Labor Code § 1198	9
18	California Labor Code § 1199	9
19	California Labor Code § 2699	2, 20
20	California Labor Code § 2800	9
21	California Labor Code § 2802	9
22		
23		
24		
25		
26		
27		
28		

MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiff Bryan A. Rodriguez (“Plaintiff”) respectfully submits this memorandum of points and authorities in support of the Motion for Preliminary Approval of Class and Representative Action Settlement (“Motion”).

I. INTRODUCTION

Plaintiff and Defendant G2 Secure Staff, L.L.C. (“G2” or “Defendant”) have reached a settlement of the above-captioned class and representative action (“Settlement”), which is embodied in the Parties’ Joint Stipulation of Class and Representative Action Settlement (the “Settlement Agreement” or “Agreement”), attached as **Exhibit A** to the Declaration of Anthony J. Orshansky (“Orshansky Decl.”), filed concurrently herewith. By this Motion, Plaintiff seeks preliminary approval of the Agreement as fair, reasonable, and adequate, entry of the Preliminary Approval Order, and scheduling of the Final Approval Hearing to determine final approval of the Settlement.

The proposed \$555,000 non-reversionary settlement of this class and representative wage and hour case was achieved after extensive negotiations. The Settlement will provide monetary payments to over 8,000 Class Members with an average gross settlement award of \$67.49 per Class Member, a reasonable sum in light of the existing releases applicable to Class Members from two of Defendant’s prior class and representative action settlements. As set forth more fully below, the proposed Settlement satisfies all the criteria for settlement approval under Federal Rule of Civil Procedure 23. The Settlement was reached after substantial investigation and discovery. The negotiations were at arms-length and non-collusive, and were facilitated by experienced wage and hour mediator Lisa Klerman over the course of a full-day mediation session and follow-up negotiations facilitated by the mediator. Accordingly, Plaintiff requests that the Court preliminarily approve the proposed Settlement, certify the proposed Class for settlement purposes, approve the distribution of notice of the proposed Settlement,

1 and set a Final Approval Hearing.

2 **II. BACKGROUND AND PROCEDURE**

3 Defendant is a professional staffing company headquartered in Irving, Texas.
 4 Defendant provides professional aviation service solutions ranging from ground
 5 handling services such as cabin cleaning, to customer assistance services and
 6 security solutions for airline operations.

7 **A. Relevant Procedural Facts**

8 1. Procedural Background

9 Plaintiff was employed by Defendant as a nonexempt employee in 2019. On
 10 July 27, 2020, Plaintiff filed a putative class and representative action Complaint
 11 against Defendant in the Superior Court of the State of California, County of Los
 12 Angeles, (the “State Court Action”). The Complaint alleged the following causes
 13 of action on behalf of Defendant’s nonexempt California employees: (1) failure to
 14 pay minimum wages; (2) failure to pay all overtime wages; (3) meal period liability
 15 under Labor Code § 226.7; (4) rest break liability under Labor Code § 226.7; (5)
 16 failure to provide reporting-time pay; (6) failure to reimburse business expenses; (7)
 17 failure to provide accurate itemized employee wage statements; (8) failure to pay
 18 all wages owed timely and upon separation of employment; (9) violation of Labor
 19 Code § 1174(d); (10) violation of Business & Professions Code §§ 17200, *et seq.*;
 20 and (11) penalties pursuant to Labor Code § 2699. Plaintiff sent a letter to the
 21 California Labor & Workforce Development Agency (“LWDA”) providing notice
 22 under the Private Attorneys General Act (“PAGA”) of the same alleged violations
 23 that were pled in his Complaint.

24 On August 20, 2020, Defendant removed the State Court Action to the
 25 United States District Court for the Central District of California, where it has since
 26 been pending.

27 2. Relevant Time Periods

28 Plaintiff filed this class action after the settlement of two related prior class

1 and representative actions: (1) *Marshall v. G2 Secure Staff, L.L.C.*, Los Angeles
 2 County Superior Court Case No. BC541579 (“*Marshall*”); and (2) and *Heaggans v.*
 3 *G2 Secure Staff, L.L.C., et al.*, United States District Court, Central District of
 4 California Case No. 2:17-cv-09206-GW-PLA (“*Heaggans*”). *Marshall* bars all of
 5 Plaintiff’s class and representative action claims for all persons employed by
 6 Defendant in hourly or nonexempt positions within the State of California from
 7 April 3, 2010 through October 8, 2016, with the exception of Plaintiff’s class and
 8 representative claims for failure to reimburse for business expenses. *Heaggans* bars
 9 all of Plaintiff’s class and representative action claims for all nonexempt individuals
 10 employed by Defendant at any time from October 9, 2016 through May 15, 2020,
 11 with the exception of Plaintiff’s class and representative claims for meal periods
 12 and failure to reimburse for business expenses. Thus, for the vast majority of
 13 Plaintiff’s claims, the relevant time period only dates back to October 9, 2016 or
 14 May 16, 2020. The Settlement therefore covers the time period from October 9,
 15 2016 through the date of preliminary approval (“Settlement Period” or “Class
 16 Period”).

17 3. *The Parties Completed Substantial Discovery and Investigation*

18 The Parties engaged in substantial discovery and analysis of the underlying
 19 merits of Plaintiff’s claims, potential damages, and possible certification.
 20 Defendant produced documents, including: Defendant’s employment policies and
 21 procedures relating to the recording of time, meal periods, rest periods, expense
 22 reimbursements, overtime, and attendance; Plaintiff’s time records; Plaintiff’s pay
 23 records including wage statements; and a sampling of hard copy and electronic data
 24 regarding Class Members’ time records, meal periods, shifts, and wage statements.

25 After Plaintiff’s counsel performed a lengthy and time-consuming
 26 examination of the records, which included engaging an expert to analyze
 27 Defendant’s records and data, the results of the examination were used to produce a
 28 damages model utilized for mediation.

1 4. Mediation and Subsequent Negotiations

2 The Parties participated in mediation with attorney Lisa Klerman, a third-
3 party neutral who is experienced in mediating wage and hour class actions. During
4 mediation, the Parties engaged in approximately ten hours of extensive and
5 informed arm's-length negotiations. While the Parties did not settle on the day of
6 mediation, they continued settlement negotiations after mediation, and ultimately
7 reached a settlement in principle with the help of a mediator's proposal.

8 Additionally, because Plaintiff signed an arbitration agreement with
9 Defendant that contained a representative action waiver, and the resolution of
10 Plaintiff's PAGA claims is a component of the settlement in principle reached by
11 the Parties, the Parties also engaged in discussions regarding renegotiation of
12 certain terms of the Settlement Agreement in light of *Viking River Cruises, Inc. v.*
13 *Moriana*, U.S. Supreme Court Case No. 20-1573, where the Supreme Court granted
14 certiorari to decide "[w]hether the Federal Arbitration Act requires enforcement of
15 a bilateral arbitration agreement providing that an employee cannot raise
16 representative claims, including under PAGA." See Petition for a Writ of
17 Certiorari, *Viking River Cruises, Inc. v. Moriana*, 2021 WL 1944938; *Viking River*
18 *Cruises, Inc. v. Moriana*, 142 S. Ct. 734, 2021 WL 5911481 (2021). Recognizing
19 the critical opportunity to resolve the matter for the benefit of both the putative
20 class and Defendant, the ensuing settlement negotiations were non-collusive,
21 adversarial, and at arm's length, as required for appropriate class and representative
22 action settlements. Plaintiff, the Class and its counsel, on the one hand, and
23 Defendant and its counsel, on the other hand, agree that the Settlement is
24 reasonable, fair and equitable to both sides.

25 **III. PLAINTIFF'S CLAIMS**

26 Plaintiff has some primary wage and hour claims at issue in this litigation
27 that remain after the *Marshall* and *Heaggans* settlements, as well as several claims
28 that are derivative of these primary claims.

1 Plaintiff's meal period claim applies to all Class Members and is based on his
2 theory that Defendant maintained a common policy and practice of requiring its
3 nonexempt California employees to clock out for meal periods prior to completing
4 security checks that were mandatory to leave and re-enter their work premises,
5 which cut into their allotted time for meal periods. *See, e.g., Moore v. Ulta Salon,*
6 *Cosms. & Fragrance, Inc.*, 311 F.R.D. 590, 620-25 (C.D. Cal. 2015) (granting class
7 certification based on claim that nonexempt employees underwent exit inspections
8 during their meal breaks); *Hamilton v. Wal-Mart Stores, Inc.*, No. 17-CV-01415-
9 AB-KKX, 2018 WL 4813082, at *13 (C.D. Cal. Aug. 21, 2018) (granting class
10 certification based on claim that nonexempt employees were required to go through
11 security checkpoints during meal periods).

12 Plaintiff's meal period claim is also based on his theory that Defendant
13 maintained a common policy and practice of failing to pay meal period premiums at
14 the regular rate of pay rather than Class Members' base hourly rate of pay, as
15 required by law. *See Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal. 5th 858, 878
16 (2021) ("the term 'regular rate of compensation' in section 226.7(c) has the same
17 meaning as 'regular rate of pay' in section 510(a) and encompasses not only hourly
18 wages but all nondiscretionary payments for work performed by the employee").
19 Based on his investigation, Plaintiff alleges that these are company-wide policies
20 and practices, and not the result of discrete decisions by individual managers.
21 Plaintiff contends that this claim is certifiable for settlement purposes because it
22 presents common questions: (1) whether Defendant's alleged common policy and
23 practice of requiring nonexempt California employees to clock out for meal periods
24 prior to completing mandatory security checks violates California law, where
25 Defendant did not otherwise pay the employee a meal period premium; and (2)
26 whether Defendant's alleged common policy and practice of paying nonexempt
27 California employees' meal period premiums at their base hourly rate rather than
28 their regular rate of pay violates California law.

1 Moreover, this claim is capable of classwide proof since Plaintiff asserts that
2 while all Class Members were required to go through security checkpoints given
3 the secure environments in which Defendant's aviation clients operated, Defendant
4 as a matter of policy and practice required Class Members to punch out for their
5 meal periods before they reached any security check points. Plaintiff also asserts
6 that any meal break premiums that Class Members were paid did not account for
7 shift differentials or incentive pay that are otherwise legally required to be included
8 in the regular rate of pay, and therefore, the meal break premium calculation. Since
9 these alleged policies and practices applied to all Class Members, Plaintiff's meal
10 period claim covers all Class Members.

11 Plaintiff's rest period claim applies to all PAGA Members and is based upon
12 the theory that Defendant required Class Members to remain on site during rest
13 periods, which Plaintiff contends violates California law. Plaintiff bases this claim
14 on Defendant's rest period policy, which provides: "Rest breaks are paid and
15 employees must remain on the premises during the rest break time." Since
16 Defendant's rest period policy applied to all PAGA Members, Plaintiff's rest period
17 claim covers all PAGA Members.

18 Plaintiff's claim for reporting time pay applies to all PAGA Members and is
19 based upon the theory that while PAGA Members reported to work at their
20 scheduled times, they were sometimes sent home by their supervisors and
21 Defendant failed to pay them reporting time pay in each of those instances. Since
22 this alleged practice applied to all PAGA Members, Plaintiff's claim for reporting
23 time pay covers all PAGA Members.

24 Plaintiff's claim for failure to reimburse necessary business expenses applies
25 to all PAGA Members and is based upon the theory that PAGA Members incurred
26 necessary business expenses, including the purchase and use of personal cell
27 phones, in discharging their duties, but that Defendant failed to pay and/or
28 reimburse for such expenses. Since this alleged practice applied to all PAGA

Members, Plaintiff's claim for failure to reimburse necessary business expenses covers all PAGA Members.

Plaintiff's claims for overtime, minimum wage, wage statement, and waiting time penalties are largely derivative of his claims for meal and rest periods and his reporting time pay claim. Accordingly, Plaintiff's overtime, minimum wage, wage statement, and waiting time penalties claims cover all PAGA Members.

Plaintiff's PAGA claims are derivative of all of Plaintiff's above-described wage and hour claims based on the Labor Code. Accordingly, Plaintiff's PAGA claims cover all Class Members who also qualify as PAGA Members—*i.e.*, if the Class Member is a current or former non-exempt individual who was employed by Defendant G2 Secure Staff, L.L.C. in California at any time from July 18, 2019 through the Preliminary Approval Date. (Orshansky Decl., Ex. A, Settlement Agreement at ¶ 6.6.2.)

IV. SUMMARY OF THE SETTLEMENT TERMS

A. Composition of the Settlement Class

The Class or Settlement Class consists of all current and former nonexempt individuals who were employed by Defendant G2 Secure Staff, L.L.C. in California at any time from October 9, 2016 through the Preliminary Approval Date. All Class Members are subject to Plaintiff's theories for alleged meal period violations. (Orshansky Decl., ¶¶ 14-17.)

B. Settlement Consideration and Calculation of Settlement Payments

Plaintiff and Defendant have agreed to settle all class claims and representative claims alleged in the Action in exchange for the Gross Settlement Amount ("GSA") of \$555,000. The GSA includes: (1) settlement payments to Participating Class Members; (2) a requested \$185,000 in attorneys' fees (or one-third of the GSA), and up to \$15,000 in litigation costs/expenses to Class Counsel; (3) \$50,000 allocated to settle PAGA claims, of which a \$37,500 payment will be made to the LWDA to account for the LWDA's 75% portion of the PAGA

1 penalties; (4) Settlement Administration Costs of approximately \$40,000; and (5) a
 2 requested Service Payment of up to \$7,500 to Plaintiff. (Orshansky Decl., Ex. A,
 3 Settlement Agreement at ¶¶ 6.1-6.5). Based on the above, the Net Settlement
 4 Amount (“NSA”) is estimated to be \$270,000.¹ Defendant’s share of payroll taxes
 5 on all settlement payments allocated as wages shall be paid by Defendant *in*
 6 *addition* to the GSA.

7 Subject to the Court approving attorneys’ fees and costs, the payment to the
 8 LWDA, Settlement Administration Costs, and Plaintiff’s Service Payment, the
 9 NSA will be distributed to all Participating Class Members, and will be apportioned
 10 among Settlement Class Members based on whether the Settlement Class Member
 11 qualifies as a PAGA Member in addition to being a Class Member. (Orshansky
 12 Decl., Ex. A, Settlement Agreement at ¶¶ 6.6.1-6.6.5.) Because the GSA is non-
 13 reversionary, 100% of the NSA will be paid to Participating Class Members
 14 without the need to a submit claim for payment. (Orshansky Decl., Ex. A,
 15 Settlement Agreement at ¶ 2.16.)

16 The proposed \$555,000 non-reversionary, class and representative action
 17 settlement of this wage and hour case was achieved after extensive negotiations.
 18 This entire Settlement will provide monetary payments to at least 8,000 Class
 19 Members with an average gross settlement award to class members in the amount
 20 of approximately \$67.49, an eminently reasonable sum in light of the broad releases
 21 applicable to Class Members from *Marshall* and *Heaggans*. This recovery is in the
 22 range of other wage and hour class action settlements approved by California state
 23 and federal courts.²

24 ¹ Any amounts not awarded as attorneys’ fees and costs, Service Payment, payment
 25 to the LWDA or Settlement Administration Costs will be added to the amount
 payable to the class.

26 ² See, e.g., *Lim v. Victoria’s Secret Stores, Inc.*, Case No. 04CC00213 (Orange
 27 County Super. Ct.) (average net recovery of approximately \$35); and *Gomez v.*
 28 *Amadeus Salon, Inc.*, Case No. BC392297 (L.A. Super. Ct.) (average net recovery
 of approximately \$20); *Delgado v. New Albertson’s, Inc.*, Case No. SACV08-806
 DOC-RBNx (C.D. Cal.) (average net recovery of approximately \$45).

1 **C. Release by the Settlement Class**

2 In exchange for the GSA, Class Members (including Plaintiff) who do not
 3 opt out will agree to release for the period from October 9, 2016 through the
 4 Preliminary Approval Date—*i.e.*, the period post-dating the *Marshall* release
 5 period—any and all known and unknown claims which have been or could have
 6 been pled relating to the failure to provide meal periods or to pay any related
 7 premium pay, including any claims pursuant to or predicated on California Labor
 8 Code sections 226.7, 512, 558, the applicable wage order(s), and California
 9 Business & Professions Code section 17200 *et seq.* (Orshansky Decl., Ex. A,
 10 Settlement Agreement at ¶¶ 2.8, 2.23.)

11 Additionally, all Class Members, regardless of whether they opt out from the
 12 settlement of class claims, will release the following PAGA claims: (1) for the
 13 period from July 18, 2019 through May 15, 2020, any and all known and unknown
 14 claims pursuant to PAGA which have been or could have been pled relating to the
 15 failure to provide meal periods or to pay any related premium pay (at the correct
 16 rate, in part, or at all), and/or failure to reimburse for business expenses, including
 17 any claims pursuant to or predicated on California Labor Code sections 226.7, 512,
 18 558, 2800, 2802, and/or the applicable wage order(s); and (2) for the period from
 19 May 16, 2020 through the Preliminary Approval Date—*i.e.*, the PAGA lookback
 20 period that post-dates the *Heaggans* release period—any and all known and
 21 unknown claims which have been or could have been pled pursuant to PAGA
 22 relating to violations of California Labor Code sections 201-204, 201.3, 223, 226,
 23 226.7, 510, 512, 558, 1174, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2800, 2802,
 24 applicable wage order(s), failure to pay regular, overtime, minimum, or final wages,
 25 failure to pay reporting time pay, failure to provide meal and rest periods, failure to
 26 pay premium pay (at the correct rate, in part, or at all) for unprovided meal and rest
 27 periods, failure to provide accurate itemized wage statements, and failure to
 28 reimburse business expenses, claims for penalties, interest, and/or attorneys' fees

1 and costs. (Orshansky Decl., Ex. A, Settlement Agreement at ¶¶ 2.8, 2.23.) All
 2 Class Members who cash their settlement check will also release any and all claims
 3 for violation of the Fair Labor Standards Act during the Class Period. *Id.*

4 The above releases are directly related to Plaintiff's claims and take into
 5 account the scope of the pre-existing class and representative releases that were
 6 achieved in the *Marshall* and *Heaggans* settlements. Accordingly, the releases in
 7 the Settlement Agreement are narrowly tailored to the claims alleged in the Action,
 8 or related claims which could have been alleged in the Action. *See International*
 9 *Union of Operating Engineers-Employers Const. Industry Pension, Welfare and*
 10 *Training Trust Funds v. Karr*, 994 F. 2d 1426, 1430 (9th Cir. 1993) ("res judicata
 11 bars not only all claims that were actually litigated, but also all claims that 'could
 12 have been asserted' in the prior action").

13 **V. THE COURT SHOULD CONDITIONALLY CERTIFY THE** 14 **PROPOSED SETTLEMENT CLASS**

15 Plaintiff seeks conditional certification of the Class. A party seeking to
 16 certify a class must demonstrate that it has met the "four threshold requirements of
 17 Federal Rule of Procedure 23(a): (i) numerosity; (ii) commonality; (iii) typicality;
 18 and (iv) adequacy of representation." *Levy v. Medline Indus, Inc.*, 716 F.3d 510,
 19 512 (9th Cir. 2013). Once these prerequisites are satisfied, a court must consider
 20 whether the proposed class can be maintained under at least one of the requirements
 21 of Rule 23(b). *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2548 (2011).
 22 Plaintiff, here, seeks certification pursuant to Rule 23(b)(3), which requires that
 23 "questions of law or fact common to class members predominate over any
 24 questions affecting only individual members, and that a class action is superior to
 25 other available methods for fairly and efficiently adjudicating the controversy."
 26 Fed. R. Civ. P. 23(b)(3). The present case satisfies all of these requirements with
 27 respect to Plaintiff's claim for failure to provide meal periods or to pay any related
 28 premium pay (at the correct rate, in part, or at all), which is the only claim being

1 settled on a class-wide basis.

2 **A. The Settlement Class and Subclasses are Sufficiently Numerous**
 3 **and Ascertainable.**

4 Rule 23(a)(1) requires the class to be “so numerous that joinder of all
 5 members is impracticable[.]” Fed. R. Civ. P. 23(a)(1). There are approximately
 6 8,224 Class Members. With respect to Plaintiff’s meal period claim, all Class
 7 Members were subject to Defendant’s alleged common policies and practices of
 8 requiring Class Members to clock out for their meal periods prior to completing
 9 mandatory security checks, and of underpaying meal break premiums by paying
 10 such premiums at the Class Members’ base hourly rate rather than their regular rate
 11 of pay.

12 **B. There Are Questions of Law and Fact Common to the Class.**

13 Rule 23(a)(2) requires the existence of questions of law or fact common to
 14 the class[.] Fed. R. Civ. P. 23(a)(2). “[F]or purposes of Rule 23(a)(2) even a single
 15 common question will do.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 359, 131
 16 S. Ct. 2541, 2556, 180 L. Ed. 2d 374 (2011) (internal quotation marks and brackets
 17 omitted); *see Parsons v. Ryan*, 754 F.3d 657, 675 (9th Cir. 2014) (finding it is not
 18 necessary “that every question in the case, or even a preponderance of questions, is
 19 capable of class wide resolution. So long as there is even a single common
 20 question, a would-be class can satisfy the commonality requirement of Rule
 21 23(a)(2).” (internal quotation marks omitted)). Commonality requires the plaintiff
 22 to demonstrate that the class members have suffered the same injury but “[t]his
 23 does not mean merely that they have all suffered a violation of the same provision
 24 of law.” *Wal-Mart Stores*, 564 U.S. at 349-50 (internal quotation marks omitted).
 25 Rather, “[t]hat common contention . . . must be of such a nature that it is capable of
 26 classwide resolution—which means that determination of its truth or falsity will
 27 resolve an issue that is central to the validity of each one of the claims in one
 28 stroke.” *Id.*

1 The commonality requirement is satisfied in this action. Here, Plaintiff's
2 meal period class claim turns on answers to overarching common questions
3 regarding Defendant's policies and procedures that are capable of class-wide
4 resolution for settlement purposes. For settlement purposes, the common questions
5 raised include: (1) whether Defendant's alleged common policy and practice of
6 requiring nonexempt California employees to clock out for meal periods prior to
7 completing mandatory security checks violates California law, where Defendant did
8 not otherwise pay the employee a meal period premium; and (2) whether
9 Defendant's alleged common policy and practice of paying nonexempt California
10 employees' meal period premiums at their base hourly rate rather than their regular
11 rate of pay violates California law. Here, because Defendant's policies and
12 practices, and the common questions of law and fact that they raise, apply
13 uniformly to each and every Class Member, certification is appropriate of the entire
14 Class for settlement purposes.

15 **C. The Representative Plaintiff's Claims Are Typical of the Claims of**
16 **the Class and Subclasses.**

17 Rule 23(a)(3) requires the representative parties' claims or defenses be
18 "typical of the claims or defenses of the class[.]" Fed. R. Civ. P. 23(a)(3). "Under
19 the 'permissive standards' of this Rule, 'representative claims are 'typical' if they
20 are reasonably co-extensive with those of absent class members; they need not be
21 substantially identical." *Galvan v. KDI Distrib., Inc.*, No. 08-CV-0999-JVS-ANX,
22 2011 WL 5116585, at *6 (C.D. Cal. Oct. 25, 2011) (quoting *Hanlon v. Chrysler*
23 *Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1988)).

24 Here, Plaintiff and the Class Members all worked for Defendant as
25 nonexempt employees in California on airport contracts, and Plaintiff contends that
26 they were all subject to the same allegedly non-compliant policies and practices
27 with respect to meal periods. For example, Plaintiff alleges that Defendant
28 uniformly required Class Members to punch out for meal periods before going

1 through any security check, despite the fact that security checks were mandated due
 2 to the secure environments in which Defendant's aviation clients operated. Plaintiff
 3 also alleges that Defendant failed to properly pay meal period premiums at the
 4 correct rate by uniformly using Class Members' base hourly rate rather than their
 5 regular rate in calculating and issuing such premiums. As a result, Plaintiff argues
 6 that he and Class Members have suffered the same or similar injuries resulting from
 7 the same or similar conduct by Defendant and thus, the typicality requirement is
 8 satisfied for settlement purposes.

9 **D. Plaintiff and Plaintiff's Counsel Will Adequately Represent the**
 10 **Class.**

11 A class representative must be able to "fairly and adequately represent the
 12 interests of the class." Fed. R. Civ. P. 23(a)(4). To determine whether this
 13 requirement is met, the Ninth Circuit applies a two-pronged test: "(1) do the named
 14 plaintiffs and their counsel have any conflicts of interest with other class members;
 15 and (2) will the named plaintiffs and their counsel will prosecute the action
 16 vigorously on behalf of the class. *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454,
 17 462 (9th Cir. 2000). Both requirements are met here. Plaintiff has no conflict of
 18 interest with other Class Members and his interests are aligned with those of the
 19 Class Members, as he has vigorously represented the Class Members in seeking
 20 recovery for various alleged wrongdoings on their behalf. (Orshansky Decl., ¶¶ 31-
 21 35.) Plaintiff's counsel also has no conflict of interest with Class Members and
 22 seeks to recover compensation on their behalf. (*Id.*) Plaintiff's counsel has
 23 significant experience in prosecuting wage and hour class actions, and has
 24 previously been appointed as class counsel in numerous similar cases. (*Id.* at ¶¶ 36-
 25 38.)

26 **E. The Class Can Be Conditionally Certified Because the**
 27 **Requirements of FRCP Rule 23(b)(3) Are Satisfied.**

28 A class may be certified under Rule 23(b)(3) when "questions of law or fact

1 common to the class members predominate over any questions affecting only
2 individual members” and the class action mechanism is “superior” to other methods
3 of adjudicating the controversy. Fed. R. Civ. Proc. 23(b)(3). Here, both prongs of
4 the Rule 23(b)(3) analysis are satisfied.

5 1. Common Issues of Law and Fact Predominate

6 “The predominance inquiry ... asks whether proposed classes are sufficiently
7 cohesive to warrant adjudication by representation.” *Stearns v. Ticketmaster Corp.*,
8 655 F.3d 1013, 1019 (9th Cir. 2011). “The focus is on the relationship between the
9 common and individual issues.” *Id.* Here, the proposed Class is sufficiently
10 cohesive to warrant certification of Plaintiff’s meal break claim for settlement
11 purposes. The following common issues arise from Defendant’s uniform policies
12 and practices with respect to meal periods and predominate over individual
13 employee issues: (1) whether Defendant’s alleged common policy and practice of
14 requiring nonexempt California employees to clock out for meal periods prior to
15 completing mandatory security checks violates California law, where Defendant did
16 not otherwise pay the employee a meal period premium; and (2) whether
17 Defendant’s alleged common policy and practice of paying nonexempt California
18 employees’ meal period premiums at their base hourly rate rather than their regular
19 rate of pay violates California law. As such, the questions of law and fact that are
20 common to the Class predominate over individual issues.

21 2. The Class Action Mechanism is Superior to Any Other Methods
22 of Adjudication

23 Given the size of the Class, it is clear that the “superiority” element is
24 satisfied. The fact that more than 8,224 individual claims “would not only
25 unnecessarily burden the judiciary, but would prove uneconomic for potential
26 plaintiffs” weighs heavily in favor of a class resolution. *See Hanlon*, 150 F.3d at
27 1023.

VI. THE PROPOSED CLASS ACTION SHOULD RECEIVE PRELIMINARY APPROVAL AS IT MEETS ALL OF THE REQUIREMENTS OF RULE 23

Recent amendments to Rule 23 now clarifies that preliminary approval should be granted where the parties have “show[n] that the court will likely be able to ... approve the proposal under [the final approval factors in] Rule 23(e)(2).” Fed. R. Civ. Proc. 23(e)(1)(B). Accordingly, for the purposes of this motion, Plaintiff shall provide a discussion of the factors informing final approval, namely, whether:

(A) the class representatives and class counsel have adequately represented the class;

(B) the proposal was negotiated at arm’s length;

(C) the relief provided for the class is adequate, taking into account:

(i) the costs, risks, and delay of trial and appeal;

(ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;

(iii) the terms of any proposed award of attorney’s fees, including timing of payment; and

(iv) any agreement required to be identified under Rule 23(e)(3).

(D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. Proc. 23(e)(2). As explained below, each of these factors is met here, and so preliminary approval is appropriate.

A. The Class Representative and Class Counsel Have Adequately Represented the Class.

As discussed above, Plaintiff and his counsel have adequately represented the Class. (Orshansky Decl. ¶¶ 31-38.) Therefore, this requirement is satisfied.

B. The Settlement Is the Product of Arms-Length Negotiations and Is Therefore Entitled to a Presumption of Fairness.

“Preliminary approval is appropriate if the proposed settlement is the product of serious, informed, non-collusive negotiations.” *In re Volkswagen “Clean*

1 *Diesel*” Mktg., Sales Practices, and Prods. Liab. Litig. (“Volkswagen”), 2016 WL
 2 4010049, *14 (N.D. Cal. July 26, 2016). Here, the Parties participated in a full-day
 3 mediation session with Lisa Klerman, an experienced wage and hour mediator, and
 4 engaged in subsequent follow-up discussions with Ms. Klerman after an almost ten-
 5 hour mediation. At all times, the Parties’ negotiations were adversarial and non-
 6 collusive. This participation weighs considerably against any inference of a
 7 collusive settlement. *See In re Apple Computer, Inc. Derivative Litig.*, No. 06-CV-
 8 4128-JF-HRL, 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008).

9 The Parties were represented by experienced class action counsel throughout
 10 the negotiations resulting in this Settlement. Plaintiff was represented by
 11 CounselOne, P.C., a firm that regularly litigates wage and hour claims, and has
 12 considerable experience settling wage and hour class actions. (See Orshansky Decl.
 13 ¶¶ 36-42.) Defendant was represented by Morgan Lewis, which operates a highly-
 14 respected nationwide class action defense practice.

15 Moreover, no indicia of potential collusion exists here where there is no
 16 reversion to Defendant, no disproportionate service payment to Plaintiff as class
 17 representative, and no disproportionately large attorneys’ fee award. Therefore, the
 18 Settlement should be preliminarily approved for settlement purposes.

19 **C. The Relief Provided to the Class Is Adequate.**

20 The third factor requires the Court to consider whether “the relief provided
 21 for the class is adequate, taking into account: (i) the costs, risks, and delay of trial
 22 and appeal; (ii) the effectiveness of any proposed method of distributing relief to
 23 the class, including the method of processing class-member claims; (iii) the terms
 24 of any proposed award of attorney’s fees, including timing of payment; and (iv) any
 25 agreement required to be identified under Rule 23(e)(3).” Fed. R. Civ. P.
 26 23(e)(2)(C).

27 1. Costs, Risks, and Delay of Trial and Appeal

28 In accordance with Rule 23(e)(2)’s instruction to evaluate “the costs, risks,

1 and delay of trial and appeal,” courts assess “the strength of the plaintiffs’ case; the
 2 risk, expense, complexity, and likely duration of further litigation; [and] the risk of
 3 maintaining class action status throughout the trial.” *Hanlon*, 150 F.3d at 1026.
 4 This inquiry evaluates “plaintiffs’ expected recovery balanced against the value of
 5 the settlement offer.” *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d at 1080.

6 During this matter’s pendency, Class Counsel thoroughly investigated and
 7 researched the claims in controversy, and the defenses. The investigation entailed
 8 the exchange of information pursuant to substantial informal discovery. In the
 9 course of such discovery, Class Counsel received and analyzed adequate
 10 information to properly investigate and evaluate the claims, including: Defendant’s
 11 employment policies and procedures relating to the recording of time, meal periods,
 12 rest periods, expense reimbursements, overtime, and attendance; Plaintiff’s time
 13 records; Plaintiff’s pay records including wage statements; and a sampling of hard
 14 copy and electronic data regarding Class Members’ time records, meal periods,
 15 shifts, and wage statements. The extensive document and data exchanges have
 16 allowed Class Counsel to appreciate the strengths and weaknesses of the claims
 17 alleged against the benefits of the proposed Settlement.

18 2. *Defendant Has Asserted Defenses Creating Risk that the Class*
 19 *Will Receive No Recovery If the Claims at Issue Are Not Settled*

20 Throughout this litigation, Defendant has indicated that it intends to
 21 vigorously contest the forum of this litigation, class certification, PAGA
 22 manageability, and Plaintiff’s claims on the merits. While Plaintiff does not agree
 23 with Defendant’s arguments regarding arbitration, class certification, PAGA
 24 manageability, or Defendant’s defenses on the merits to Plaintiff’s claims, Plaintiff
 25 recognizes that there is a risk that the Court and/or a jury will agree with Defendant,
 26 and thus, limit or eliminate Class Members’ ability to recover on the claims at
 27 issue.

28 With respect to all of Plaintiff’s claims, Defendant contended that an

1 arbitration agreement required arbitration of Plaintiff's individual claims and
2 dismissal of Plaintiff's class and representative claims.³ Defendant also argued that
3 Plaintiff's claims are preempted by the Railway Labor Act, which provides for
4 mandatory arbitration of certain labor disputes between parties to a Collective
5 Bargaining Agreement—which exists here between G2 and its nonexempt
6 employees, including Plaintiff—and applies to any “company which is directly or
7 indirectly owned or controlled by or under common control with any carrier... and
8 which operates any equipment or facilities or performs any service (other than
9 trucking service) in connection with the transportation, receipt, delivery, elevation,
10 transfer in transit... and handling of property transported by railroad.” 45 U.S.C.
11 §§ 151, §§ 181-182.

12 Defendant also advanced arguments as to the merits of Plaintiff's meal and
13 rest period claims. With respect to Plaintiff's meal period claim, Defendant
14 maintained a timekeeping system that asked employees to select whether their
15 short, late, or unrecorded meal periods were the result of their own choice or
16 Defendant's conduct, and that paid meal period premiums whenever the employee
17 selected that a potential issue was due to Defendant's conduct. Employees were
18 also permitted to separately report any alleged meal break violations to their
19 supervisors or human resources. With respect to Plaintiff's rest period claim,
20 Defendant argued that as a practice, it has always permitted Class Members to leave
21 their work area during rest periods, and had even issued a memorandum to all
22 California employees dated October 9, 2019 stating, among other things, that
23 “Consistent with what has always been allowed, employees are permitted to leave
24 their work area during their off-duty rest periods, and go to any public area in the
25 terminal, sit in the break room, or anywhere else they wish within the limitations of

26
27 ³ Plaintiff's arbitration agreement contains a representative action waiver, and as
28 mentioned above, the U.S. Supreme Court will soon decide the enforceability of
such waivers in *Viking River Cruises, Inc. v. Moriana*, U.S. Supreme Court Case
No. 20-1573.

1 a 15-minute rest period.”

2 With respect to Plaintiff’s claim for overtime, Defendant argued that this
3 claim is subject to the collective bargaining agreement exemption pursuant to Labor
4 Code § 514.

5 With respect to Plaintiff’s wage statement claim, Defendant argued that
6 failure to pay meal and rest period premiums cannot be the basis for a wage
7 statement claim. *See Brewer v. Gen. Nutrition Corp.*, No. 11-CV-3587-YGR, 2015
8 WL 5072039, at *17-*18 (N.D. Cal. Aug. 27, 2015) (discussing split of authority
9 and cataloging cases).

10 With respect to Plaintiff’s claim for reporting time pay, Defendant contended
11 that it maintained a lawful policy, including pursuant to the language in its
12 handbook instructing for the payment of reporting time pay.

13 With respect to Plaintiff’s claim for reimbursement of necessary business
14 expenses, Defendant contended that no aspect of Plaintiff’s job position or the
15 positions of any PAGA Members required the use of their personal cell phones, as
16 they are given tablets or radios to use during their shifts. Defendant argued that
17 Plaintiff and the PAGA Members did not incur any other reasonable and necessary
18 business expenses, but that even if they had, they had the opportunity to request
19 reimbursement of any such expenses.

20 And with respect to Plaintiff’s derivative claim for waiting time penalties,
21 Defendant contended that any failure to pay final wages was not willful.

22 3. Exposure Analysis

23 Damages and Penalties: Based upon the analysis of various class data,
24 including a sampling of Defendant’s business records and review of sample
25 electronic data regarding Class Member meal periods and shifts leading up to
26 mediation, there were approximately 8,224 putative class members who worked
27 since October 9, 2016. Plaintiff’s counsel determined that a reasonable estimate of
28 the valuation of his classwide meal break claim is approximately \$294,152.

1 (Orshansky Decl., ¶ 18.)

2 As noted above, Plaintiff's theory of liability on his meal period claim is
3 based on Defendant's alleged policy and practice of requiring Class Members to
4 punch out for meal breaks prior to completing security checks, which were
5 mandatory due to the secure environments in which Defendant's aviation clients
6 operated, as well as Defendant's alleged policy and practice of paying meal period
7 premiums at Class Members' base hourly rate rather than their regular rate, which
8 is inconsistent with the standard articulated in *Ferra*, 11 Cal. 5th at 878. Even
9 though Plaintiff argues that these theories of meal period liability are certifiable,
10 Plaintiff's counsel ascribed a low value to these theories because: (1) the Class
11 Members all signed arbitration agreements with class action waivers; (2) there are
12 significant risks associated with obtaining class certification on this claim; and (3)
13 for many Class Members, their regular rate was generally similar or equal to their
14 base hourly rate, so would have little to no resulting damages.

15 PAGA: The amount of PAGA penalties would add a modest amount to the
16 valuation of the PAGA claims for settlement purposes. (Orshansky Decl., ¶ 28.)
17 But Defendant argued that Labor Code § 2699(e)(2) expressly provides that "...a
18 court may award a lesser amount than the maximum civil penalty amount specified
19 by this part if, based on the facts and circumstances of the particular case, to do
20 otherwise would result in an award that is unjust, arbitrary and oppressive, or
21 confiscatory." There is a substantial risk that the Court could significantly reduce
22 civil penalties if it is unpersuaded by Plaintiff's evidence of willful and intentional
23 conduct. *See Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 514 (2014) (PAGA
24 penalties reduced by 90%). Moreover, approval of PAGA allocations in the class
25 context show wide variance in the amounts determined by the Court to be fair,
26 reasonable and adequate. *See e.g., Reed v. Thousand Oaks Toyota*, No. 56-2012-
27 00419282-CU-OE-VTA, 2013 WL 8118716 (Cal. Super. Ct. Apr. 8, 2013) (class
28 action settlement approved for \$108,624, with \$1,500 allocated towards PAGA

1 penalties); *Bolton v. U.S. Nursing Corp.*, No. 12-CV-4466-LB, 2013 WL 5700403
2 (N.D. Cal. Oct. 18, 2013) (approving class action settlement for \$1,700,000, with
3 \$15,000 allocated towards PAGA).

4 Here, due to Defendant's defenses, Defendant argued that there should be
5 low valuation for the PAGA claims. For example, Plaintiff's theory of liability for
6 his rest period PAGA claim is based largely on G2's written rest period policy that
7 requires on-premises rest periods which Plaintiff argues is not compliant pursuant
8 to *Augustus v. ABM Security Servs., Inc.*, 2 Cal. 5th 257 (2016) which addressed
9 "on-call" and "on-duty" rest periods. Plaintiff's counsel applied appropriate
10 discounts to this claim in light of Defendant's arguments that: (1) interpreting
11 *Augustus* as prohibiting on-premises rest breaks is questionable because an
12 allegation that an employer does not permit employees to leave the employer's
13 business premises during rest breaks is not sufficient in and of itself to state a rest
14 period violation (*see Hubbs*, 2018 WL 5264141); (2) as a matter of practice,
15 Defendant contends it has always permitted Class Members to leave their work
16 areas during rest periods; (3) the fact that Class Members work at various airports
17 in California means that in order for them to leave the airport terminal during their
18 rest period, they would need to exit a secure area and re-complete the security
19 screening process during their rest period, meaning that as a practical matter, the
20 Class Members would not have been able to take off-premises rest periods anyway;
21 and (4) there would be some difficulty in proving this claim because there are no
22 timekeeping records of rest periods.

23 Plaintiff's counsel applied appropriate discounts to Plaintiff's PAGA claims
24 predicated on alleged overtime and minimum wage violations for purposes of
25 settlement because these claims are largely derivative of Plaintiff's meal and rest
26 period claims, and because Defendant argued that the overtime claim is precluded
27 by the collective bargaining agreement exemption in Labor Code § 514.
28 (Orshansky Decl., ¶¶ 25-27.) Plaintiff's counsel likewise applied appropriate

1 discounts to Plaintiff's PAGA claims predicated on alleged reporting time pay
2 violations because Defendant contended that it had a compliant written policy with
3 respect to such pay. (*Id.*, ¶¶ 21-22.)

4 Plaintiff's counsel also applied appropriate discounts to Plaintiff's PAGA
5 claim predicated on alleged waiting time penalties claim for former employees
6 because of (1) Defendant's defenses discussed above; (2) Defendant's argument
7 that waiting time penalties are recoverable only when a *willful* violation has
8 occurred (*see* Cal. Code Regs. Tit. 8, § 13520); and (3) Defendant's argument that a
9 waiting time penalties claim cannot be based on failure to pay meal and rest period
10 premiums (*see Singletary v. Teavana Corp.*, 2014 WL 1760884, *4 (N.D. Cal. Apr.
11 2, 2014) (holding that section 203 penalties for willful failure "to pay any wages of
12 an employee" were not meant to include the payments under section 226.7)).
13 (Orshansky Decl., ¶ 26.)

14 Plaintiff's counsel further applied appropriate discounts to Plaintiff's PAGA
15 claim predicated on alleged failure to reimburse necessary business expenses
16 because of the difficulty of demonstrating that (1) Class Members' job positions
17 required the use of their personal cell phones or other business expenses, and (2)
18 Class Members were denied any express requests for reimbursement for the
19 reasonable use of their personal cell phones or other business expenses in
20 connection with performing their job duties. (Orshansky Decl., ¶¶ 23-24.)

21 Additionally, Defendant raised manageability defenses to Plaintiff's PAGA
22 claims. Defendant maintains that a PAGA claim will be deemed unmanageable if
23 individualized inquiries are necessary to establish liability and ascertain which
24 employees are aggrieved. *See, e.g., Ortiz v. CVS Caremark Corp.*, 2014 WL
25 1117614, at *4 (N.D. Cal. Mar. 19, 2014) (striking PAGA claim as unmanageable)
26 ("[T]he circumstances of this case make the PAGA claim here unmanageable
27 because a multitude of individualized assessments would be necessary ... [p]roof of
28 this [off-the-clock] claim would be unmanageable, and could not be done with

1 statistical or survey evidence but only with detailed inquiries about each employee
2 claimed to have done so and her manager's knowledge thereof."); *Amey v.*
3 *Cinemark*, 2015 WL 2251504, at *16 (N.D. Cal. May 13, 2015) (dismissing PAGA
4 claims; "[W]hen the evidence shows, as it does here, that numerous individualized
5 determinations would be necessary to determine whether any class member has
6 been injured by [defendant's] conduct, then allowing a representative action to
7 proceed is inappropriate."); *Bowers v. First Student, Inc.*, 2015 WL 1862914, at *4
8 (C.D. Cal. Apr. 23, 2015) (same) (internal quotations and citations omitted).
9 Moreover, in *Wesson v. Staples*, 68 Cal. App. 5th 746 (Sep. 9, 2021), the California
10 Court of Appeal recently affirmed the striking of a plaintiff's entire PAGA claim on
11 manageability grounds.

12 Finally, Defendant raised arbitration as a defense to Plaintiff's PAGA claims
13 because Plaintiff and the PAGA Members signed arbitration agreements with
14 Defendant that contained representative action waivers. On December 15, 2021,
15 the United States Supreme Court granted a petition for certiorari in *Viking River*
16 *Cruises, Inc. v. Moriana*, U.S. Supreme Court Case No. 20-1573 ("Viking River"),
17 to decide "[w]hether the Federal Arbitration Act requires enforcement of a bilateral
18 arbitration agreement providing that an employee cannot raise representative
19 claims, including under PAGA." See Petition for Writ of Certiorari, *Viking River*
20 *Cruises, Inc. v. Moriana*, 2021 WL 1944938; Order granting Petition, *Viking River*
21 *Cruises, Inc. v. Moriana*, 142 S. Ct. 734, 2021 WL 5911481 (Dkt. 201573). Should
22 the U.S. Supreme court find that representative action waivers are enforceable,
23 Defendant contended it would move to compel individual arbitration of Plaintiff's
24 claims, including the PAGA claims, posing a substantial risk to their potential
25 value. (Orshansky Decl., ¶¶ 10, 13.)

26 Here, Plaintiff applied discounts to the value of the PAGA claims in
27 settlement negotiations in light of Defendant's arguments on the merits of
28 Plaintiff's underlying claims and on the arbitration issues. (*Id.*, ¶¶ 13-29.) As is

1 always the case with a trial, Plaintiff needed to accept that there was a possibility
 2 that he would not prevail. Thus, in the face of such uncertainty, settlement was
 3 advantageous to Plaintiff, the LWDA, and the aggrieved employees as it secured
 4 some monetary recovery. (*Id.*, ¶ 39.)

5 4. Allocation to LWDA for PAGA Penalties

6 Pursuant to the Settlement Agreement, \$50,000 from the GSA shall be
 7 allocated to the resolution of the PAGA claim, of which 75% (\$37,500) will be paid
 8 directly to the LWDA, and the remaining 25% will be added to the NSA. Where,
 9 as here, PAGA penalties are negotiated in good faith and “there is no indication that
 10 [the] amount was the result of self-interest at the expense of other Class Members,”
 11 such amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.*,
 12 Case No. 08-00844, 2009 U.S. Dist. LEXIS 33900, at *24 (N.D. Cal. Apr. 3, 2009).

13 Class Counsel will submit a copy of the Settlement to the LWDA before the
 14 hearing of this Motion.

15 5. Benefits to Early Resolution

16 The potential risks attending further litigation also support early resolution
 17 and preliminary approval. Courts have long recognized the inherent risks and
 18 “vagaries of litigation,” and emphasized the comparative benefits of “immediate
 19 recovery by way of the compromise to the mere possibility of relief in the future,
 20 after protracted and expensive litigation.” *Nat’l Rural Telecommunications Coop.*,
 21 221 F.R.D. at 526.

22 Additionally, early resolutions save time and money that would otherwise go
 23 to litigation. Parties’ resources, as well as the Court’s, would be further taxed by
 24 continued litigation. Moreover, given that the Class Members in this case are
 25 primarily low wage workers, for whom receiving speedy remuneration is
 26 particularly important, the potential for years of delayed recovery is a significant
 27 concern. Considered against the risks of continued litigation, and the importance of
 28 the employment rights and a speedy recovery to plaintiff class members, the totality

1 of relief provided under the proposed Settlement is more than adequate and well
2 within the range of reasonableness.

3 In summary, although Plaintiff and his counsel maintained a strong belief in
4 the underlying merits of the claims, they also acknowledge the significant
5 challenges posed by continued litigation through trial. Accordingly, when balanced
6 against the risk and expense of continued litigation, the Settlement is fair, adequate,
7 and reasonable. *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1242 (9th Cir.
8 1998) (“the very essence of a settlement is compromise, a yielding of absolutes and
9 an abandoning of highest hopes”).

10 **D. The Method of Distributing Relief to the Class Is Effective.**

11 The Notice of Proposed Class and Representative Action Settlement (“Notice
12 of Settlement”) and settlement administration procedure satisfy due process. FRCP
13 Rule 23(c)(2) requires the Court to direct the litigants to provide Class Members
14 with the “best notice practicable” under the circumstances, including “individual
15 notice to all members who can be identified through reasonable effort.” *Eisen v.*
16 *Carlisle & Jacqueline*, 417 U.S. 156, 173 (1974). Where the names and addresses
17 of Class Members are easily ascertainable, individual notice through the mail
18 constitutes the “best notice practicable.” *Id.* at 175.

19 The Notice of Settlement was jointly drafted and approved by the Parties and
20 provides Class Members with all required information so that each member may
21 make an informed decision regarding his or her participation in the Settlement. The
22 Notice of Settlement provides information regarding the nature of the lawsuit, a
23 summary of the substance of the settlement terms, the class definition and subclass
24 definitions, the deadlines by which Class Members must submit Request for
25 Exclusion or objection, the date for the final approval hearing; the formula used to
26 calculate settlement payments, a statement that the Court has preliminarily
27 approved the settlement, and a statement that Class Members will release the settled
28 claims unless they opt out.

1 The Settlement Administrator will mail the Notice of Settlement to all Class
 2 Members via first class United States mail. (Orshansky Decl., Ex. A, Settlement
 3 Agreement at ¶¶ 7.2.1-7.2.3.) Prior to mailing the Notice of Settlement, the
 4 Settlement Administrator will search the National Change of Address Database and
 5 update the Class Data to reflect any identifiable address changes. Any Notices of
 6 Settlement returned to the Settlement Administrator as undeliverable on or before
 7 the deadline for postmarking Opt Outs shall be sent promptly via First-Class U.S.
 8 Mail to the forwarding address affixed thereto. If no forwarding address is
 9 provided, the Settlement Administrator shall promptly attempt to determine the
 10 correct address using a single skip-trace or other search using the name, address
 11 and/or Social Security Number of the Class Member involved, and it shall then
 12 perform up to three re-mailings.

13 **E. Attorneys' Fees Are Reasonable.**

14 The California Supreme Court has endorsed the percentage method of
 15 awarding attorneys' fees where a class action suit results in a common fund for the
 16 class, noting that its benefits as compared to the lodestar method include the
 17 method's "relative ease of calculation, alignment of incentives between counsel and
 18 the class, a better approximation of market conditions in a contingency case, and
 19 the encouragement it provides counsel to seek an early settlement and avoid
 20 unnecessarily prolonging the litigation." *Laffitte v. Robert Half Int'l, Inc.*, 1 Cal. 5th
 21 480, 503 (2016). The Ninth Circuit is in accord about the benefits of the percentage
 22 method. *See In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 942 (9th
 23 Cir. 2011) ("Because the benefit to the class is easily quantified in common-fund
 24 settlements, we have allowed courts to award attorneys a percentage of the common
 25 fund in lieu of the often more time-consuming task of calculating the lodestar.").
 26 Thus, "the percentage-of-the-fund method is preferred when counsel's efforts have
 27 created a common fund for the benefit of the class." *In re Capacitors Antitrust*
 28 *Litig.*, No. 3:14-CV-03264-JD, 2018 WL 4790575, at *2 (N.D. Cal. Sept. 21, 2018)

Here, Plaintiff's counsel seeks approximately 33¹/₃% of the Gross Settlement Amount in attorneys' fees (\$185,000) plus reimbursement of reasonable expenses and costs, such as mediation fees, filing fees and service fees (\$15,000). This percentage is well in line with the fee awards approved in numerous other cases. *See, e.g., Morris v. Lifescan, Inc.*, 54 Fed. App'x. 663, 664 (9th Cir. 2003) (affirming fee award of 33% of fund); *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 457, 463 (9th Cir. 2000) (affirming fee award of 33.3% of fund); *In re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (affirming 33% of class recovery); *Milburn v. PetSmart, Inc.*, No. 1:18-CV-00535-DAD, 2019 WL 5566313, at *10 (E.D. Cal. Oct. 29, 2019) (awarding 33.3% of fund); *Vedachalam v. Tata Consultancy Servs., Ltd.*, No. 06-CV-0963-CW, 2013 WL 3941319, at *2 (N.D. Cal. July 18, 2013) (collecting cases awarding 30% or more); *Johnson v. Gen. Mills, Inc.*, No. 10-CV-00061-CJC, 2013 WL 3213832, at *6 (C.D. Cal. June 17, 2013) (approving fee award of 30% of fund); *Cicero v. DirecTV, Inc.*, No. 07-CV-1182, 2010 WL 2991486, at *6 (C.D. Cal. July 27, 2010) ("courts usually award attorneys' fees in the 30-40% range in wage and hour class actions that result in ... a common fund under \$10 million").

In determining whether an attorneys' fee award is justified, the Court must evaluate the results obtained on behalf of the class. *See Vizcaino v. Microsoft Corp.*, 142 F. Supp. 2d 1299, 1304 (W.D. Wash. 2001), *aff'd*, 290 F.3d 1043 (9th Cir. 2002). Plaintiff's counsel has obtained favorable settlement terms in this case, as discussed above. Thus, here, the attorneys' fees sought are reasonable given the complexity of the litigation.

F. There Are No Agreements Made in Connection with the Settlement Other than What Plaintiff Already Identified.

There are no agreements between the Parties in connection with the Settlement other than what Plaintiff identifies herein and in the Parties' Joint Stipulation of Class and Representative Action Settlement. (Orshansky Decl., Ex. A.)

G. The Settlement Provides for Equitable Treatment of Class Members.

The Settlement provides for the equitable treatment of Class Members. The settlement payments are separated into two funds, reflecting the value of the separate releases: (1) the Class Fund for those Class Members who were employed by Defendant in California at any time from October 9, 2016 through the Preliminary Approval Date; and (2) the PAGA Fund for those Class Members who were employed by Defendant in California at any time from July 18, 2019 through the Preliminary Approval Date. Because longer-term employees of Defendant will be more likely to qualify for both funds, they will also tend to receive higher payouts than shorter-term employees.

Plaintiff also intends to apply for a \$7,500 Service Payment. The Ninth Circuit has recognized that service awards to named plaintiffs in a class action are permissible and do not necessarily render a settlement unfair or unreasonable. *See Staton v. Boeing Co.*, 327 F.3d 938, 977 (9th Cir. 2003). The service award, however, must be “reasonable,” and the Court “must evaluate their awards individually, using ‘relevant factors includ[ing] the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefitted from those actions, ... the amount of time and effort the plaintiff expended in pursuing the litigation ... and reasonabl[e] fear[s of] workplace retaliation.’” *Id.* Here, the Service Payment sought by Plaintiff is very reasonable given the time expended by Plaintiff on behalf of the Class, and service awards of this amount or greater have been approved in numerous cases. *See, e.g., China Agritech, Inc. v. Resh*, 138 S. Ct. 1800, 1811 n.7 (2018) (class representative may obtain incentive award of up to \$25,000); *Moore v. PetSmart, Inc.*, 2015 WL 5439000, at *13 (N.D. Cal. Aug. 4, 2015) (awarding \$10,000 service awards); *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 267 (N.D. Cal. 2015) (incentive awards typically range from \$2,000 to \$10,000); *Galeener v. Source Refrigeration & HVAC, Inc.*, No. 3:13-CV-

04960-VC, 2015 U.S. Dist. LEXIS 193096, at *7-8 (N.D. Cal. Aug. 21, 2015) (collecting cases and holding that service awards of \$27,000, \$25,000, \$15,000, and \$2,000 were “fair and reasonable”); *Garner v. State Farm Mut. Auto. Ins. Co.*, No. 08-CV-1365-CW-EMC, 2010 U.S. Dist. LEXIS 49477, at *47 (N.D. Cal. Apr. 22, 2010) (compiling cases and holding service awards of \$20,000 were “well justified”); *Glass v. UBS Fin. Servs., Inc.*, No. 06-CV-4068 MMC, 2007 WL 221862, at *17 (N.D. Cal. Jan. 26, 2007) (approving \$25,000 awards to each of four representatives). Accordingly, the requested Service Payment is reasonable.

H. The Court Should Approve CPT Group, Inc. as Settlement Administrator.

The Parties have agreed to retained CPT Group, Inc. as the Settlement Administrator (Declaration of Julie Green, ¶ 4.) CPT has extensive experience in disseminating class action notices and administering class action settlements in thousands of cases. (*Id.*, ¶ 3, Ex. A.) CPT has provided a bid of \$40,000 to act as a class action Settlement Administrator for this case. (*Id.*, ¶ 5, Ex. B.) A detailed list of CPT’s responsibilities are discussed in the Green Declaration. (*Id.*, ¶ 4.) In Class Counsel’s experience, this bid is competitive for similar wage and hour class action settlement administrations. (Orshansky Decl., ¶ 43.)

VII. CONCLUSION

The Parties have negotiated a fair and reasonable settlement of claims. Having appropriately presented the materials and information necessary for preliminary approval, Plaintiff respectfully requests that the Court preliminarily approve the settlement.

Dated: April 28, 2022

COUNSELONE, P.C.

By /s/ Anthony J. Orshansky
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