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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

FERNANDO HERRERA, individually, and on
behalf of other members of the general public
similarly situated,

Plaintiff,

vs.

AIRTECH INTERNATIONAL, INC., a
California corporation; ADVANCED
MATERIALS GROUP, an unknown business
entity; and DOES 1 through 100, inclusive,

Defendants.

SALVADOR SALAMANCA, on behalf of
himself and other members of the general
public similarly situated,

Plaintiff,

vs.

AIRTECH INTERNATIONAL, INC., a
California corporation; and DOES 1 through
100,

Defendants.

Case No.: CIVDS 1930833 (lead case)
CIVDS 2020465

Honorable David Cohn
Department S26

CLASS ACTION

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

Preliminary Approval Hearing

Date: May 14, 2021
Time: 10:00 a.m.
Dept.: S26

1 **PLEASE TAKE NOTICE** that, pursuant to Rule 3.769 of the California Rules of Court,
2 on May 14, 2021 at 10:00 a.m. in Department S26 of the above-entitled Court, located at 247
3 West Third Street, San Bernardino, California 92415, plaintiffs Fernando Herrera, Lizbeth
4 Cisneros, and Salvador Salamanca (collectively, “Plaintiffs” or “Class Representatives”)
5 individually and on behalf of all others similarly situated, will and hereby do move this Court
6 for:

7 1. Preliminary approval of the proposed Stipulation of Settlement;
8 2. Pursuant to Section 382 of the California Code of Civil Procedure, provisional
9 certification of the following Class defined as follows:

10 **Class Members** - all current and former hourly-paid or non-exempt employees
11 who worked for Defendants in the state of California at any time during the Class
Period (the “Class” or “Class Members”).

12 3. Preliminary appointment of Plaintiffs Fernando Herrera, Lizbeth Cisneros, and
13 Salvador Salamanca as Class Representatives;

14 4. Preliminary appointment of Lawyers *for* Justice, P.C. and CounselOne, P.C. as
15 Class Counsel;

16 5. The scheduling of a hearing to consider whether the settlement should be finally
17 approved and award amounts for the Class Representative Service Awards, Settlement
18 Administrator Expenses, the Private Attorneys General Act payment to the California Labor and
19 Workforce Development Agency, as well as attorneys’ fees and costs to Class Counsel;

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

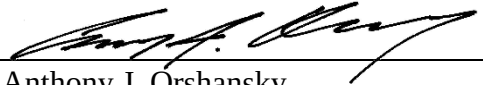
21 8. Approval of the proposed Notice of Class Action Settlement and entry of the
22 proposed Order instructing the notice to be disseminated to the Class as provided in the
23 settlement.

24 This motion is based on this notice of motion, the attached memorandum of points and
25 authorities, and the declarations of Edwin Aiwasian and Anthony J. Orshansky filed concurrently
26 herewith, and the exhibits attached thereto, the pleadings and other papers filed in this action,
27 and on any further oral or documentary evidence or argument presented at the time of hearing.
28 Finally, given the multiplicity of issues addressed in this Motion, Plaintiffs respectfully believe

1 there is good cause to exceed the 20-page limit set forth in California Rule of Court 3.764(c)(2),
2 and respectfully requests that the Court consider Plaintiffs' memorandum of points and
3 authorities.

4
5 Dated: April 21, 2021

Respectfully submitted,
COUNSELONE, PC

6
7
8 By: 

Anthony J. Orshansky

Jennifer L. Connor

Justin Kachadoorian

Attorneys for Plaintiffs, putative Class,
and putative aggrieved employees

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Fernando Herrera and Salvador Salamanca, along with proposed additional
4 named plaintiff, Lizbeth Cisneros (collectively, “Plaintiffs” or “Class Representatives”),
5 individually and on behalf of all others similarly situated,¹ seek preliminary approval of the
6 settlement agreement entered with defendants Airtech International Inc. and Airtech Advanced
7 Materials Group (collectively, “Defendants”). The class and representative action Stipulation of
8 Settlement (“Settlement Agreement” or “Settlement”) between Plaintiffs and Defendants
9 (together, the “Parties”), if approved, will resolve specific claims of the Plaintiffs and Settlement
10 Class Members in exchange for Defendants’ agreement to pay a maximum amount of **Three**
11 **Million Three Hundred Fifteen Thousand Dollars (\$3,315,000) into a non-reversionary**
12 **common settlement fund** that will be available for distribution to Settlement Class Members.²
13 Based upon the data received from Defendants, there are approximately 387 Class Members
14 employed as hourly, non-exempt employees during the Class Period.

15 By way of this now consolidated class and representative lawsuit, Plaintiffs jointly pursue
16 their rights against Defendants for abusing their non-exempt and hourly paid employees
17 by violating wage-and-hour laws under the California Labor Code and Business and Professions
18 Code. Plaintiffs seek to recover unpaid wages and overtime, premiums for improper meal and
19 rest breaks, reimbursement of business expenses, restitution, liquidated damages, penalties for
20 improper wage statements, waiting time penalties, wages, civil penalties pursuant to the Private
21 Attorneys General Act (“PAGA”), injunctive and other equitable relief, prejudgment interest,
22 and attorneys’ fees and costs.

23 After engaging in substantial independent investigation and after mediation with Eve
24 Wagner, Esq. of Signature Resolution, the Parties agreed to settle Plaintiffs and the Settlement

25 ¹ “Class Members” are defined as all current and former hourly-paid or non-exempt employees who worked for
26 Defendants in the state of California at any time between October 15, 2015 through the date of preliminary approval,
27 or the date on which the Workweeks are equal to or do not exceed 56,100, whichever comes first. (Settlement
Agreement ¶¶ 2.2, 2.4.)

28 ² “Settlement Class Members” means all Class Members who do not opt out of this Settlement. (Settlement
Agreement ¶ 2.3.)

Class Members' claims alleged in this consolidated litigation for the ***non-reversionary sum of Three Million Three Hundred Fifteen Thousand Dollars (\$3,315,000) ("Total Settlement Amount")***. A true and correct copy of the fully executed Stipulation of Settlement dated April 16, 2021 is attached at Exhibit "1" to Declaration of Anthony J. Orshansky ("Orshansky Decl.") ¶ 5 filed concurrently herewith. After deductions for attorneys' fees and costs to Class Counsel, service awards to the Class Representatives, Settlement Administrator costs, and the PAGA payment, the remaining amount (the "Net Distribution Fund") of approximately **\$1,982,750** will be distributed to the Settlement Class.³ The entire Net Distribution Fund must be paid out to Settlement Class Members. Settlement Class Members will automatically receive payments ***without the need to submit claim forms.***

The Settlement is fair, reasonable, and adequate, and in the best interests of Class Members. Consequently, Plaintiffs, with the consent and approval of Defendants, hereby move for an order: (1) conditionally certifying the Class for settlement purposes; (2) granting preliminary approval of the Settlement Agreement; (3) approving the Notice of Class Action Settlement; and (4) setting a hearing for final approval of the Settlement.

II. THE EXTENT OF INVESTIGATION AND STAGE OF PROCEEDINGS

Originally, Plaintiffs filed two separate actions in San Bernardino County Superior Court against Defendants Airtech International, Inc. and Airtech Advanced Materials Group. (Orshansky Decl. ¶ 26.) Plaintiff Fernando Herrera was employed as a shipping/receiving clerk and shipping coordinator in Chino, California from June 24, 2013 to August 16, 2018. (Orshansky Decl. ¶ 27.) On October 15, 2019, Plaintiff Fernando Herrera commenced the *Herrera* Action by filing a Class Action Complaint for Damages ("*Herrera* Complaint") asserting putative class action wage and hour claims.⁴ Plaintiff Herrera is represented by Lawyers

³ Payment of Defendants' share of employer payroll taxes for payments on the Individual Settlement Shares allocated as wages shall be separately funded (*i.e.*, outside of the settlement fund) by Defendants. (Settlement Agreement ¶ 2.33.)

⁴ Plaintiff Herrera alleged the following claims: (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime); (2) Violation of California Labor Code §§ 226.7 and 512(a) (Failure to Provide Meal Periods and Unpaid Meal Period Premiums); (3) Violation of California Labor Code § 226.7 (Failure to Provide Rest Periods and Unpaid Rest Period Premiums); (4) Violation of California Labor Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum

1 *for Justice, P.C. (Orshansky Decl. ¶ 28.)*

2 Plaintiff Salvador Salamanca was employed as a machine operator in Chino, California
3 from March 17, 2008 to March 24, 2020. (*Orshansky Decl. ¶ 29.*) Unaware of the pending
4 *Herrera* Action, on July 1, 2020, Plaintiff Salamanca submitted notice to the California Labor &
5 Workforce Development Agency (“LWDA”) seeking authority to pursue penalties under the
6 Private Attorneys General Act (“PAGA”) for violations of California law. On September 28,
7 2020, Plaintiff Salamanca commenced the *Salamanca* Action by filing a Class And
8 Representative Action Complaint (“*Salamanca* Complaint”) asserting putative class action wage
9 and hour claims, several that overlap with the *Herrera* Action, along with representative action
10 claims under the PAGA.⁵ (*Orshansky Decl. ¶ 29.*) Plaintiff Salamanca is represented by
11 CounselOne, P.C. On February 17, 2021, the Court *sua sponte* deemed the *Herrera* Action and
12 *Salamanca* Action consolidated for purposes of future litigation.⁶ (*Orshansky Decl. ¶ 31.*)

13 Defendants deny Plaintiffs’ allegations of wrongdoing. Defendants do not believe that
14 any liability to Plaintiffs or other Class Members exist, or that Plaintiffs or Class Members are
15 entitled to any recovery. (*Settlement Agreement ¶ 1.10.*) In settling, Defendants do not admit
16 liability with respect to the alleged claims made by Plaintiffs and make no admissions regarding
17 any facts or law related to the lawsuit. (*Ibid.*) Defendants also dispute that Plaintiffs would be

18 _____
19 Wages); (5) Violation of California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid); (6) Violation of
20 California Labor Code § 204 (Wages Not Timely Paid During Employment); (7) Violation of California Labor Code
21 § 226(a) (Non-Compliant Wage Statements); (8) Violation of California Labor Code § 1174(d) (Failure To Keep
Requisite Payroll Records); (9) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business
Expenses); and (10) Violation of California Business & Professions Code §§ 17200, *et seq.* See, (*Orshansky Decl.*
¶ 28.)

22 ⁵ Plaintiff Salamanca alleged the following claims: (1) Violation of California Labor Code §§ 1194, 1194.2, 1197,
23 and 1197.1 (Failure to Pay Minimum Wages); (2) Violation of California Labor Code §§ 510 and 1198 (Failure to
24 Pay All Overtime Wages); (3) Violation of California Labor Code §§ 226.7 and 512 (Meal Period Liability); (4)
25 Violation of California Labor Code § 226.7 (Rest Break Liability); (5) Violation of California Labor Code § 226
26 (Failure to Provide Accurate Itemized Wage Statements); (6) Violation of California Labor Code §§ 201-204
(Failure to Pay All Wages Owed Timely and Upon Separation of Employment); (7) Violation of California Labor
Code Section 1174(d) (Failure to Maintain Accurate Itemized Wage Statements); (8) Violation of California
Business and Professions Code Section 17200, *et seq.* (Unfair Business Practices); and (9) Penalties Pursuant to
Labor Code Section 2699 (Private Attorneys General Act (“PAGA”)). See, (*Orshansky Decl. ¶ 30.*)

27 ⁶ Subsequent to the filing of the *Herrera* Action and *Salamanca* Action, a putative class member identified as Lizbeth
28 Cisneros came forward to assist the Parties in their litigation and mediation efforts, and did, in fact, do so. As part
of the Settlement, the Parties agreed that Ms. Cisneros may serve as an additional named plaintiff and class
representative. The Parties defer to the Court’s guidance on whether, or not, an amended or joint consolidated
complaint should be filed to reflect this addition. See, (*Orshansky Decl. ¶ 12.*)

1 able to certify a class outside of the settlement context because, *inter alia*, Plaintiffs' claims on
2 the merits would require a series of individualized mini-trials; Defendants agreed to a settlement
3 class only. (Settlement Agreement ¶ 3.5.)

4 **A. Discovery and Investigation**

5 Here, the Parties engaged in extensive discovery, exchanging information, documents
6 and reviewing and analyzing extensive data made available by Defendants which enabled the
7 Parties to thoroughly evaluate Plaintiffs' claims, the claims of the putative class members, and
8 the aggrieved employees' PAGA claim, along with Defendants' affirmative defenses, and the
9 likely outcomes, risks and expense of pursuing litigation.

10 Prior to initiating their respective *Herrera* and *Salamanca* lawsuits, counsel for
11 Plaintiffs, Lawyers *for* Justice, P.C. and CounselOne, P.C. (herein, "Class Counsel"),
12 independently and thoroughly investigated the claims and considered the facts and
13 circumstances underlying the pertinent issues and applicable law. *See*, (Orshansky Decl. ¶ 32);
14 (Declaration of Edwin Aiwazian ("Aiwazian Decl.") ¶¶ 1, 8-9 filed concurrently herewith). This
15 required thorough discussions and interviews with Plaintiffs and other Class Members as well
16 as research into the various legal issues involved in the case. (Orshansky Decl. ¶ 32); (Aiwazian
17 Decl. ¶ 9). After conducting their initial investigation, Class Counsel determined that the claims
18 were well suited for class action adjudication owing to what appeared to be a common course
19 of conduct affecting a similarly situated group of employees. (Orshansky Decl. ¶ 32); (Aiwazian
20 Decl. ¶ 9.)

21 In advance of mediation, Class Counsel conducted discovery which yielded information
22 and substantial documentation concerning the claims alleged, such as, Defendants' written
23 policies concerning those claims, including, Defendants' employee handbooks, policies and
24 procedures regarding the payment of wages, the provision of meal and rest breaks, time keeping
25 policies, such as recording hours, issuance of wage statements, and providing all wages at
26 separation. *See*, (Settlement Agreement ¶ 1.6.) *See also*, (Orshansky Decl. ¶ 36); (Aiwazian
27 Decl. ¶ 10.) Defendants also provided composite data for the Class including: total number of
28 putative class members; mix of current versus former hourly-paid or non-exempt employees;

total number of pay periods; total number of workweeks; and the average hourly rate in effect. (Orshansky Decl. ¶ 36); (Aiwazian Decl. ¶ 10.) Significantly, Defendants produced time and wage records for *all putative class members – consisting of 216,371 shifts* - not just a mere sampling. (Orshansky Decl. ¶ 37.) Class Counsel analyzed the documents and data produced to determine Defendants’ degree of liability and potential amounts due in damages. (Orshansky Decl. ¶ 38); (Aiwazian Decl. ¶ 11.)

B. Mediation and Settlement

Thereafter, the Parties participated in a full-day mediation, where they debated and discussed their respective positions. (Orshansky Decl. ¶ 39.) The Parties participated in a lengthy mediation session with Eve Wagner, Esquire of Signature Resolution. Ms. Wagner is experienced in mediating and arbitrating complex general litigation, labor and employment claims, class actions, and PAGA cases, among others. (Ibid.) During the mediation, the Parties exchanged further information and discussed all aspects of the case, including the risks and delays of litigation and the risk to both Parties for proceeding with a motion for class certification, liability under the claims asserted, and the implications of a PAGA representative action. (Orshansky Decl. ¶ 40); (Aiwazian Decl. ¶ 13.) These were contentious issues because of the factual and legal complexity of the case. (Orshansky Decl. ¶ 40.) With the assistance of Ms. Wagner, and pursuant to a mediator’s proposal, the Parties agreed to resolve the matter and reached the terms of this proposed arm’s-length Settlement. (Orshansky Decl. ¶ 40); (Settlement Agreement ¶ 1.7.)

From Class Counsel’s review of the facts, strengths, and weaknesses of the case, the risks and delays posed by further litigation, and Class Counsel’s own prior litigation experience, Class Counsel believe that the recovery being made available to Class Members is fair, reasonable, and adequate taking into consideration the amounts received in other wage and hour class and representative actions, the risks inherent in litigation of this genre, and the reasonable tailoring of each Settlement Class Members’ claim to the settlement award he or she will receive. (Orshansky Decl. ¶ 43.) Class Counsel believe that the Settlement serves the best interests of Class Members. (Ibid.) Further, and based on the settlement negotiations, which were hard

fought and conducted in good faith and at arm's length between attorneys with substantial experience litigating class actions, representative actions, and wage and hour cases, the Settlement was the product of a non-collusive settlement process in which the Parties were forced to make significant compromises in the interest of reaching a full and complete settlement of the action. (Orshansky Decl. ¶ 42.) The Parties have concluded that it is in their best interests to compromise, settle, and accept the terms of the Settlement Agreement. (Settlement Agreement ¶ 1.9.)

III. SUMMARY OF BASIC SETTLEMENT TERMS

Under the terms of the Settlement, Defendants agree to pay a ***non-reversionary amount of Three Million Three Hundred Fifteen Thousand Dollars (\$3,315,000)*** ("***Total Settlement Amount***"). (Settlement Agreement ¶¶ 2.33, 4.1.) This Total Settlement Amount shall be inclusive of the following payments: the Class Counsel Award (*i.e.*, attorneys' fees and litigation costs to Class Counsel); the Service Awards (*i.e.*, enhancement award payments to Class Representatives); all expenses and costs to the Settlement Administrator (*i.e.* payment of costs for administration of the Settlement); the PAGA Payment (which includes Individual PAGA Payments to PAGA Group Members and payment to California's LWDA); the Individual Settlement Shares; all related interest; and all employee-side payroll and employment taxes on the wage portion of Individual Settlement Shares. (Ibid.) The only monies excluded from the Total Settlement Amount is that amount to be paid by Defendants as the employer's share of employer-side payroll and employment taxes with respect to the wage portion of Individual Settlement Shares, which shall be paid out separately. (Ibid.)

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

- Up to \$1,160,250 – which is 35% of the Total Settlement Amount - in attorneys' fees as part of the Class Counsel Award – and up to \$30,000 in litigation costs to Class Counsel as part of the Class Counsel Award;
- Up to \$24,000 to the Class Representatives as Service Awards – proposed to be allocated as \$10,000 each to Plaintiffs Herrera and Salamanca, along with \$4,000

1 to later-named Plaintiff Cisneros - as a service award and in exchange for a general
2 release of claims;

- 3 • Up to \$100,000 allocated as a PAGA Payment – of which 75% of the PAGA
4 Payment is allocated for payment to the LWDA for civil penalties pursuant to
5 statute and 25% of the PAGA Payment is to be distributed to PAGA Group
6 Members⁷; and
- 7 • Up to \$18,000 to the Settlement Administrator for Settlement Administrator
8 Expenses to notify Class Members and administer the Settlement.

9 The amount remaining after the foregoing deductions, approximately **\$1,982,750, is called the**
10 **“Net Distribution Fund.”** (Settlement Agreement ¶¶ 2.18, 4.3-4.6.) The entire Net Distribution
11 Fund will be paid out to Settlement Class Members. Settlement Class Members will
12 automatically receive payments **without the need to submit a claim form**, and the PAGA Group
13 Members shall receive PAGA Payments irrespective of whether or not they opt-out. (Settlement
14 Agreement ¶¶ 4.5, 4.7-4.8.)

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

16 Although exact recovery amounts depend on each Settlement Class Members’ relative
17 number of qualifying pay periods, for estimation purposes only, if all of the approximately 387
18 Class Members participate in the Settlement, then an estimated **\$5,123.39 pro rata** Individual
19 Settlement Share per Settlement Class Member would be paid. (Orshansky Decl. ¶ 11.) Of
20 course, any Class Member who prefers to preserve his or her right to pursue relief or seek an
21 alternative recovery may opt out. (Settlement Agreement ¶¶ 7.1, 7.2.)

22 In actuality, Settlement Class Members will receive a proportional share of the Net
23 Distribution Fund based on his or her pay periods during the Class Period. (Settlement Agreement
24 ¶ 4.7.) Each Individual Settlement Share will be calculated as follows: The Net Distribution Fund
25 shall be divided by the total of all Pay Periods of Settlement Class Members during the Class
26 Period in order to establish the value of each Pay Period. The Individual Settlement Share to each

27
28 ⁷ PAGA Group Members are defined as “all Class Members who worked for AIRTECH any time during the PAGA
Period [which is July 1, 2019 through date of Preliminary Approval, or the date on which the Workweeks are equal
to or do not exceed 56,100, whichever comes first].” (Settlement Agreement ¶¶ 2.21, 2.22.)

1 Settlement Class Member shall be calculated by multiplying the value of a Pay Period by the
2 number of Pay Periods worked by that individual Settlement Class Member during the Class
3 Period. (Ibid.)

4 In addition, PAGA Group Members will receive a proportional share of the 25% of the
5 PAGA Payment based on his or her pay periods during the PAGA Period. (Settlement Agreement
6 ¶ 4.8.) Each Individual PAGA Payment shall be divided by the total of all Pay Periods worked
7 by PAGA Group Members during the PAGA Period in order to establish the value of each Pay
8 Period. The Individual PAGA Payment to be made to each PAGA Group Member shall be
9 calculated by multiplying the value of a Pay Period by the number of Pay Periods worked by the
10 PAGA Group Member during the PAGA Period. (Ibid.)

11 After reduction for the employee's share of taxes on the wage portion,⁸ the net payment
12 to each Settlement Class Member/PAGA Group Member will be the sum of his or her Individual
13 Settlement Share plus Individual PAGA Payment (collectively, "Individual Settlement
14 Payment"). (Settlement Agreement ¶ 4.10.) As a result of the distribution formulas, the
15 consideration paid to each Settlement Class Member is tailored to the impact of Defendants'
16 alleged violations as well to the claims he or she is releasing. (Orshansky Decl. ¶¶ 10, 43.)
17 Further, a Settlement Class Members may submit a written letter to the Settlement Administrator
18 disputing the number of pay periods credited if he or she believes that count is inaccurate.
19 (Settlement Agreement ¶ 4.9.) Finally, any Settlement Class Member who prefers to preserve his
20 or her right to pursue relief or seek an alternative recovery may opt out.⁹ (Settlement Agreement
21 ¶¶ 7.1, 7.2.)

22 **B. Class Representative Service Awards, Attorneys' Fees, and Expenses**

23 As part of the Settlement, Plaintiffs will apply for an enhancement payment at the time
24 of seeking final approval in the aggregate amount of \$24,000 – i.e., \$10,000 for Plaintiff Herrera,
25 \$10,000 to Plaintiff Salamanca, and \$4,000 for Plaintiff Cisneros - for services to the Settlement

26 ⁸ The Parties agreed to allocate twenty percent (20%) of each Individual Settlement Share to wages and eighty
27 percent (80%) 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 ¶ 4.10.)

28 ⁹ Again, if approved, PAGA Group Members will receive their Individual PAGA Payment irrespective of whether
they opt-out of the Class. (Settlement Agreement ¶ 4.5.)

1 Class and a general release of all claims against Defendants. (Settlement Agreement ¶ 4.3.);
2 (Orshansky Decl. ¶ 13.) “[I]ncentive awards are fairly typical in class action cases . . . and are
3 intended to compensate class representatives for work done on behalf of the class [and] to make
4 up for financial or reputational risk undertaken in bringing the action.” *In re Cellphone Fee*
5 *Termination Cases* (2010) 186 Cal. App. 4th 1380, 1393-1394. Plaintiffs’ requested service
6 award payments are intended to recognize the significant benefits conferred upon the Class and
7 be proportional to the respective time and effort that Plaintiffs expended on behalf of the Class
8 including, providing factual information and documents to Class Counsel, discussing the claims
9 and theories at issue in the case with Class Counsel, identifying potential witnesses and reviewing
10 documents; reviewing the Settlement Agreement, as well as the significant risks Plaintiffs
11 undertook by agreeing to serve as named plaintiffs, and the fact that Plaintiffs agreed to a general
12 release of all claims subject to a waiver of Civil Code § 1542. *See*, (Settlement Agreement ¶¶
13 2.29, 4.3); (Orshansky Decl. ¶ 14); (Aiwazian Decl. ¶ 14.)

14 Class Counsel will apply for an attorneys’ fees award of thirty-five percent (35%) of the
15 Total Settlement Amount, and reimbursement of litigation costs in an amount up to \$30,000.
16 (Settlement Agreement ¶ 2.6); (Orshansky Decl. ¶ 15.) Plaintiffs submit that the requested fee is
17 fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on
18 a purely contingent fee basis. (Orshansky Decl. ¶ 15.) Class Counsel have incurred substantial
19 attorneys’ fees conducting pre-filing investigation, analyzing Plaintiffs’ claims, conducting legal
20 research and analysis, conducting discovery, meeting and conferring with defense counsel,
21 interviewing putative class members, reviewing documents produced by Defendants, including
22 corporate policies, employee time and payroll records, building damages models, preparing for
23 and attending mediation, routine case updates and consultations with the clients, negotiating and
24 preparing the long-form Settlement Agreement, Notice of Class Action Settlement, and this
25 motion for preliminary approval and supporting documents. *See*, (Orshansky Decl. ¶ 15);
26 (Aiwazian Decl. ¶ 12.) Class Counsel will also expend future attorney time in attending the
27 hearing on this Motion, overseeing the notice and administration process, drafting the Final
28 Approval Motion and supporting documents, and attending the Final Approval hearing, among

1 other tasks, such as addressing questions from Class Members. (Orshansky Decl. ¶ 16.)

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

14 Class Counsel submit that their request for attorneys' fees is reasonable when viewed as
15 an overall percentage of the settlement amount in light of the substantial risks and significant
16 work undertaken, the excellent results obtained for the Class Members, and the efficiency with
17 which the Parties have conducted the litigation. (Orshansky Decl. ¶ 17.) Assuming that the Court
18 grants preliminary approval, Class Counsel will seek an award of attorneys' fees and litigation
19 costs at the time of seeking final approval of the Settlement.

20 **IV. REQUEST FOR LEAVE TO ADD LIZBETH CISNEROS AS NAMED** 21 **PLAINTIFF**

22 To effectuate the terms of the Settlement Agreement and intent of the Parties, the Parties
23 agreed that leave should be granted for Plaintiffs to add, in addition to Fernando Herrera and
24 Salvador Salamanca, a further named plaintiff and proposed class representative, Lizbeth
25 Cisneros. (Settlement Agreement ¶ 1.5.) Plaintiff Cisneros was a subsequently identified putative
26 Class Member who agreed to assist subsequent to the initiation of the two lawsuits, but prior to
27 the Parties' mediation. (Orshansky Decl. ¶ 12); Defendants do not object to Plaintiffs' request to
28 add Lizbeth Cisneros, *see*, (Settlement Agreement ¶ 1.5.), and the Parties will follow the Court's

guidance on whether this requires any further or amended pleading filing. (Orshansky Decl. ¶ 12.)

V. CERTIFICATION FOR SETTLEMENT PURPOSES IS APPROPRIATE

Express judicial policy favors maintaining wage and hour actions as class actions. *Prince v. CLS Transp., Inc.* (2004) 118 Cal. App. 4th 1320, 1328; *Richard v. Dart Industries, Inc.* (1981) 29 Cal. 3d 462 (finding that California public policy “encourages the use of the class action device”). Any doubt as to the appropriateness of class treatment should be resolved in favor of class certification, subject to later modification if necessary. *Id.* at 473-475. The decision to certify a class is purely a procedural one and should be based on the allegations in the operative complaint, and not in the perceived factual or legal merit of the class claims. *Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 439-441.

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

A. There Is an Ascertainable and Sufficiently Numerous Class

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

Here, the class definition is “precise, objective and presently ascertainable.” *Sevidal v. Target Corp.* (2010) 189 Cal. App. 4th 905, 919. Class Members are comprised of all current and former hourly-paid or non-exempt employees who worked for Defendants in the state of California at any time during the Class Period. (Settlement Agreement ¶ 2.2.) Further, the Class

Period is defined as the period between October 15, 2015 through the date of Preliminary Approval, or the date on which the Workweeks are equal to or do not exceed 56,100, whichever comes first. (Settlement Agreement ¶ 2.4.) Thus, all Class Members are of a specific type (hourly-paid or non-exempt employees) employed within California. Defendants are required to and do maintain employment records of such persons, including contact information and Social Security numbers. (Orshansky Decl. ¶ 94.) Documents and information exchanged reflect a class of approximately 387 current and former hourly non-exempt employees working in California during the Class Period. (Orshansky Decl. ¶ 94.) Thus, the proposed Class satisfies the ascertainability and numerosity requirements. *See e.g., Collins v. Rocha* (1972) 7 Cal. 3d 232 (finding a class of 44 farm workers sufficiently numerous).

B. There Is a Well-Defined Community of Interest

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

[D]oes not depend upon an identical recovery, and the fact that each member of the class must prove his separate claim to a portion of any recovery by the class is only one factor to be considered...The mere fact that separate transactions are involved does not of itself preclude a finding of the requisite community of interest so long as 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. *Id.* at 809.

Here, litigation is predicated on uniform company policies and systemic top-down business practices revolving principally around Defendants' timekeeping and pay practices – *e.g.*, off-the-clock work attributed to understaffing, unreasonable workloads, and/or inequitable rounding, failure to pay meal and rest break premiums despite records depicting non-compliance and/or on-premises requirements - as well as business expense reimbursements, or lack thereof. These allegations have given rise to the following claims: failure to pay minimum and overtime wages; meal period liability; rest break liability; failure to reimburse for business expenses; and derivative claims arising therefrom. (Orshansky Decl. ¶ 95.)

Because Plaintiffs have alleged a single top-down compensation scheme where “the relevant proof [does] not vary among class members” and “clearly present[] a common question

1 fundamental to all class members.” See, *In Re NASDAQ Market-Makers Antitrust Litigation*
2 (S.D.N.Y. 1997) 172 F.R.D. 119, 123 (citing *In Re NASDAQ Market-Makers Antitrust Litigation*
3 (S.D.N.Y. 1997) 169 F.R.D. 493, 518). California courts show “no hesitancy” in inferring class-
4 wide causation, class-wide injury, and class-wide damages when a common course of action has
5 been shown. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal. App. 3d 1341, 1350
6 (granting class certification in a manufacturing defect case when a common course of action had
7 been proven). This inference “*eliminates* the need for each class member to prove individually
8 the consequences of the defendants’ actions to him or her.” *Id.* at 1351 (emphasis added). Thus,
9 the outcome of this matter depends upon questions that are common to members of the Settlement
10 Class. (Orshansky Decl. ¶ 96.) These types of claims are commonly held to be proper for class
11 certification. See, e.g., *Bluford v. Safeway, Inc.* (2013) 216 Cal. App. 4th 864, 871 (reversing
12 denial of rest period claim); *Benton v. Telecom Network Specialists, Inc.* (2013) 220 Cal. App.
13 4th 701, 726 (certifying meal period claim).

14 **C. The Claims of the Named Plaintiffs Are Typical**

15 The typicality requirement is satisfied where class representatives have claims that are
16 typical of those of the rest of the class. *B.W.I Custom Kitchen, supra*, 191 Cal. App. 3d at 1347.
17 Here, Plaintiffs’ claims are typical of those held by the members of the Class. (Orshansky Decl.
18 ¶ 97.) Like all other Class Members, Plaintiffs Herrera, Salamanca, and Cisneros were non-
19 exempt hourly employee working for Defendants in California during the Class Period. (*Ibid.*)
20 As alleged, Plaintiffs were not compensated for all hours they worked, not provided with legally
21 compliant meal and rest breaks, and required to incur business expenses necessary to perform
22 their job duties without reimbursement. (*Ibid.*) Plaintiffs were therefore impacted by the same
23 challenged policies that allegedly injured the Class as a whole and subject to the same defenses
24 forwarded by Defendants as to the Class and are therefore typical. (*Ibid.*)

25 **D. Named Plaintiffs and Class Counsel Will Fairly and Adequately Represent**
26 **the Settlement Class**

27 The adequacy of representation requirement examines conflicts of interest between
28 named parties and the class(es) they seek to represent. *Capital People First v. Department of*

1 *Developmental Services* (2007) 155 Cal. App. 4th 676, 697. Here, Plaintiffs and Class Counsel
2 will adequately represent the Class, as there are no conflicts between the named Plaintiffs,
3 Herrera, Salamanca, and Cisneros and the Class they seek to represent. (Orshansky Decl. ¶ 98.)
4 *McGhee v. Bank of America* (1976) 60 Cal. App. 3d 442, 450 (finding adequacy satisfied where
5 there was no indication that plaintiff's counsel were not qualified and the named plaintiff had
6 no interests antagonistic to those of the proposed class). Class Counsel also have extensive
7 experience in wage and hour litigation. (Orshansky Decl. ¶¶ 87-92); (Aiwazian Decl. ¶¶ 2-7.)

8 **E. A Class Action Is Superior to a Multiplicity of Litigation**

9 In making its class certification decision, the court must determine that a class action
10 would be superior to alternative means for the fair and efficient adjudication of the litigation. By
11 consolidating hundreds of individual actions into a single proceeding, this Court's use of the class
12 action device enables it to manage this litigation in a manner that serves the efficiency interests
13 of the litigants and the judicial system. (Orshansky Decl. ¶ 99.) Absent class treatment, the only
14 alternative would be to force these employees to file individual actions. *Sav-On Drug Stores v.*
15 *Super. Ct.* (2004) 34 Cal. 4th 319, 339, fn. 10 (stating "[t]he relevant comparison lies between
16 the costs and benefits of adjudicating Plaintiffs' claims in a class action and the costs and benefits
17 of proceeding by numerous separate actions – not between the complexity of a class suit that
18 must accommodate some individualized inquires and the absence of any remedial proceeding
19 whatsoever.") Finally, in the context of settlement, the superiority concerns are essentially non-
20 existent.

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

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

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

1 class members of a formal fairness hearing, at which evidence may be presented
2 in support of and in opposition to the settlement.

3 See, Manual for Complex Litigation (Second) (1985) at § 30.44. The preliminary approval of the
4 class action settlement by the trial court is simply a conditional finding that the settlement appears
5 to be within the range of acceptable settlements. See, e.g., Newberg, § 11.25; *North County*
6 *Contractor's Assn., Inc. v. Touchstone Ins. Services* (1994) 27 Cal. App. 4th 1085, 1094-1095;
7 Federal Manual for Complex Litigation, Second ("MCL 2d") § 30.44 ("Preliminary approval is
8 appropriate if the agreement is 'fair, reasonable, and adequate under the circumstances'"). Thus,
9 the preliminary approval of the class action settlement by the Court is simply a conditional
10 finding that the settlement appears to be within the range of acceptable settlements. A review of
11 the preliminary approval criteria demonstrates a substantial basis for granting the preliminary
12 approval requested by this Motion and proceeding to a full settlement hearing.

13 **VII. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE**

14 As a matter of public policy, courts both encourage the use of the class action device and
15 favor settlement over continued litigation. See, e.g., *Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th
16 429, 434 ("Courts have long acknowledged the importance of class actions as a means to prevent
17 a failure of justice in our judicial system."); *State v. Levi Strauss & Co.* (1986) 41 Cal. 3d 460,
18 471; *Class Plaintiffs v. City of Seattle* (1992) 955 F. 2d 1268, 1276 ("[S]trong judicial
19 policy...favors settlements, particularly where complex class action litigation is concerned.");
20 Newberg, § 11.41. Settlement is favored, and settlement agreements are realistically assessed.
21 *Stamburgh v. Superior Court* (1976) 62 Cal. App. 3d 231, 236; *Priddy v. Edelman* (6th Cir. 1989)
22 883 F. 2d 438, 447 ("The fact that plaintiff might have received more if the case had been fully
23 litigated is no reason not to approve the settlement.")

24 To summarize, the settlement here is fair because it offers payment to each Settlement
25 Class Member for releasing his or her claims, extinguishes the risk of litigation, and provides a
26 fair and adequate distribution of the settlement proceeds whereby the funds are allocated to
27 individual Settlement Class Members proportionally based on the respective number of pay
28 periods that they worked during the relevant period. (Orshansky Decl., *passim*.)

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

2 Moreover, courts presume the absence of fraud or collusion in the negotiation of a
3 settlement unless evidence to the contrary is offered. In short, there is a presumption that the
4 negotiations were conducted in good faith. *See, Newberg*, § 11.51; *Rodriguez v. West Publ. Corp.*
5 (C.D. Cal. August 10, 2007) 2007 U.S. Dist. LEXIS 74767, 24-25; *In re Chicken Antitrust*
6 *Litigation* (N.D. Ga. 1980) 560 F. Supp. 957, 962; *Priddy v. Edelman* (6th Cir. 1989) 883 F. 2d
7 438, 447; *Mars Steel Corp. v. Continental Illinois National Bank and Trust Co.* (7th Cir. 1987)
8 834 F. 2d 677, 681. Courts do not substitute their judgment for that of the proponents, particularly
9 when settlement has been reached by experienced counsel familiar with the litigation. *Rodriguez*,
10 *supra*, 2007 U.S. Dist. LEXIS 74767 at 24. As detailed at length in the accompanying Declaration
11 of Anthony J. Orshansky, the settlement is the result of extensive settlement negotiations between
12 the Parties, conducted at arm's length, and informed by substantial factual and legal
13 investigations. (Orshansky Decl., *passim*; Aiwazian Decl. ¶¶ 8-13.)

14 **1) Negotiations Were at Arm's Length before a Respected Mediator**

15 The Parties engaged in a mediation session with Eve Wagner, Esquire of Signature
16 Resolution. (Orshansky Decl. ¶ 39.) Ms. Wagner is experienced in resolving complex general
17 litigation, labor and employment claims, class actions, and PAGA cases, among others. (*Ibid.*)
18 The settlement negotiations were hard-fought and the Settlement is the product of an adversarial,
19 non-collusive settlement process in which the Parties were forced to make significant
20 compromises in the interest of reaching a full and complete settlement of the action pursuant to
21 mediator's proposal. (Orshansky Decl. ¶¶ 40-42); (Aiwazian Decl. ¶ 13.)

22 **2) Investigation Was Sufficient to Allow Counsel to Act Intelligently**

23 Throughout this case, Class Members have been represented by counsel who have years
24 of experience in employment class action litigation. (Orshansky Decl. ¶¶ 87-92); (Aiwazian Decl.
25 ¶¶ 8-13) Class Counsel devoted a considerable amount of time to the prosecution of this case,
26 including, but not limited to, interviewing Plaintiffs and other Class Members; reviewing
27 Defendants' written policies concerning the claims set forth in the action, including Defendants'
28 policies and procedures regarding the payment of wages, the provision of meal and rest breaks,

time keeping policies, such as rounding and recording hours, reimbursement of expenses, issuance of wage statements, and providing all wages at separation; reviewing and analyzing time and pay records produced for ***all 387 Class Members comprising 216,371 shifts***; meeting and conferring regarding the information and documents produced; drafting pleadings; researching California law; preparing damages models; preparing for and attending mediation; and negotiating and finalizing the settlement and related documents. (Orshansky Decl. ¶¶ 32, 36-41); Aiwazian Decl. ¶¶ 11-12.)

3) Class Counsel Are Experienced in Similar Litigation

Class Counsel believe that the settlement is fair and reasonable and serves the best interests of the Settlement Class Members. (Orshansky Decl. ¶¶ 42-43.) Although the recommendations of counsel proposing the class settlement are not conclusive, the Court can properly take the recommendations into account, particularly if counsel have been involved in litigation for some period of time, appear to be competent, have experience with this type of litigation, and significant discovery has been completed. *See, Newberg*, § 11.47. Here, Plaintiffs are represented by competent and experienced counsel who possess extensive experience litigating wage and hour class actions and have been appointed as class counsel in numerous cases alleging similar claims. (Orshansky Decl. ¶¶ 87-92); (Aiwazian Decl. ¶¶ 2-7.)

B. The Settlement Is Fair, Reasonable, and Adequate

To make a fairness determination, the Court should consider several factors, including “the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery and the stage of proceedings, [and] the experience and views of counsel.” *Dunk v. Ford Motor Co.* (1986) 48 Cal. App. 4th 1794, 1801. “The list of factors is not exclusive and the court is free to engage in a balancing and weighing of factors depending on the circumstance of each case.” *Wershba, supra*, 91 Cal. App. 4th 224, 245. As discussed below, the proposed Settlement is fair, adequate, and reasonable in light of the overall factors in this case.

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1) The Strength of Plaintiff's Case

Class Counsel carefully vetted the claims at issue to arrive at a comprehensive damages model for Defendants' liability. (Orshansky Decl. ¶ 44.) Although Plaintiffs steadfastly maintain that their claims are meritorious, they acknowledge that there are substantial risks and uncertainty in proceeding with class certification and trial. (Ibid.) As explained in further detail in Section VII.B.4 *infra*, Defendants presented numerous defenses to Plaintiffs' claims, both on the merits and with respect to class certification. (Ibid.) For example, Defendants defended against the minimum and overtime wage claims by relying on written policies that explicitly prohibited Class Members from engaging in off-the-clock work. (Orshansky Decl. ¶ 45.) Defendants also argued that Class Members worked in different job positions and had different managers, and that, as a result, Defendants contended there was variation to the circumstances that could allegedly cause the employees to be deprived of the opportunity to take legally compliant, duty-free meal and rest periods, and this variation in circumstances raises highly individualized questions of fact. (Orshansky Decl. ¶ 45.)

Although Plaintiffs were prepared to litigate these claims through class certification and, ultimately, through trial, given the substantial amount offered in settlement, Class Counsel predicted that it was far from certain that Plaintiffs would be able to recover a greater amount at trial, particularly after considering the increased litigation costs that would accrue. (Orshansky Decl. ¶ 48); (Aiwazian Decl. ¶ 13.) Thus, this factor supports preliminary approval of the Settlement.

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2) Risk, Expense, Complexity, and Duration of Further Litigation

Although Plaintiffs conducted extensive discovery prior to mediation, the Parties agreed to focus on exhausting early settlement efforts at mediation before launching into full-fledged and hotly contested litigation. (Orshansky Decl. ¶ 46.) 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. (Orshansky Decl. ¶ 46.) Discovery disputes would have been in the offing

1 and liability likely would have entailed a battle of experts. This settlement avoids the
2 considerable time, attorneys' fees and costs, and party resources associated with conducting
3 additional discovery, moving for class certification and potentially summary judgment or
4 adjudication, and ultimately, trial, as well as the risks and the accompanying burden of continued
5 litigation on the Court. (Orshansky Decl. ¶ 46.) Thus, this factor supports preliminary approval
6 of the Settlement.

7 **3) Risk of Maintaining Class Action Status**

8 Here, settlement was reached prior to class certification and the result was a successful
9 outcome for the Class. (Orshansky Decl. ¶ 47.) Yet, class certification was by no means a
10 foregone conclusion. (Ibid.) For example, Class Members worked in different job positions and
11 had different managers, and that, as a result, Defendants contended there was variation to the
12 circumstances that could allegedly cause the employees to work off-the-clock and/or be deprived
13 of the opportunity to take legally compliant, duty-free meal and rest periods, and this variation
14 in circumstances raised highly individualized questions of fact. (Orshansky Decl. ¶ 47.)
15 Defendants further disputed Plaintiffs' characterization of working conditions, liability, and
16 damages, and possessed documentary and testimonial evidence rebutting Plaintiffs' allegations.
17 If the Court either denied class certification or later decertified it, the Class would recover nothing
18 and Class Members would be forced to retain their own counsel and proceed on the basis of
19 individual claims only. (Orshansky Decl. ¶ 47.) Here, Class Members may avoid each of the risks
20 described and receive substantial monetary benefits, which also weighs in favor of preliminary
21 approval.

22 **4) Amount Offered in Settlement Given Realistic Value of Claims**

23 A settlement is not judged against what might have been recovered had a plaintiff
24 prevailed at trial, nor does the settlement have to provide 100% of the damages to be fair and
25 reasonable. *Wershba, supra*, 91 Cal. App. 4th 224, 246, 250 (acknowledging that "Compromise
26 is inherent and necessary in the settlement process ... even if the relief afforded by the proposed
27 settlement is substantially narrower than it would be if the suits were to be successfully litigated,
28 this is no bar to a class settlement because the public interest may indeed be served by a voluntary

1 settlement in which each side gives in the interest of avoiding litigation.”) The proposed
2 Settlement provides a fair and reasonable monetary recovery for the Settlement Class in the face
3 of disputed claims.

4 Plaintiffs’ estimate of the settlement recovery is a reasonable percentage of possible
5 recoverable damages at trial. Plaintiffs’ damages analysis shows that the Settlement reflects an
6 ***estimated 44% of the maximum realistic potential damages*** recoverable at trial. (Orshansky
7 Decl. ¶ 49.) Utilizing a class-wide damages study to assess the nature and magnitude of the claims
8 in question, *see, Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal. App. 4th 116, 123, this case
9 clearly meets requirements establishing that the class settlement is within the “ballpark” of
10 reasonableness.

11 **Unpaid Minimum and Overtime Wages**

12 Plaintiffs, along with other hourly non-exempt employees, preformed pre- and post-shift
13 off the clock work to minimize the incidence of overtime. (Orshansky Decl. ¶ 51.) Plaintiffs
14 contend that all off-the-clock work is compensable time. (Ibid.) An employer must pay its
15 employees no less than the minimum wage for all hours worked, *see*, Labor Code § 1197, thus,
16 Plaintiffs sought to recover at least the minimum wage for all off-the-clock work, plus liquidated
17 damages in that amount under Labor Code § 1194.2. (Ibid.)

18 Class Counsel analyzed the documents and data produced by Defendants and, in
19 conjunction with interviews of Plaintiffs and Class Members, determined Defendants’ degree of
20 liability and amounts due in damages – specifically, the incidence and amount of purported off-
21 the-clock activity. (Orshansky Decl. ¶ 52.) Notwithstanding the obvious evidentiary challenge of
22 quantifying unrecorded off-the-clock hours, Plaintiffs estimate that Defendants are liable for an
23 aggregate of approximately sixty (60) minutes of unpaid straight and overtime pay per workweek.
24 (Orshansky Decl. ¶ 53.) At the average overtime hourly rate of \$27.20, such yields an estimated
25 damages amount of \$1,379,058. (Ibid.) Plaintiffs also concluded that inequitable rounding
26 occurred with a net loss of 17,010 hours being unpaid to employees, thus adding, an additional
27 \$462,672 to that off-the-clock sum. Thus, the estimated total of owed minimum and overtime
28 wages is **\$1,841,730**, without discounting for risks associated with certification or merits.

1 (Orshansky Decl. ¶ 53.)

2 In opposition to certification, Defendants contended that Plaintiffs’ claim for off-the-
3 clock work is not amenable to class treatment, because employees worked in a variety of
4 departments with different requirements, and it would require an unmanageable series of mini-
5 trials to determine how much time was spent without pay. (Orshansky Decl. ¶ 54.) Further, in
6 terms of merit defenses, Defendants vigorously disagreed with Plaintiffs’ theories regarding how
7 much off-the-clock work occurred in reality and the credibility of those claimed hours given
8 Defendants’ express written policies to the contrary. (Orshansky Decl. ¶ 55.) Here, the failure to
9 track all hours poses evidentiary difficulties because it is hotly contested how much off-the-clock
10 work actually occurred. (Orshansky Decl. ¶ 56.) Although Class Counsel conducted multiple
11 employee interviews, for Plaintiffs to establish the quantity of specific disputed and unrecorded
12 work activities – especially over multiple job titles, at differing pay rates - would have been
13 costly, time-consuming, and daunting. (Orshansky Decl. ¶ 56.)

14 Defendants further responded that any off-the-clock time is *de minimis*. Plaintiffs
15 countered that such defense lacks viability in light of *Troester v. Starbucks Corp.* (2018) 5 Cal.
16 5th 829 given that the California Supreme Court refused to allow the *de minimis* defense to
17 insulate Starbucks from having to pay employees for small amounts of work regularly performed
18 off-the-clock. What is not clear, however, is to what extent the *de minimis* defense would apply
19 where the uncaptured hours were associated with an occasionally recurring activity. (Orshansky
20 Decl. ¶ 57.)

21 In light of these considerations – especially the evidentiary difficulties of demonstrating
22 off-the-clock work on a classwide basis - Class Counsel acknowledged a discount that
23 incorporated the risks of non-certification and being unsuccessful on the merits. (Orshansky
24 Decl. ¶ 58.)

25 **Meal and Rest Period Violations**

26 Plaintiffs argue that Defendants’ written meal policies are facially invalid and are
27 improperly conditioned on supervisors scheduling breaks consistent with business operations.
28 (Orshansky Decl. ¶ 59.) Further, in actual practice, Plaintiffs’ review of the data of employee

1 time-punches demonstrates Defendants’ non-compliance. Records indicate that meal periods
2 were often “missed,” “short,” or “late” and that second meal periods for shifts worked in excess
3 of ten (10) hours were near non-existent. (Orshansky Decl. ¶ 60.) Significantly, there is no
4 indication that Defendants ever made a payment of a meal period premium for “missed,” “short,”
5 or “late” meal periods prior to the lawsuits. *C.f.* Wage Order 4-2001, § 11(b). Consequently,
6 Plaintiffs allege that Defendants violated Labor Code §§ 226.7, 512, and applicable Wage Orders
7 by failing to compensate Plaintiffs and Class Members for short, late, interrupted, and missed
8 meal periods. (Orshansky Decl. ¶ 61.)

9 Defendants, however, contended that they had practices, policies, and procedures to
10 provide meal and rest breaks every workday to their employees that fully complied with the law.
11 (Orshansky Decl. ¶ 62.) Defendants vehemently argued that they complied with the
12 requirements articulated by the California Supreme Court in *Brinker Restaurant Corp. v.*
13 *Superior Court* (2012) 53 Cal. 4th 1004. (Ibid.) Specifically, Defendants maintained that they
14 “provide” employees with a reasonable opportunity to take timely meal periods of at least 30
15 minutes, relieve employees of all duties during meal periods, and relinquish control over
16 employees’ activities, including the ability to leave the premises during meal periods. (Ibid.)

17 Plaintiffs faced significant challenges to their Labor Code § 226.7 meal period claims for
18 two reasons: *First*, a majority of the records for Class Members showed lunch breaks, even if
19 untimely and short. *Second*, like most employers facing meal period litigation, Defendants argued
20 that employees were apprised of their right to take meal periods, but voluntarily waived them.
21 (Orshansky Decl. ¶ 63.) Defendants contended that the issue of voluntary waiver would
22 necessarily devolve into a series of individualized mini-trials, precluding class certification. *See,*
23 *Duran v. U.S. Bank National Association* (2014) 59 Cal. 4th 1, 25 (holding that the defendant
24 must be provided an opportunity to litigate affirmative defenses, even when they turn on
25 individual questions). Thus, although Plaintiffs argue that Defendants had an impermissible top-
26 down practice of requiring Class Members to work during meal breaks, in light of their written
27 policies and other evidence suggesting an intent to follow those policies, establishing the alleged
28 unlawful business practice as a rule rather than exception might prove daunting. (Orshansky

Decl. ¶ 64.)

Based upon analysis of Class Member time and payroll records, and taking into account Plaintiffs' assessment that 49.91% of eligible shifts were the subject of unique violations for missed, short, or late meal periods, Plaintiffs calculated the potential realistic exposure of this claim to be **\$1,918,118**. (Orshansky Decl. ¶ 65.)

Plaintiffs also alleged that hourly employees did not receive authorized rest breaks as required whereby employers "relinquish control over how employees spend their time and relieve employees of all duties." *Augustus v. ABM Security Service, Inc.* (2016) 2 Cal. 5th 257, 260. Here, hourly employees did not receive timely and compliant rest breaks, nor did Defendants relinquish control over how employees spent their 10-minute rest periods. (Orshansky Decl. ¶ 66.) Specifically, Defendants conditioned the scheduling of rest breaks on workload and business flow, plus implemented written policies stating that employees may not leave the premises. (*Ibid.*) As with the meal periods, Plaintiffs neither received a rest period premium, nor is there evidence that Defendants ever made a premium payment for a non-compliant rest break to Class Members. (Orshansky Decl. ¶ 67.) Thus, Plaintiffs allege that Defendants did not provide premium pay for each non-compliant rest break as required under Labor Code § 226.7.

Here again, Defendants dispute liability and damages. Defendants maintained that they authorized and permitted duty-free rest breaks of not less than ten minutes for every major fraction of four hours worked as required by Labor Code § 226.7. (Orshansky Decl. ¶ 68.) Defendants explained that Class Members had ample opportunity to take, and did take, regular rest breaks. (*Ibid.*) As with meal breaks, Defendants argued that any Class Member who failed to take a rest break, or took a short or late rest period, did so voluntarily and that all applicable rest periods were still authorized and provided. (Orshansky Decl. ¶ 68.) Thus, Defendants argued that they did not act unlawfully to deprive Class Members of rest breaks. (*Ibid.*)

Defendants also attempted to distinguish *Augustus, supra*, which involved security guards who were required to monitor a pager, phone, or other device as having an added constraint that is not present in the matter *sub judice*. (Orshansky Decl. ¶ 68.) Moreover, unlike meal periods, rest breaks need not be recorded and thus establishing Defendants' exertion of pressure, control,

1 and resulting violations is likely to be more difficult. (Orshansky Decl. ¶ 69.) Class Counsel
2 applied a 20% violation rate based on the narratives of Plaintiffs and other Class Members for a
3 maximum exposure rate of **\$781,417**. (Orshansky Decl. ¶ 69.) For settlement purposes, and to
4 account for the difficulties of certifying and proving unrecorded rest break violations, a
5 downward departure from that maximum exposure was and is warranted. (Orshansky Decl. ¶
6 69.)

7 **Unreimbursed Expenses**

8 Plaintiffs allege a cause of action under Labor Code § 2802(a) which states that an
9 employer must reimburse employees for all necessary expenditures that employees incur in
10 discharging their duties. (Orshansky Decl. ¶ 70.) Here, Plaintiffs and Class Members were
11 required to use their personal cell phones to communicate with supervisors and coworkers for
12 reasons related to work, yet Defendants failed to reimburse for these necessary business
13 expenses. (Ibid.)

14 Defendants contended that they have a policy and practice of reimbursing employees for
15 necessary business-related expenses. (Orshansky Decl. ¶ 71.) Defendants also contended that,
16 with respect to the alleged expenses for which Plaintiffs and other Class Members never
17 requested reimbursement from Defendants, Defendants did not know and had no reason to know
18 that the alleged business-related expenses were incurred. (Ibid.) Moreover, to the extent it
19 occurred, Defendants asserted that this claim is not suitable for class treatment as it would require
20 individualized determinations as to whether each employee used a personal cell phone for work-
21 related purposes and, if so, how much of that use was a reasonable percentage of his or her
22 individual monthly phone bill. (Ibid.)

23 Defendants also argued that the California Labor Code only requires reimbursement of
24 “necessary” expenses—as opposed to any expense that is incurred in the course of performing
25 work—and argued that distinguishing a necessary expense from an unnecessary one would
26 require individualized inquiry. (Orshansky Decl. ¶ 72.) *See* Cal. Lab. Code § 2802; *Gattuso v.*
27 *Harte-Hanks Shoppers, Inc.* (2007) 42 Cal. 4th 554. Furthermore, whether an expense was
28 necessary would depend in part on the reasonableness of the employee’s choice and would thus

1 have to be established by way of extensive individual factual inquiry and/or statistical evidence.
2 *Cochran v. Schwan's Home Services, Inc.* (2014) 228 Cal. App. 4th 1137. (Ibid.)

3 For the foregoing reasons and taking into account the wide variety of telephone plans,
4 providers and costs which creates evidentiary complexities on an individual basis, let alone class-
5 wide, Plaintiffs assigned *de minimis* value to this claim. (Orshansky Decl. ¶ 73.)

6 **Wage Statement Violations**

7 Plaintiffs allege a cause of action under Labor Code § 226(a) for Defendants' failure to
8 provide accurate itemized wage statements. (Orshansky Decl. ¶ 74.) Failure to comply with the
9 statute entitles employees to recover the greater of all actual damages or fifty dollars (\$50) for
10 the initial pay period in which a violation occurs and one hundred dollars (\$100) for each
11 violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars
12 (\$4,000). *See*, Labor Code § 226(e). This cause of action is derivative of the foregoing causes of
13 action because if Defendants did not provide wages for all hours worked, meal and rest breaks,
14 and so forth, then the wage statements were inevitably inaccurate.

15 Defendants contended, however, that Labor Code § 226(e) penalties are not automatic.
16 (Orshansky Decl. ¶ 75.) Rather, the employee must show that Defendants' noncompliance was
17 "knowing and intentional." (Ibid.) Defendants suggested that any noncompliance was not
18 knowing and intentional. (Ibid.) Moreover, Defendants argued that meal and rest period
19 violations cannot support derivative wage statement penalties. *See, Naranjo v. Spectrum Security*
20 *Service, Inc.* (2019) 40 Cal. App. 5th 444, 474 (holding that violations of Labor Code's meal
21 break provisions do not entitle employees to pursue the derivative wage statement penalties).
22 *C.f., but review granted, Naranjo v. Spectrum Security Services, Inc.*, 455 P. 3d 704, 257 Cal.
23 Rptr. 3d 188 (Cal., Jan. 02, 2020) (Cal. Sup. Ct. No. S258966).

24 Because the damages for this cause of action are penalties, the statute of limitations is
25 only one year prior to the filing of the original complaint. *See*, Code Civ. Proc. § 340. The Parties
26 discussed these issues and, based on the \$50 initial violation plus the \$100 per pay period
27 subsequent violation rates, Plaintiffs estimate the total maximum wage statement exposure to be
28 **\$1,128,700.** (Orshansky Decl. ¶ 76.)

1 **Derivative Waiting Time and UCL Claims**

2 Plaintiffs further assert causes of action against Defendants for failure to timely pay all
3 wages due employees at separation, for civil penalties under the PAGA, and for engaging in
4 unfair, unlawful, and fraudulent business practices. *See*, Labor Code §§ 203, 2699, *et seq.* and
5 Cal. Business and Professions Code § 17200, *et seq.* As with other claims, Defendants vigorously
6 disagree that they engaged in any conduct giving rise to liability or entitlement to recovery of
7 penalties or equitable relief. (Orshansky Decl. ¶ 77.)

8 Defendants argued that waiting time penalties are not appropriate because they attempted
9 to pay employees all final wages owed in good faith upon their separation, thereby precluding a
10 finding of willfulness necessary to obtain waiting time penalties. (Orshansky Decl. ¶ 78.)
11 Moreover, Defendants maintained that no waiting time penalties were recoverable from alleged
12 meal or rest period violations. (*Ibid.*) Defendants raised the Second Appellate District’s decision
13 in *Naranjo et al. v. Spectrum Services, Inc.* (2019) 40 Cal. App. 5th 444 to argue that meal and
14 rest break violations trigger neither wage statement, nor waiting time penalties. Yet the *Naranjo*
15 decision is currently pending before the California Supreme Court, *see, Naranjo, supra*, review
16 granted, Supreme Court Case No. S258966, 455 P. 3d 704 (January 02, 2020), and although
17 fully-briefed, the outcome of this important case remains to be seen.¹⁰ (Orshansky Decl. ¶ 78.)
18 Finally, Defendants argued that adequate remedies at law exist to render the action unsuitable for
19 equitable remedies, and again, contended that the allegations underlying the unfair competition
20 claim lacked merit. (Orshansky Decl. ¶ 78.)

21 Based on the count of 165 former employees, Class Counsel appraised the maximum
22 value of the waiting time claim as **\$717,948**. (Orshansky Decl. ¶ 79.) However, to account for
23 the uncertainty of proving the underlying claims and risk of an adverse decision in *Naranjo*, Class
24 Counsel made a realistic allowance with the agreed upon settlement dollar figure. (Orshansky
25 Decl. ¶ 79.)

26 ¹⁰ The “Issues Presented” in the Case Summary of the Appellate Courts Case Information webpage
27 (<https://appellatecases.courtinfo.ca.gov/>) reads: “This case presents the following issues: (1) Does a violation of
28 Labor Code section 226.7, which requires payment of premium wages for meal and rest 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?”

PAGA Penalties

The success of Plaintiffs' PAGA claim is wholly dependent upon the success of their underlying claims occurring within the one-year statute of limitations applicable to the PAGA. (Orshansky Decl. ¶ 80.) Defendants contended that these penalties are derived from the underlying wage and hour violations discussed above, which Defendants dispute. (Ibid.) See e.g., *Green v. Lawrence Service Co.* (C.D. Cal. 2013) 2013 WL 3907506, *5, n.5 (explaining that a PAGA claim's success was determined by the merits of its underlying claims). Defendants maintained and continue to maintain that they had legally compliant employment policies and practices throughout the statutory period. (Orshansky Decl. ¶ 81.) Defendants denied and continue to deny that they ever violated any provision of the California Labor Code and argued that, even assuming such violations occurred, Defendants will not be treated as having engaged in subsequent violations giving rise to heightened penalties. (Ibid.) In other words, Defendants argue that heightened civil penalties for subsequent violations would not be assessed unless it could be shown that Defendants had notice that they were violating the law, e.g., they had been cited by a labor agency or adjudged by a court to have done so. (Ibid.) See, e.g., *Amaral v. Cintas Corp.* (2008) 163 Cal. 4th 1157, 1209. Thus, Defendants contended that, at best, even if a violation giving rise to a penalty was shown for each pay period, only the lower civil penalty associated with initial violations would apply. (Orshansky Decl. ¶ 81.)

Moreover, Defendants asserted that, before a PAGA claim could be tried, under existing law, the court of law would have to be satisfied that the adjudication of the PAGA claim, based on a theory of uniform wage and hour practices relating to a large group of aggrieved employees, is sufficiently "manageable" so as not to interfere with Defendants' right to due process. (Orshansky Decl. ¶ 82.) Defendants reiterated how hourly employees' job duties and work hours varied. (Orshansky Decl. ¶ 83.) Defendants contended that there was variation as to the circumstances that could allegedly cause employees to work off-the-clock or to be deprived of the opportunity to take legally compliant, duty-free meal and/or rest periods. (Ibid.) Defendants further opined that these issues presented challenges not only to liability but also challenges to Plaintiffs' ability to show that a PAGA claim could be efficiently and manageably adjudicated

1 without abridging Defendants’ due process rights. (*Ibid.*)

2 Finally, Defendants maintained that the Court has discretion to reduce any award of
3 PAGA penalties where it views them as duplicative. *See*, Labor Code § 2699e(2) (the Court may
4 “award a lesser amount than the maximum civil penalty amount [authorized by PAGA] if, based
5 on the facts and circumstances of the particular case, to do otherwise would result in an award
6 that is unjust, arbitrary and oppressive, or confiscatory.”) (*Orshansky Decl.* ¶ 84.)

7 Although, strictly speaking, class certification requirements are not required to be
8 satisfied in order to adjudicate a PAGA claim, the state of the law with respect to the adjudication
9 and valuation of a PAGA claim is uncertain.¹¹ (*Orshansky Decl.* ¶ 85.) Thus, Class Counsel
10 applied discounts for the risks in establishing manageability and possible bifurcation of
11 discovery and/or trial, the risks regarding success on the merits and establishing liability, and
12 the risks with proving the extent of penalties that are warranted and possible discretionary
13 reduction of penalties by the Court. (*Orshansky Decl.* ¶ X.) As a result, Plaintiffs used the
14 “initial” \$100 per pay period violation (as opposed to the \$200 subsequent per violation rate) to
15 calculate a realistic estimate of **\$1,141,700** in potential PAGA penalty exposure – of which, by
16 statute, only 25%, or **\$285,425** - would be recoverable by aggrieved employees. (*Orshansky*
17 *Decl.* ¶ 85.)

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21 ¹¹ Instead, what is clear is that the purpose of the PAGA is not to generate revenue for the State but rather to facilitate
22 the enforcement of the labor laws. (*Ibid.*) *See, e.g., Williams v. Superior Court* (2017) 3 Cal. 5th 531, 546; *Arias v.*
23 *Superior Court* (2009) 46 Cal. 4th 969, 986; Cal. Lab. Code § 2699(i). In assessing the adequacy of the recovery
24 under a PAGA claim, the focus is not the amount which the LWDA and the aggrieved employees are to receive
25 formally in the form of monetary civil penalties but instead whether the total settlement amount achieves the PAGA’s
26 objectives. “When 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 include
28 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 Techns. (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 4:14-16.

Summary

After Class Counsel calculated the realistic possible recovery to Class Members for each of the above claims, the aggregate dollar amount result is **\$7,529,613**.¹² (Orshansky Decl. ¶ 86.) Thus, the proposed settlement amount to Class Members of **\$3,315,000** *represents an approximate 44% of Plaintiffs' potential maximum realistic recovery*, while avoiding the further expense and serious risk of proceeding toward class certification and trial. (Orshansky Decl. ¶ 86); (Aiwazian Decl. ¶ 15.) “The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved.” *Linney v. Cellular Alaska Partnership* (9th Cir. 1998) 151 F. 3d 1234, 1242 (internal quotations omitted). *See, e.g., Altamirano v. Shaw Industries, Inc.* (N.D. Cal. 2015) 2015 WL 4512372, at *9 (preliminarily approving wage and hour class action settlement stating, “[a]lthough 15% represents a modest fraction of the hypothetical maximum recovery estimated by Plaintiff, that figure is sufficient for the Court to grant preliminary approval given the merits of Plaintiff’s claims). Taking into account the risk of non-certification, failure to prevail on the merits, and the Court’s power to reduce the civil penalties, the proposed Settlement falls within the realm of being fair, reasonable, and adequate. (Orshansky Decl. ¶ 86.)

VIII. PROPOSED NOTICE PROVIDES ADEQUATE NOTICE TO THE CLASS

This Court should order distribution of the proposed Notice of Class Action Settlement, *see*, exhibit “A” to the Settlement Agreement attached at Exhibit “1” to Orshansky Decl. ¶ 100, to the Class by first class mail, postage prepaid, using the last known mailing address information provided by Defendants. This manner of giving notice is the “best notice practicable” under the circumstances because it provides “individual notice to all members who can be identified though reasonable effort.” *Eisen v. Carlisle and Jacqueline* (1974) 417 U.S. 156, 173. Here, Plaintiffs propose that the settlement be administered by CPT Group, Inc. (“CPT”), an experienced class action settlement administrator. (Settlement Agreement ¶ 2.31); (Orshansky Decl. ¶ 101.) Class Members’ addresses will be ascertainable through Defendants’ personnel and payroll records,

¹² To wit, \$1,841,730 + \$1,918,118 + \$781,417 + \$1,128,700 + \$717,948 + \$1,141,700 = \$7,529,613 in realistic total damages and penalties.

1 which Defendants will provide to CPT within fifteen (15) calendar days after preliminary
2 approval of the settlement. (Settlement Agreement ¶ 6.1.) To the extent that any notices are
3 returned, CPT will run those addresses through the National Change of Address database and/or
4 conduct skip traces to obtain current address information. (Settlement Agreement ¶ 6.6.)

5 The content of the proposed notice satisfies California Rule of Court 3.766(d) because
6 it advises Class Members of the nature of the claims, basic contentions and denials of the Parties,
7 the key terms of the Settlement, the uniform 45-day deadline to submit a dispute, opt-out, or
8 object to the Settlement and the procedure by which to do so, and explains the recovery formula
9 and credited number of pay periods for each Class Member. (Orshansky Decl. ¶ 102.) The
10 proposed notice will also notify Class Members of the final approval hearing date, provide the
11 contact information for Class Counsel, and advise Settlement Class Members that they may
12 enter an appearance through counsel if they wish. (Orshansky Decl. ¶ 103.) This manner of
13 giving notice satisfies California Rule of Court 3.766(e) as the most reliable and cost-effective
14 method of reaching Class Members. Thus, the proposed method of notice is reasonably
15 calculated to reach Class Members by the best means practicable and should be approved.

16 **IX. THE COURT SHOULD SET A FINAL APPROVAL HEARING**

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

20 **X. CONCLUSION**

21 Based upon the foregoing, and because the proposed Settlement is fair, reasonable, and
22 advantageous to the Class Members, Plaintiffs respectfully request that the Court enter an Order:

- 23 1. Preliminarily approving the Settlement Agreement as fair, reasonable, and
24 adequate;
- 25 2. Preliminarily approving the form and content of the Notice of Class Action
26 Settlement, attached as Exhibit “A” to the Settlement Agreement;
- 27 3. Provisionally certifying the Settlement Agreement’s proposed Class comprised of
28 the Class Members identified during the Class Period under Cal. Civ. Code § 382 for settlement

1 purposes only;

2 4. Approving and appointing Plaintiffs Fernando Herrera, Salvador Salamanca, and
3 Lizbeth Cisneros, as the Class Representatives;

4 5. Approving and appointing the law firms of CounselOne, P.C. and Lawyers for
5 Justice, P.C. as Class Counsel;

6 6. Approving and appointing CPT Group, Inc. as the Settlement Administrator;

7 7. Setting a date for the Final Approval Hearing; and

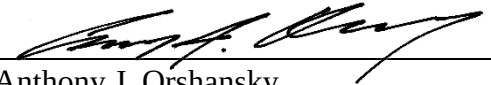
8 8. Any further relief the Court deems just and proper.

9
10 Dated: April 21, 2021

Respectfully submitted,

11 COUNSELONE, PC

12 By:



13 Anthony J. Orshansky

14 Jennifer L. Connor

15 Justin Kachadoorian

16 Attorneys for Plaintiffs, putative Class,
17 and putative aggrieved employees
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