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and SILVIA URBIETA, individually, and on
13 behalf of others similarly situated
14

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **COUNTY OF STANISLAUS**

17 BLANCA CATANO and SILVIA URBIETA,
18 individually, and on behalf of others similarly
situated

19 Plaintiffs,

20 vs.

21 COMPASS FOODS, INC., a corporation;
22 AVITEK RECRUIT, INC., a corporation;
HUMAN BEES, INC., a corporation; and
23 DOES 1 through 50, inclusive,

24 Defendants.
25
26
27
28

Case No. CV-21-001610

[Assigned to the Honorable John D. Freeland,
Dept. 23]

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

Hearing Date: November 13, 2024
Hearing Time: 8:30 AM
Department: 23

Complaint: March 25, 2021
Trial Date: None Set

1 TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that, on November 13, 2024 at 8:30 a.m., or as soon thereafter as the
3 matter may be heard, in Department 23 of the Stanislaus County Superior Court, City Towers
4 Courthouse, located at 801 10th Street, Modesto, California 95354, Plaintiffs Blanca Catano and Silvia
5 Urbietta (“Plaintiffs”) will, and hereby do, move this Court for entry of an order, pursuant to Rules
6 3.766 and 3.769 of the California Rules of Court and Code of Civil Procedure § 382, as follows:

- 7 1. Granting preliminary approval of the Stipulation of Class Action and Representative
8 Action Settlement and Release (“Stipulation” or “Settlement”);
- 9 2. Provisionally certifying the following Class for settlement purposes only: (1) all non-
10 exempt persons employed directly by Compass Foods, Inc. (“Compass”) in California
11 from March 25, 2017 through September 16, 2023, and (2) all non-exempt persons
12 employed by Human Bees, Inc. and/or Avitek Recruit, Inc. in California and assigned
13 to work at Compass’s facility at any time from March 25, 2017 through September 16,
14 2023;
- 15 3. Appointing Plaintiffs as Class Representatives;
- 16 4. Appointing Matern Law Group, PC as Class Counsel;
- 17 5. Appointing CPT Group, Inc. as the Settlement Administrator;
- 18 6. Approving the proposed Class Notice; and
- 19 7. Scheduling a Final Approval Hearing.

20 Good cause exists for the granting of this motion as the proposed Settlement is fair, adequate,
21 and reasonable. Additionally, the proposed class notice process complies with Rules 3.766 and 3.769
22 of the California Rules of Court, and mailing the proposed Class Notice to the Class Members’ last
23 known addresses is an appropriate form of giving notice. Provisional certification of the Class is
24 appropriate because the proposed Class is ascertainable, common questions of law and fact
25 predominate over any individualized questions, Plaintiffs’ claims are typical of those of the Class
26 Members, Plaintiffs and their counsel have adequately represented, and will continue to adequately
27 represent, the Class, and proceeding as a class action is a superior means of resolving this dispute.

28 The motion is based upon this notice, the attached Memorandum of Points and Authorities, the

1 accompanying Declaration of Dalia Khalili, Declarations of Plaintiffs Blanca Catano and Silvia
2 Urbieto, and all exhibits thereto, the complete files and records of this case, and any other evidence or
3 oral argument which may be considered by the Court at the time of the hearing.

4
5 DATED: October 7, 2024

Respectfully submitted,

6 MATERN LAW GROUP, PC

7
8 By: 

9 MATTHEW J. MATERN

10 MATTHEW W. GORDON

11 NORA R. KATZ

Attorneys for Plaintiffs

12 BLANCA CATANO and SILVIA URBIETA,

13 individually, and on behalf of all others similarly situated
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Blanca Catano and Silvia Urbieto¹ (collectively, “Plaintiffs” or “Class
4 Representatives”) assert claims against Defendants Compass Foods, Inc. (“Compass”), Avitek Recruit,
5 Inc., and Human Bees, Inc. (“Human Bees”)² (collectively, “Defendants”) for wage and hour
6 violations, including failure to provide meal and rest periods, failure to pay overtime and minimum
7 wages, failure to timely pay final wages due, failure to furnish accurate itemized wage statements,
8 failure to indemnify employees for necessary business expenditures, and unfair and unlawful business
9 practices, as well as a cause of action under the Labor Code Private Attorneys General Act of 2004
10 (“PAGA”).³ Plaintiffs now seek preliminary approval of the Stipulation of Class and Representative
11 Action Settlement and Release (“Stipulation” or “Settlement”), which, if approved by the Court, will
12 resolve this action in its entirety.

13 In exchange for a release of claims, Defendants have agreed to an all-inclusive, non-
14 reversionary settlement that will pay a Maximum Settlement Amount of Seven Hundred Thousand
15 Dollars (\$700,000.00). A presumption of fairness exists as the Settlement was reached through
16 extensive arm’s-length negotiations during a private mediation, sufficient investigation and discovery
17 was completed to allow Plaintiffs’ counsel to act intelligently at all times, and Plaintiffs’ counsel is
18 experienced in similar wage-and-hour class and representative action litigation. Preliminary
19 settlement approval is appropriate as the proposed Settlement is within the “ballpark” of
20 reasonableness and is fair, adequate, and reasonable to the Class Members and PAGA Members.

21 Additionally, provisional certification of the Class for settlement purposes is appropriate
22 because the proposed Class is ascertainable and estimated to consist of approximately 511 individuals,

23
24 ¹ For settlement purposes only, the Parties agreed to stipulate to the filing of an amended
25 complaint to include Ms. Urbieto as a named Plaintiff. Agreement ¶ 41. The Court granted the Parties’
26 stipulation on September 25, 2024. The amended complaint was filed with the Court on October 1,
27 2024. Khalili Decl. ¶ 9.

28 ² Human Bees, Inc. was formerly known as Avitek Recruit, Inc., Plaintiffs refer to Human
Bees, Inc. and Avitek Recruit, Inc. collectively as “Human Bees.”

³ The Stipulation of Class and Representative Action Settlement and Release is attached as
Exhibit 3 to the Declaration of Dalia Khalili in Support of Plaintiff’s Motion for Preliminary Approval
of Class and Representative Action Settlement (“Khalili Decl.”).

1 common questions of law and fact predominate over any individualized questions, Plaintiffs' claims
2 are typical of those of the Class Members, Plaintiffs and their counsel have adequately represented,
3 and will continue to adequately represent, the Class, and proceeding as a class action is a superior
4 means of resolving this dispute.

5 Accordingly, Plaintiffs respectfully request that the Court enter an order: (1) granting
6 preliminary approval of the Settlement; (2) provisionally certifying the Class for settlement purposes
7 only; (3) appointing Plaintiffs Catano and Urbieto as Class Representatives; (4) appointing Plaintiffs'
8 counsel as Class Counsel; (5) appointing CPT Group, Inc. ("CPT") as the Settlement Administrator;
9 (6) approving the mailing of the proposed Class Notice; and (7) setting a hearing to consider whether
10 to grant final approval of the Settlement and the request for the Attorney's Fees and Costs, Settlement
11 Administration Costs, and Class Representative Enhancement Payments.

12 **II. FACTUAL AND PROCEDURAL BACKGROUND**

13 **A. The Parties**

14 Plaintiff Blanca Catano began working for Defendants as a non-exempt meat cutter in
15 approximately June 2019. Declaration of Dalia Khalili ("Khalili Decl.") ¶ 3. Plaintiff Catano worked
16 at Compass's meat processing facility in Riverbank, California. *Id.* Plaintiff Catano resigned from
17 her employment with Defendants in or around September 2020. *Id.* Plaintiff Silvia Urbieto worked as
18 a direct hire employee for Compass as a meat cutter from approximately February 2015 until
19 approximately July 2019. *Id.*

20 Defendant Compass owns and/or operates meat-processing facilities in California. *Id.*
21 Defendant Human Bees, formerly known as Avitek Recruit, is a labor contractor and staffing agency
22 that supplied Compass with workers to perform labor within Compass's usual course of business
23 during the Class Period. *Id.*

24 **B. Procedural History**

25 Plaintiff Catano filed a putative class action and PAGA representative action on March 25,
26 2021 against Defendants on behalf of all other non-exempt employees of Defendants in California
27 from March 25, 2017 to the present. Khalili Decl. ¶ 6. Plaintiff Catano alleged that Defendants
28 violated various provisions of the California Labor Code with respect to herself and others similarly

1 situated, including, *inter alia*, by failing to provide compliant meal and rest periods and associated
2 premium pay, failing to pay all regular and overtime wages due, failing to pay all wages due to
3 discharged and quitting employees and associated waiting time penalties, failing to issue accurate
4 itemized wage statements, failing to maintain required payroll records, and failing to reimburse
5 employees for necessary business expenses. *Id.* On October 1, 2024, pursuant to the Parties'
6 stipulation, Plaintiffs filed a First Amended Complaint with the Court, adding Ms. Urbieto as an
7 additional Plaintiff and class representative. *Id.* ¶ 9.

8 **C. Discovery and Investigation**

9 Prior to reaching the Settlement, Defendants responded to Plaintiff Catano's written discovery,
10 including requests for production of documents, special interrogatories, form interrogatories, and
11 requests for admission. Khalili Decl. ¶ 10. The Parties participated in informal discovery, and
12 Defendants produced Plaintiff Catano's employment records and a 20% sample of class members'
13 timekeeping data, including time records of approximately 13,160 shifts. *Id.* Partial pay records were
14 also provided for the sample of class members. *Id.* Based on the data Defendants provided, Plaintiffs
15 currently estimate that there are approximately 511 class members, comprised of both Compass direct
16 hires (206 employees) and employees provided by labor contractor Human Bees (305 employees),
17 who cumulatively worked approximately 25,717 workweeks during the Class Period. *Id.* ¶ 11.
18 Plaintiffs' counsel hired an expert to conduct an analysis of the time and payroll records and to prepare
19 a damages model in preparation for mediation. *Id.* ¶ 12. This information allowed Plaintiffs' counsel
20 to act intelligently and effectively in negotiating the proposed Settlement. *Id.*

21 **D. Settlement Negotiations**

22 The parties attended an all-day mediation with an experienced mediator, Steven Serratore,
23 Esq., on July 18, 2023, and the parties accepted the mediator's proposal to resolve this matter on July
24 25, 2023, with the understanding that they would enter into a comprehensive written agreement.
25 Khalili Decl. ¶ 13. On December 21, 2023, the parties signed a Memorandum of Understanding. *Id.*
26 On October 1, 2024, the parties fully executed the Settlement. *Id.* ¶ 13, Exh. 3.

27 ///

28 ///

III. SUMMARY OF THE SETTLEMENT

A. The Class Members and PAGA Members

The proposed Class consists of “(1) all non-exempt persons employed directly by Compass in California from March 25, 2017 through September 16, 2023, and (2) all non-exempt persons employed by Human Bees in California and assigned to work at Compass’s facility at any time from March 25, 2017 through September 16, 2023.” Settlement ¶ 6. Based on a review of Defendants’ records, Plaintiffs currently estimate that there are approximately 511 class members, comprised of both Compass direct hires (206 employees) and employees provided by labor contractor Human Bees (305 employees). Khalili Decl. ¶ 11. “PAGA Members” means all persons employed by Defendants in California as non-exempt employees at any time from January 19, 2020 through September 16, 2023. Settlement ¶¶ 21, 23. Based on Defendants’ records, there are approximately 277 PAGA Members, comprised of both Compass direct hires (119 employees) and employees provided by Human Bees (158 employees). Khalili Decl. ¶ 11.

B. Settlement Terms

Under the proposed Settlement, Defendants will pay a Maximum Settlement Amount of Seven Hundred Thousand Dollars (\$700,000.00), which is inclusive of Individual Settlement Payments, Attorney’s Fees and Costs, Enhancement Payments, Settlement Administration Costs, and the PAGA Settlement. Settlement ¶ 42. Defendants shall pay the employer portion of any payroll taxes (including but not limited to FICA and FUTA) in addition to the Maximum Settlement Amount. *Id.* No portion of the Maximum Settlement Amount shall revert to Defendants or result in an unpaid residue. *Id.* ¶¶ 10, 18. The Maximum Settlement Amount shall be allocated as follows:

1. Individual Settlement Payments. Individual Settlement Payments shall be paid by the Settlement Administrator from the “Net Settlement Amount,” which means the portion of the Maximum Settlement Amount remaining after deducting the Class Representative Enhancement Payments, the PAGA Settlement, Attorney’s Fees and Costs, and Settlement Administration Costs. Settlement ¶¶ 15, 18, 49-50. The Individual Settlement Payment for each Participating Class Member shall be based upon a formula, whereby the Net Settlement Amount shall be divided by the total number of workweeks for all Participating Class Members, and the result of this division is referred to

1 as the “Workweek Rate.” *Id.* ¶ 50. The amount of each Individual Settlement Payment shall be the
2 result of multiplying each Participating Class Member’s number of workweeks during the Class Period
3 by the Workweek Rate. *Id.* The Individual Settlement Payments will be allocated as follows: Twenty
4 Percent (20%) as payment for alleged unpaid wages, Forty Percent (40%) as alleged unpaid interest,
5 and Forty Percent (40%) as alleged unpaid civil and statutory penalties. *Id.* ¶ 71.

6 2. Class Representative Enhancement Payments. Subject to Court approval, Plaintiffs
7 each shall be paid a Class Representative Enhancement Payment not to exceed Ten Thousand Dollars
8 (\$10,000.00) for a total of Twenty Thousand Dollars (\$20,000.00), or any lesser amount as awarded
9 by the Court, for their time and effort in prosecuting the Action and for their general release of all
10 claims. Settlement ¶ 46. The Class Representative Enhancement Payments shall be made in addition
11 to Plaintiffs’ Individual Settlement Payments. *Id.*

12 3. Attorney’s Fees and Costs. Subject to Court approval, Class Counsel shall be entitled
13 to receive reasonable attorneys’ fees in an amount not to exceed one-third of the Maximum Settlement
14 Amount, for a total of Two Hundred Thirty-Three Thousand Three Hundred Thirty-Three Dollars and
15 Thirty-Three Cents (\$233,333.33). Settlement ¶ 45. In addition, subject to Court approval, Class
16 Counsel shall be entitled to an award of reasonable costs associated with Class Counsel’s prosecution
17 of the Action in an amount not to exceed Forty-Eight Thousand Dollars (\$48,000.00). *Id.*

18 4. Settlement Administration Costs. The Settlement Administrator shall be paid from the
19 Maximum Settlement Amount for the Settlement Administration Costs, which are estimated not to
20 exceed Fifteen Thousand Dollars (\$15,000). Settlement ¶¶ 37, 47.

21 5. PAGA Settlement. Twenty Thousand Dollars (\$20,000.00) from the Maximum
22 Settlement Amount shall be allocated for PAGA penalties, of which 75% (\$15,000.00) shall be paid
23 by the Settlement Administrator directly to the LWDA as the LWDA PAGA Payment. Settlement ¶
24 48. The remaining 25% (\$5,000) shall be allocated to the PAGA Payment for pro rata distribution of
25 Individual PAGA Payments to the PAGA Members. *Id.* The Individual PAGA Payment for each
26 PAGA Member shall be determined as follows: the PAGA Payment shall be divided by the total
27 number of Pay Periods for all PAGA Members, and the result of this division is referred to as the “Pay
28 Period Rate.” *Id.* ¶ 51. The amount of each PAGA Member’s Individual PAGA Payment shall be the

1 result of multiplying each PAGA Member's number of Pay Periods during the PAGA Period by the
2 Pay Period Rate. *Id.* No withholdings or deductions will be made from the Individual PAGA
3 Payments. *Id.*

4 **C. The Releases**

5 Effective on the date when Defendants fully fund the entire Maximum Settlement Amount,
6 Participating Class Members and PAGA Members will release claims against all Released Parties as
7 follows:

8 "Released Parties" means Compass and Human Bees, each of their respective present and
9 former parent companies, subsidiaries, divisions, concepts, related or affiliated
10 companies, and each of their present and former shareholders, officers, directors,
11 employees, agents, attorneys, insurers, reinsurers, successors and assigns, and any
12 individual or entity that could be liable for any of the Released Claims.

13 Settlement ¶ 34.

14 "Released Class Claims" means any and all claims arising during the Class Period under
15 state, federal or local law, whether statutory, common law or administrative law, alleged
16 in the operative complaint in the Action, or that could have been alleged based on the
17 factual allegations in the operative complaint in the Action, including: (1) Failure to
18 Provide Required Meal Periods; (2) Failure to Provide Required Rest Periods; (3) Failure
19 to Pay Overtime Wages; (4) Failure to Pay Minimum Wages; (5) Failure to Pay All
20 Wages Due to Discharged and Quitting Employees; (6) Failure to Timely Pay All Wages
21 Earned; (7) Failure to Maintain Required Records; (8) Failure to Furnish Accurate
22 Itemized Wage Statements; (9) Failure to Indemnify Employees for Necessary
23 Expenditures Incurred in Discharge of Duties; and (10) Unfair and Unlawful Business
24 Practices, including but not limited to including, but not limited to, claims for injunctive
25 relief; punitive damages; liquidated damages; penalties; interest; fees; costs; and all other
26 claims and allegations made or which could have been made based on the allegations in
27 the operative complaint. The Released Class Claims do not include any claims for civil
28 penalties under PAGA.

Id. ¶ 32.

"Released PAGA Claims" means any and all claims arising during the PAGA Period for
civil penalties under Labor Code 2698 *et seq.* that were or could have been asserted in the
Action based on the factual allegations in the operative complaint in the Action and in the
PAGA notice letter, including claims for civil penalties under PAGA for alleged
violations of Labor Code §§ 200, 201, 202, 203, 204, 210, 218.6, 221, 223, 224, 225.5,
225, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 199, and 2802.

Id. ¶ 33.

1 In addition, Plaintiffs will enter into a general release of all claims, in addition to the claims
2 being released by all Participating Class Members, and each Plaintiff expressly waives any and all
3 rights and benefits conferred by the provisions of California Civil Code § 1542. *Id.* ¶ 81.

4 **D. Notice and Settlement Administration**

5 Within thirty (30) calendar days after the Court grants Preliminary Approval, Defendants shall
6 provide the Settlement Administrator with the Class List for purposes of mailing the Class Notice to
7 Class Members. Settlement ¶ 55. Within fifteen (15) calendar days after receiving the Class List from
8 Defendants, the Settlement Administrator will mail a Class Notice to all Class Members via regular
9 First-Class U.S. Mail, using the most current, known mailing addresses identified in the Class List. *Id.*
10 ¶ 56.

11 Prior to mailing, the Settlement Administrator will perform a search based on the National
12 Change of Address (“NCOA”) database for information to update and correct for any known or
13 identifiable address changes. *Id.* ¶ 57. Any Class Notices returned to the Settlement Administrator as
14 non-deliverable on or before the Response Deadline will be sent promptly via regular First-Class U.S.
15 Mail to the forwarding address affixed thereto and the Settlement Administrator will indicate the date
16 of such re-mailing on the Class Notice. *Id.* If no forwarding address is provided, the Settlement
17 Administrator will promptly attempt to determine the correct address using a skip-trace or other search
18 and will then perform a single re-mailing. The Response Deadline will be extended for fifteen (15)
19 calendar days for all re-mailed Notices. *Id.*

20 All Class Members will be mailed a Class Notice via First Class U.S. Mail. *Id.* ¶ 58. Each
21 Class Notice will provide: (i) information regarding the nature of the Action; (ii) a summary of the
22 Settlement’s principal terms; (iii) the Settlement Class definition; (iv) the PAGA Member definition;
23 (v) the total number of qualifying workweeks worked by each respective Class Member during the
24 Class Period; (vi) the total number of Pay Periods worked by each respective PAGA Member during
25 the PAGA Period; (vii) each Class Member’s estimated Individual Settlement Payment and the
26 formula for calculating Individual Settlement Payments; (viii) each PAGA Member’s estimated
27 Individual PAGA Payment and the formula for calculating Individual PAGA Payments; (ix) the
28 procedure for a Class Member to dispute the calculation of their estimated Individual Settlement

1 Payments; (x) the dates that comprise the Class Period and PAGA Period; (xi) instructions on how to
2 submit a Request for Exclusion or Objection; (xii) the deadlines by which the Class Member must
3 postmark a Request for Exclusion, and the deadlines by which the Class Members must postmark
4 Objections to the Settlement; and (xiii) the claims to be released. *Id.*

5 The Settlement Administrator will set up and maintain a toll-free telephone number for Class
6 Members and PAGA Members to contact the Settlement Administrator regarding the Settlement, and
7 the toll-free telephone number will be identified in the Class Notice. *Id.* ¶ 59. The Settlement
8 Administrator will also set up a dedicated page on its website that Class Members and PAGA
9 Members may access regarding the Settlement, and the web page URL will be identified in the Class
10 Notice. *Id.*

11 “Response Deadline” means the deadline by which Class Members must postmark to the
12 Settlement Administrator Requests for Exclusion, or postmark Objections to the Settlement
13 Administrator. *Id.* ¶ 36. The Response Deadline will be forty-five (45) calendar days from the initial
14 mailing of the Class Notice by the Settlement Administrator, unless the 45th day falls on a Sunday or
15 Federal holiday, in which case the Response Deadline will be extended to the next day on which the
16 U.S. Postal Service is open. *Id.* The Response Deadline will be extended by fifteen days for any Class
17 Member whose Class Notice is re-mailed by the Settlement Administrator. *Id.*

18 Class Members will have an opportunity to dispute the information provided in their Class
19 Notices. *Id.* ¶ 60. To the extent Class Members dispute their total qualifying workweeks while
20 working for Defendants as non-exempt employees during the Class Period, Class Members may
21 produce evidence to the Settlement Administrator showing that such information in the Class Notice is
22 inaccurate. *Id.* The Settlement Administrator will decide the dispute. *Id.* Defendants’ records will be
23 presumed correct, but the Settlement Administrator will evaluate the evidence submitted by the Class
24 Member and will make the final decision as to the merits of the dispute, which decision shall be final
25 and not appealable by any Party or Class Member. *Id.* All disputes will be resolved within ten (10)
26 business days of the Response Deadline. *Id.*

27 Any Class Member wishing to opt-out from the Settlement Agreement must sign and postmark
28 a written Request for Exclusion to the Settlement Administrator within the Response Deadline. *Id.* ¶

1 61. The postmark date will be the exclusive means to determine whether a Request for Exclusion has
2 been timely submitted. *Id.*

3 If a Class Member's Request for Exclusion is defective as to the requirements listed herein,
4 that Class Member will be given an opportunity to cure the defect(s). *Id.* ¶ 62. The Settlement
5 Administrator will mail the Class Member a cure letter within three (3) business days of receiving the
6 defective submission to advise the Class Member that his, her, or their submission is defective and that
7 the defect must be cured to render the Request for Exclusion valid. *Id.* The Class Member will have
8 until the later of (i) the Response Deadline or (ii) seven (7) calendar days from the date of the cure
9 letter to postmark a revised Request for Exclusion. *Id.* If the revised Request for Exclusion is not
10 postmarked within that period, it will be deemed untimely. *Id.*

11 **IV. ARGUMENT**

12 **A. The Court Should Grant Preliminary Approval of the Proposed Settlement**

13 Review of a proposed class action settlement is a two-step process. The first step is a
14 preliminary hearing to determine whether the proposed settlement is "within the range of possible
15 approval" and whether notice to the class of the settlement terms and scheduling of a final fairness
16 hearing should be approved. *Armstrong v. Bd. of Sch. Directors of City of Milwaukee* (7th Cir. 1980)
17 616 F.2d 305, 314, overruled on other grounds by *Felzen v. Andreas* (7th Cir. 1998) 134 F.3d 873;
18 *Wershba v. Apple Computer Inc.* (2001) 91 Cal.App.4th 224, 234-35. To determine whether a class
19 settlement is fair, adequate, and reasonable a court must be provided with basic information about the
20 nature and magnitude of the claims in question and the basis for concluding that the consideration
21 being paid for the release of those claims represents a reasonable compromise. *Clark v. Am.*
22 *Residential Services LLC* (2009) 175 Cal.App.4th 785, 790, 802-03.

23 The trial court must exercise its discretion through the application of several well-recognized
24 factors when deciding whether a class action settlement is fair. *Id.* The list of factors, which "is not
25 exhaustive and should be tailored to each case," includes "the strength of Plaintiff's case, the risk,
26 expense, complexity and likely duration of further litigation, the risk of maintaining class action status
27 through trial, the amount offered in settlement, the extent of discovery completed and the stage of the
28 proceedings, the experience and views of counsel, the presence of a governmental participant, and the

1 reaction of the class members to the proposed settlement.” *Kullar v. Foot Locker Retail Inc.* (2008)
2 168 Cal.App.4th 116, 128 (quoting *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1794, 1801).
3 The most important factor the trial court should consider in determining whether to approve a class
4 action settlement is the strength of the case on the merits balanced against the amount offered in
5 settlement. *Munoz v. BCI Coca Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 408;
6 *Kullar*, 168 Cal.App.4th at 130.

7 Here, the proposed Settlement should be granted preliminary approval as it is supported by
8 experienced counsel, it was preceded by sufficient discovery and investigation, it extinguishes the
9 risks of continued litigation, it provides significant financial recovery to Class Members, and it
10 provides a fair and adequate distribution of settlement proceeds to Class Members. Khalili Decl. ¶¶
11 10-21, 29-44.

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

13 A presumption of fairness exists where: (1) the settlement is reached through arm’s-length
14 bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act
15 intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is
16 small. *Dunk*, 48 Cal.App.4th at 1806; *In re Microsoft I-V Cases* (2006) 135 Cal.App.4th 706, 723; 7-
17 *Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1146. As the
18 proposed Settlement was reached through arm’s-length negotiations, sufficient investigation and
19 discovery allowed Plaintiffs’ counsel to act intelligently, and Plaintiffs’ counsel is experienced in
20 wage-and-hour class actions (*see* discussion, *supra* IV.A), it is entitled to a presumption of fairness.⁴

21 **a. The Proposed Settlement Was Reached Through Arm’s Length Bargaining**

22 Here, the Settlement is the product of extensive arm’s-length negotiations. Khalili Decl. ¶¶ 13-
23 14. The negotiations were hard-fought and conducted at arm’s-length, and the Settlement is the result
24 of an informed analysis of Defendants’ potential liability exposure in relation to the costs and risks
25 associated with continued litigation. *Id.* ¶¶ 14-21. In addition, the negotiations during the mediation
26

27 ⁴ At preliminary approval, the fourth factor—the percentage of objectors—is not applicable, as
28 notice has not yet been provided and class members have not yet had an opportunity to object.

1 were facilitated by a respected mediator, Steven Serratorre, Esq. *Id.* ¶ 12. The parties attended an all-
2 day mediation on July 18, 2023, and the parties accepted the mediator’s proposal to resolve this matter
3 on July 25, 2023, with the understanding that they would enter into a comprehensive written
4 agreement. *Id.* ¶ 13. On October 1, 2024, the parties fully executed the Settlement. *Id.*

5 ***b. Plaintiffs Conducted Sufficient Investigation and Discovery***

6 Prior to reaching the Settlement, the Parties engaged in informal discovery and Defendants
7 produced Plaintiff Catano’s employment records and a 20% sample of class members’ time records,
8 including approximately 13,160 shifts. Khalili Decl. ¶¶ 10-11. Partial pay records were also provided
9 for the sample of class members. *Id.* Plaintiffs retained an expert in data analysis to review and analyze
10 the time and pay records for the purposes of mediation. *Id.* ¶ 12. Accordingly, Plaintiffs’ counsel was
11 able to act intelligently and effectively in negotiating the proposed Settlement. *Id.*

12 ***c. Plaintiffs’ Counsel Has Extensive Experience in Class Actions***

13 The settlement negotiations were conducted by highly capable and experienced counsel.
14 Plaintiffs’ counsel have a strong record of vigorous and effective advocacy for their clients and are
15 experienced in handling complex wage and hour class action and PAGA litigation. Khalili Decl. ¶¶
16 29-44. Although Plaintiffs’ counsel were prepared to litigate the claims asserted in the Action, they
17 support the proposed Settlement as being in the best interests of the Class, the PAGA Members, and
18 the State of California. *Id.* ¶ 21.

19 **2. The Proposed Settlement Is Fair, Adequate, and Reasonable**

20 The trial court has “broad discretion to determine “whether a settlement [is] fair and
21 reasonable.” *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1389. In order to
22 evaluate whether a class settlement is fair, adequate, and reasonable, courts must be provided with
23 “basic information about the nature and magnitude of the claims in question and the basis for
24 concluding that the consideration being paid for the release of those claims represents a reasonable
25 compromise.” *Kullar*, 168 Cal.App.4th at 133; *Clark*, 175 Cal.App.4th at 802-03. A settlement is not
26 judged against what might have been recovered had a plaintiff prevailed at trial, nor does the
27 settlement need to recoup the maximum amount of damages available to be found fair and reasonable.
28 *Wershba*, 91 Cal.App.4th at 246, 250.

1 In considering whether a settlement is reasonable, the trial court should consider relevant
2 factors, which may include the strength of a plaintiff's case, the risk, expense, complexity and likely
3 duration of further litigation, the risk of maintaining class action status through trial, the amount
4 offered in settlement, the extent of discovery completed and the stage of the proceedings, the
5 experience and views of counsel, the presence of a governmental participant, and the reaction of the
6 class members to the proposed settlement. *Kullar*, 168 Cal.App.4th at 128. In order to approve a class
7 action settlement, the court must satisfy itself that the class settlement is within the "ballpark" of
8 reasonableness. *Id.* at 133.

9 As set forth in the accompanying declaration of Dalia Khalili, Plaintiffs' counsel has satisfied
10 the *Kullar* analysis by providing the Court with a detailed evaluation of the maximum potential
11 damages for the claims that were alleged in this matter. Khalili Decl. ¶ 15. In doing so, Plaintiffs'
12 counsel calculated the maximum potential damages and penalties to be approximately \$9,497,351.00
13 *Id.* This amount constitutes the maximum potential damages in an "everything goes right" scenario
14 in which Plaintiffs' claims are certified and Plaintiffs are able to establish liability at trial. *Id.*

15 Here, the proposed Settlement is fair, adequate, and reasonable. Plaintiffs and their counsel
16 considered several factors in reaching the decision to settle at this point in the litigation, including: (a)
17 the risk in proving liability and PAGA penalties at trial; (2) the prospect that the Court could
18 substantially reduce any award of civil penalties on the grounds that "to do otherwise would result in
19 an award that is unjust, arbitrary and oppressive, or confiscatory" pursuant to Labor Code §
20 2699(e)(2); (3) the risk that the Court would deny class certification, and that denial would be affirmed
21 on appeal; and (4) the risk that, even if a Court's order denying class certification is reversed on
22 appeal, establishing classwide liability and damages at trial would be an expensive, time-consuming
23 and extremely uncertain proposition. Khalili Decl. ¶ 16. Continued litigation could lead to an
24 unfavorable judgment and/or a lengthy and unsuccessful appeal. *Id.*

25 Plaintiffs' counsel estimated a 60 percent chance of Plaintiffs obtaining certification of the
26 class claims, reducing the potential value to \$ 2,545,721.40. *Id.* ¶ 17. Plaintiffs' counsel further
27 discounted the claims to \$1,272,860.00 based upon a 50% chance of maintaining certification and
28 prevailing at trial. *Id.* For the PAGA claims, Plaintiffs' counsel estimate a 50% chance of prevailing

1 at trial, reducing the potential civil penalties to approximately \$2,637,241.00. *Id.* Plaintiffs’ counsel
2 further considered the likelihood that the Court would substantially reduce any award of civil penalties
3 on the grounds that “to do otherwise would result in an award that is unjust, arbitrary and oppressive,
4 or confiscatory,” pursuant to Labor Code section 2699(e)(2). Khalili Decl. ¶ 17. For example, during
5 the penalty phase of the trial in *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, the plaintiff
6 requested PAGA penalties in the amount of approximately \$70 million. *Id.* at 528. The trial court
7 instead awarded only \$150,000—or 0.21% of the maximum—and stated that this reduction was
8 warranted because imposing the maximum penalty would be “unjust, arbitrary, and oppressive” based
9 on Starbucks’ “good faith attempts” to comply with meal period obligations and because the court
10 found the violations were minimal. *Id.* at 517. The Court of Appeal affirmed the lower court’s
11 reduced award of \$150,000 in penalties under PAGA. *Id.* at 529. If a similar reduction to the
12 maximum penalties is applied here, Plaintiffs and aggrieved employees would recover, in total, only
13 approximately \$11,034.00 in PAGA penalties. Khalili Decl. ¶ 17. Finally, in allocating a portion of
14 the settlement to PAGA penalties, Plaintiffs’ counsel considered case law providing that the PAGA
15 claim need not compromise a disproportionate amount of a class settlement which includes a PAGA
16 claim, with the majority of funds going to the State simply because the PAGA penalties have the
17 potential to be larger than the class claims. *See O’Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016)
18 201 F.Supp.3d 1110, 1134; *see also Nordstrom Commission Cases* (2010) 186 Cal.App.4th 576, 589
19 (trial court did not abuse discretion in approving settlement of employees’ class action against
20 employer even though settlement failed to allocate any portion of the recovery to the PAGA claims).
21 As the *O’Connor* court explained, “[s]uch a requirement would come at the expense of the workers,
22 who might otherwise benefit from a larger non-PAGA settlement.” *O’Connor*, 201 F.Supp.3d at 1134.
23 The purposes of PAGA may be concurrently fulfilled by a settlement offering fair compensation to
24 class members, thereby vindicating the rights of class members as employees and providing “a
25 deterrent effect upon the defendant employer and other employers, an objective of PAGA.” *Id.*

26 While Plaintiffs are confident in the merits of the case, a legitimate controversy exists as to
27 each cause of action. Specifically, Plaintiffs contend that, due to the nature of Class Members’ work
28 and Defendants’ practices, Class Members were consistently denied the right to take timely and

1 uninterrupted meal and rest breaks. Khalili Decl. ¶ 19. On the other hand, Defendants contend that
2 they had lawful written policies and authorized and permitted rest breaks and provided meal periods.
3 As a result, Defendants contend that, throughout the Class Period, they complied with applicable
4 California law and class treatment is not appropriate. *Id.* Moreover, there is a significant risk that this
5 Court may deny certification on all or some of Plaintiffs' claims. Indeed, a number of courts have
6 concluded that common questions did not predominate where the employer maintained lawful written
7 policies. *See, e.g., Ordonez v. Radio Shack, Inc.* (C.D. Cal. Jan. 17, 2013) 2013 WL 210223, *8
8 (denying certification of plaintiff's meal break claim, finding that in the absence of any allegation that
9 defendant's meal break policy was facially unlawful, plaintiff's meal break claims did not "depend
10 upon a common contention... of such a nature that is capable of classwide resolution"); *Cummings v.*
11 *Starbucks Corp.* (C.D. Cal. Mar. 24, 2014 ("Without a defective policy, the Court must 'resolve any
12 factual disputes necessary to determine whether there was a common pattern and practice that could
13 affect the class as a whole."); *Gonzalez v. Millard Mall Servs., Inc.* (S.D. Cal. 2012) 281 F.R.D. 455,
14 462 ("Millard had a meal and rest period policy conforming to the applicable laws and wage orders...)
15 Therefore, Plaintiffs have not shown that there was a common policy that pervaded the entire company
16 where Project Managers prevented employees from taking meal breaks and did not authorize and
17 permit employees to take rest breaks."). *Id.* The Settlement obviates all of these risks and ensures that
18 the Class Members receive timely relief without the uncertainty of an appeal and, if successful, a trial.
19 *Id.*

20 The Net Settlement Amount is currently estimated to be approximately \$363,666.67, if the
21 Court approves the requested Attorney's Fees and Costs, Enhancement Payments, PAGA Settlement,
22 and Settlement Administration Costs. *Id.* ¶ 20. Based thereon, it is currently estimated that, if there
23 are approximately 511 Class Members, each Participating Class Member will receive on average an
24 Individual Settlement Payment of approximately \$711.68 as a result of the Settlement. *Id.*

25 In sum, when the risks of litigation, the uncertainties involved in prevailing at trial and the
26 burdens of proof necessary to establish classwide liability are balanced against the merits of Plaintiffs'
27 claims, it is clear that the Settlement is within the "ballpark" of reasonableness. *Id.* ¶ 21. Although
28 Plaintiffs and Plaintiffs' counsel were prepared to proceed with litigation, they support the proposed

1 Settlement as being in the best interests of the proposed Class, the PAGA Members, and the State of
2 California. *Id.*

3 **B. The Proposed Class Notice Is an Appropriate Form of Giving Notice to the Class and**
4 **Satisfies Due Process**

5 The proposed Class Notice will be sent to Class Members in a timely fashion via first-class
6 U.S. Mail and provides all of the information a reasonable person would need to make a fully
7 informed decision about the Settlement. Settlement, Exh. A. The Class Notice summarizes the
8 lawsuit, including the contentions and denials of the parties, and the proceedings to date, and it
9 explains the terms and conditions of the settlement in plain language. *Id.* It also fully informs Class
10 Members of their rights and options (i.e., rights to object, to exclude oneself from the settlement, or to
11 do nothing to receive a pro rata share of the settlement), as well as explains the consequences of
12 exercising those options. *Id.* The Class Notice makes clear that each Class Member will receive an
13 Individual Settlement Payment unless he or she opts out of the settlement and explains the process for
14 doing so. *Id.* As such, the Class Notice comports with the requirements of Rules 3.766 and 3.769 of
15 the California Rules of Court.

16 “The principal purpose of notice to the class is the protection of the integrity of the class action
17 process.” *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 970. The notice ““must fairly apprise
18 the class members of the terms of the proposed compromise and of the options open to the
19 dissenting class members.”” *Wershba*, 91 Cal.App.4th at 224, 251. Additionally, the notice given
20 should have a reasonable chance of reaching a substantial percentage of the class members. *Cartt*, 50
21 Cal.App.3d at 974. However, there is no statutory or due process requirement that all class members
22 receive the notice. *Id.*

23 The proposed notice plan in this matter is consistent with class notices approved in state and
24 federal courts, is the best notice practicable, and is the method of dissemination likely to give the best
25 actual notice to the greatest number of Class Members. In accordance with the proposed notice plan,
26 the Settlement Administrator will mail each Class Member the Class Notice. Settlement ¶ 56.
27 Individual notice by mail is preferred when possible and dissemination of combined certification/
28 settlement notice is a common and accepted practice. *In re Vitamin Cases* (2003) 107 Cal.App.4th

820, 828. Prior to mailing the Class Notice, the Settlement Administrator will perform a search using the NCOA database to update and correct any known or identifiable address changes. Settlement ¶ 57.

Accordingly, the proposed Class Notice is an appropriate form of giving notice to the greatest number of Class Members and should be approved by the Court.

C. The Court Should Provisionally Certify the Class for Settlement Purposes Only

Code of Civil Procedure § 382 provides that three basic requirements must be met in order to sustain any class action: (1) there must be an ascertainable class; (2) there must be a well-defined community of interest in the question of law or fact affecting the parties to be represented; and (3) certification will provide substantial benefits to litigants and the courts, i.e., proceeding as a class is superior to other methods. *Fireside Bank v. Superior Court* (2007) 40 Cal.4th 1069, 1089; *see also Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326. Courts utilize a less stringent standard for class certification during settlement. *Global Minerals & Metals Corp. v. Superior Court* (2003) 113 Cal.App.4th 836, 859. The reason: “no trial is anticipated in a settlement class case, so the case management issues inherent in the ascertainable class determination need not be confronted.” *Id.*; *see also Amchem Products, Inc. v. Windsor* (1997) 521 U.S. 591, 620 (a district court “confronted with a request for settlement-only class certification ... need not inquire whether the case, if tried, would present intractable management problems, for the proposal is that there be no trial”).

All three factors weigh in favor of the Court provisionally certifying the Class.

1. The Class Is Ascertainable and Sufficiently Numerous

To determine whether a class is ascertainable, courts look at: (1) the class definition; (2) the size of the class; and (3) the means available for identifying class members. *Reyes v. Board of Supervisors of San Diego County* (1987) 196 Cal. App. 3d 1263, 1271. In this case, the Class consists of approximately 511 individuals, is objectively defined, and Class Members can be identified through Defendants’ sample of class members’ pay records. Khalili Decl. ¶¶ 10-11.

A class is ascertainable where it is “defined in terms of ‘objective characteristics and common transactional facts.’” *Ghazaryan v. Diva Limousine, Ltd.* (2008) 169 Cal.App.4th 1524, 1531-32; *see also Sevidal v. Target Corp.* (2010) 189 Cal.App.4th 905, 919. Here, the Class is defined based on objective criteria, as it includes (1) all non-exempt persons employed directly by Compass in

1 California from March 25, 2017 through September 16, 2023, and (2) all non-exempt persons
2 employed by Human Bees in California and assigned to work at Compass’s facility at any time from
3 March 25, 2017 through September 16, 2023. Settlement ¶ 6. Class members are ascertainable where
4 “they may be readily identified without unreasonable expense or time by reference to official [or
5 business] records.” *Sevidal*, 189 Cal.App.4th at 919. Here, the identity of Class Members may be
6 ascertained from Defendants’ records. Khalili Decl. ¶¶ 10-11.

7 The Class is also sufficiently numerous. In California, no set number is required as a matter of
8 law for the maintenance of a class action. *Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934
9 (finding that class of 42 was sufficiently numerous).

10 Thus, the ascertainability requirement is satisfied and the Class is sufficiently numerous.

11 **2. The Proposed Class Shares a Well-Defined Community of Interest**

12 The community of interest requirement embodies three factors: (1) predominant questions of
13 law and fact; (2) class representatives with claims or defenses typical of the class; and (3) class
14 representatives who can adequately represent the class. *Dunk*, 48 Cal.App.4th at 1806; *Richmond v.*
15 *Dart Indus. Inc.* (1981) 29 Cal.3d 462, 473-475. In this case, all three factors are met.

16 **a. Common Issues of Law and Fact Predominate**

17 The commonality criterion requires the existence of common question of law or fact and is
18 generally established with the issues of predominance and typicality. *Daar v. Yellow Cab Co.* (1967)
19 67 Cal.2d 695, 713-14. All that is required is a common question of fact or law exists which
20 predominates over issues unique to the individual class members. The existence of individual issues
21 or facts is not a bar to class certification as long as they do not render class litigation unmanageable or
22 predominate over the common issues. *See B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191
23 Cal.App.3d 1341, 1354 (“presence of individual damages issues cannot bar certification”).

24 Plaintiffs’ claims present common issues of law and fact that predominate over individual
25 issues and thus warrant class certification. Among other things, Plaintiffs allege that Defendants failed
26 to provide lawful meal and rest periods, failed to pay meal and rest period premiums, failed to pay all
27 regular and overtime wages, and failing to pay all wages due to discharged and quitting employees,
28 and associated waiting time penalties. Khalili Decl. ¶ 6. Plaintiffs further allege that, as a result of

1 these violations, Defendants failed to furnish accurate wage statements and failed to pay all wages due
2 upon separation. *Id.* Plaintiffs allege that these violations were the result of common policies and
3 practices implemented by Defendants that were uniform as to all of their non-exempt employees in
4 California. *Id.* Thus, class treatment is appropriate because common issues of law and fact
5 predominate.

6 ***b. Plaintiffs' Claims Are Typical of the Claims of the Class***

7 To satisfy the typicality requirement, California law does not require that Plaintiffs have claims
8 identical to the other class members. Rather, the test of typicality for a class representative is whether
9 other members have the same or similar injury, whether the action is based on conduct which is not
10 unique to the named plaintiffs, and whether other class members have been injured by the same course
11 of conduct. *Seastrom v. Newways, Inc.* (2007) 149 Cal.App.4th 1496, 1502. The typicality requirement
12 for a class representative refers to the nature of the claim or defense of the representative, and not to
13 the specific facts from which it arose or the relief sought. *Id.* As Plaintiffs' and the Class Members'
14 claims are based on the same legal theories, and arise out of the same unlawful policies and practices,
15 the typicality requirement is satisfied.

16 ***c. Plaintiffs and Their Counsel Will Fairly and Adequately Represent the Class***

17 The question of adequacy of representation "depends on whether the plaintiff's attorney is
18 qualified to conduct the proposed litigation in the plaintiff's interest or not antagonistic to the interests
19 of the class." *McGee v. Bank of America* (1976) 60 Cal.App.3d 422, 450. Here, Plaintiffs' counsel are
20 well-regarded and accomplished attorneys who are qualified and experienced in wage-and-hour class
21 action litigation. Khalili Decl. ¶¶ 29-43. Furthermore, because Plaintiffs' claims are typical of those
22 of the other Class Members and are not based on unique circumstances that might jeopardize the
23 claims of the class, there is no conflict of interest between Plaintiffs and the Class. Therefore, the
24 adequacy requirement is satisfied.

25 **3. Proceeding as a Class Action Is Superior to Individual Actions**

26 Under the circumstances, proceeding as a class action is a superior means of resolving this
27 dispute, as the Class Members and the Court will derive substantial benefits. Class certification would
28 serve as the only means to deter and redress the alleged Labor Code violations. *See Linder v. Thrifty*

1 *Oil Co.* (2000) 23 Cal.4th 429, 434 (relevant considerations include the probability that each class
2 member will come forward ultimately to prove his or her separate claim to a portion of the total
3 recovery and whether the class approach would actually serve to deter and redress the alleged
4 wrongdoing). Furthermore, individual actions arising out of the same operative facts would unduly
5 burden the courts and could produce inconsistent results, which may be avoided by proceeding on a
6 classwide basis.

7 **D. The Requested Class Representative Enhancement Payments Are Reasonable**

8 Plaintiffs in class action lawsuits are eligible for reasonable enhancement payments as
9 compensation “for the expense or risk they have incurred in conferring a benefit on other members of
10 the class.” *Munoz v. BCI Coca-Cola Bottling Company of Los Angeles* (2010) 186 Cal.App.4th 399,
11 412. The Settlement provides for a Class Representative Enhancement Payment not to exceed
12 \$10,000.00 each for Plaintiffs Catano and Urbieto, for a total of \$20,000.00. Settlement ¶ 46. The
13 requested enhancement payments are reasonable according to controlling and persuasive case law.
14 *See Clark v. American Residential Services, LLC* (2009) 175 Cal.App.4th 785, 805-6. The payments
15 are intended to recognize the substantial time and effort that the Class Representatives expended on
16 behalf of the Class. Khalili Decl. ¶ 22. Throughout this litigation, they cooperated with counsel and
17 took actions to protect the interests of the Class and to prosecute the PAGA claims, including:
18 remaining in regular and consistent contact with counsel; collecting and providing responsive
19 documents in their possession; reviewing numerous documents; discussing their work experiences
20 with counsel; and reviewing the Settlement documents. *Id.*, Catano Decl. ¶ 7, Urbieto Decl. ¶ 7. The
21 Class Representatives have also provided valuable information regarding the claims including, but not
22 limited to, noncompliant meal periods and rest periods, unpaid overtime, noncompliant wage
23 statements, and unreimbursed business expenses. Khalili Decl. ¶ 23. The information provided by
24 them was instrumental in attempting to establish the wage and hour violations alleged in this action,
25 and the recovery provided for in the Settlement would not have been possible to obtain without their
26 participation. *Id.*

27 The Class Representatives faced many risks in pursuing this case as a class action and a
28 representative action. *Id.* ¶ 23; Catano Decl. ¶¶ 5-6, Urbieto Decl. ¶¶ 5-6. Because of their efforts,

1 approximately 511 Class Members will now have the opportunity to participate in a settlement and
2 to recover payment for wage violations they may never have known about on their own or been
3 willing to pursue on their own. Khalili Decl. ¶ 24. If each Class Member attempted to pursue his or
4 her legal remedies individually, each person would have been required to expend a significant
5 amount of their own time and monetary resources. *Id.* Few individuals are willing to diligently act as
6 a class representative and assume the substantial risk should the employer prevail in a putative class
7 action. *Id.* The Class Representatives' willingness to assume the financial risk is significant, as
8 California law provides that the losing party must pay the prevailing party's costs. *Id.*, Catano Decl.
9 ¶ 6, Urbieto Decl. ¶ 6. As such, if they would not have prevailed in this case, they could have been
10 subjected to a cost award in the amount of several thousands of dollars. Khalili Decl. ¶ 24.
11 Additionally, as a result of filing a class and representative action against their former employer, the
12 Class Representatives may face reputational risk among potential future employers that could
13 adversely impact their future job opportunities because they may be viewed as litigious by certain
14 prospective employers. *Id.*, Catano Decl. ¶ 5, Urbieto Decl. ¶ 5. This is a significant concern.

15 The Action would not have been possible without the aid of the Class Representatives, who
16 put their own time and effort into the litigation, sacrificed the value of their own individual claims,
17 and placed themselves at risk for the sake of the other Class Members, PAGA Members, and the
18 State of California. Khalili Decl. ¶ 25. Indeed, by actively pursuing this action, the Class
19 Representatives furthered California's public policy goal of enforcing the State's wage and hour
20 laws. *See Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal. 4th 319, 340 (recognizing the
21 "clear public policy" that is specifically directed at the enforcement of California wage laws).
22 Khalili Decl. ¶ 25. The result of the Settlement is very good and will provide substantial monetary
23 compensation to those Class Members that do not elect to exclude themselves from the Settlement,
24 and the requested enhancement payments do not significantly reduce the total amount of the
25 settlement fund. *Id.*

26 Finally, the Class Representatives have agreed to a general release of all claims against
27 Defendants and a waiver of California Civil Code § 1542. Khalili Decl. ¶ 25, Ex. 4. The requested
28 Enhancement Awards in the amount of \$10,000 to each of the Class Representatives, for a total of

1 \$20,000.00, are therefore reasonable to compensate them for their active participation in the lawsuit,
2 the risks they undertook, and their general release of all claims. *Id.* ¶¶ 22-27.

3 **E. The Requested Attorneys' Fees and Costs Are Reasonable**

4 The Settlement provides for attorneys' fees to Class Counsel in an amount up to one-third of the
5 Maximum Settlement Amount, for a maximum fee award of \$233,333.33, plus an award of actual
6 litigation expenses up to \$48,000. Settlement ¶ 45. Plaintiffs request attorneys' fees pursuant to the
7 "common fund theory" with a lodestar cross-check.

8 The request for attorney fees as a percentage of the gross settlement fund is supported by the
9 "common fund theory," where "one who expends attorney fees in winning a suit which creates a fund
10 from which others derive benefits, may require those passive beneficiaries to bear a fair share of the
11 litigation costs." *Serrano v. Priest* (1977) 20 Cal.3d 25, 35; *see also, Quinn v. State of California*
12 (1975) 15 Cal.3d 162; *Samura v. Kaiser Foundation Health Plan, Inc.* (1993) 17 Cal.App.4th 1284.
13 The percentage of the maximum fund method of calculation is also supported by a number of federal
14 cases, including *Boeing v. Van Gemert* (1980) 444 U.S. 472, 478; *Mashburn v. National Healthcare,*
15 *Inc.* (1988) 684 F.Supp. 679; *In re Hill* (9th Cir. 1985) 75 F.2d 1037. The percentage is properly
16 based upon the maximum settlement amount, rather than upon the amount of funds distributed to class
17 members. *Williams v. MGM-Pathe Communications Co.* (9th Cir. 1997) 129 F.3d 1026.

18 The Maximum Settlement Amount is \$700,000.00. Settlement ¶ 17. The requested attorneys'
19 fees are one-third of that total, or \$233,333.33. *Id.* ¶ 45. The requested fee percentage is less than that
20 charged by Plaintiffs' counsel for other employment cases. Khalili Decl. ¶ 42. Moreover, Plaintiffs'
21 counsel invested significant time and resources into this case, with payment deferred to the end of the
22 case and entirely contingent on the outcome. *Id.*

23 The efforts expended by Class Counsel thus far include, but are not limited to, the following:
24 interviews with Plaintiffs and review of documents provided by Plaintiffs; preparation of multiple
25 drafts of the class action complaint; filing the class action complaint; propounding numerous sets of
26 written discovery to Defendants, including requests for production of documents, special
27 interrogatories, requests for admission, and form interrogatories; meeting and conferring with
28 Defendants' counsel to obtain relevant documents and information; communicating with Plaintiffs

1 regularly regarding the status of the case; reviewing and analyzing a sampling of time records and
2 payroll records for purposes of mediation; retaining an expert in data analysis to analyze the data
3 sample for mediation; interviewing numerous putative class members about their work experiences;
4 conducting legal research regarding Defendants' wage and hour practices; drafting, negotiating, and
5 revising the Settlement, Class Notice, and individual settlement agreements; preparing a stipulation
6 to amend the complaint; and preparing the motion for preliminary approval papers. *Id.*

7 The Court should therefore grant preliminary approval of the Settlement.

8 **F. The Requested Payment of Settlement Administration Costs Is Reasonable**

9 The Settlement provides that the Settlement Administrator shall be paid up to Fifteen Thousand
10 Dollars (\$15,000.00), from the Gross Settlement Fund, for settlement administration expenses.
11 Settlement ¶ 47. CPT has submitted a "not-to-exceed" estimate within this figure. Given the size of
12 the Class and the scope of the duties to be performed by the Settlement Administrator, the Settlement
13 Administration Costs are reasonable.

14 **V. CONCLUSION**

15 For the reasons set forth above, Plaintiffs respectfully request that the Court: (1) grant
16 preliminary approval of the Settlement; (2) provisionally certify the Class for settlement purposes
17 only; (3) appoint Plaintiffs as Class Representatives; (4) appoint Matern Law Group, PC as Class
18 Counsel; (5) appoint CPT Group, Inc. as the Settlement Administrator; (6) approve the proposed Class
19 Notice and the plan for distribution; and (7) schedule a final approval hearing.

20
21 DATED: October 7, 2024

Respectfully submitted,

22 MATERN LAW GROUP, PC

23
24 By: 

25 MATTHEW J. MATERN
26 MATTHEW W. GORDON
27 NORA R. KATZ

Attorneys for Plaintiffs

28 BLANCA CATANO and SILVIA URBIETA, individually,
and on behalf of all others similarly situated