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**UNITED STATES DISTRICT COURT**

**CENTRAL DISTRICT OF CALIFORNIA**

KEVIN MURPHY, individually and on  
behalf of all other Aggrieved Employees,

Plaintiff,

vs.

FUSION LEARNING, INC., a Delaware  
Corporation; and DOES 1 through 50,  
inclusive,

Defendants.

Case No. 2:21-cv-06732-JAK-AS  
Related Case No.: 2:22-cv-04497-  
JAK-AS

*[Assigned to Hon. Judge John A.  
Kronstadt]*

**PLAINTIFF'S NOTICE OF  
MOTION AND MOTION FOR  
PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT**

Date: December 11, 2023  
Time: 8:30 a.m.  
Courtroom: 10B

Action Filed: July 8, 2021  
Removal Date: August 19, 2021  
Trial Date: None Set

1 NOTICE IS HEREBY GIVEN that on Monday, December 11, 2023, at 8:30  
2 a.m., or as soon thereafter as the matter may be heard, at the First Street Courthouse  
3 located at 350 W. First Street, Courtroom 10B, Los Angeles, California 90012,  
4 Honorable Judge John A. Kronstadt, presiding, Plaintiff Kevin Murphy as an  
5 individual and on behalf of all others similarly situated, will and hereby does move  
6 this Court for entry of an Order pursuant to Fed. R. Civ. Proc. 23(e) and 29 U.S.C.  
7 § 216(b):

- 8 1. Preliminarily certifying the proposed Settlement Class for settlement  
9 purposes under Rule 23(e) of the Federal Rules of Civil Procedure;
- 10 2. Preliminarily appointing Plaintiffs Kevin Murphy, Gabriel Schwartz,  
11 Marc Brewer, and Garrison Moreno as Class Representatives for  
12 settlement purposes;
- 13 3. Preliminarily appointing Haig B. Kazandjian and Cathy Gonzalez of Haig  
14 B. Kazandjian Lawyers, APC, and Fletcher W. Schmidt and Matthew K.  
15 Moen of Haines Law Group, APC, as Class Counsel for settlement  
16 purposes;
- 17 4. Preliminarily approving the class action and PAGA representative action  
18 settlement based upon the terms set forth in the Class Action and PAGA  
19 Settlement Agreement and Class Notice (“Settlement Agreement”);
- 20 5. Scheduling a final fairness hearing to consider final approval of the  
21 Settlement Agreement, entry of a proposed final judgment, Plaintiffs’  
22 counsel’s Motion for Attorney’s Fees, Costs, and Class Representative  
23 Service Payments;
- 24 6. Appointing CPT Group, Inc. as the third-party settlement administrator  
25 for mailing notices; and
- 26 7. Approving the proposed Court Approved Notice of Class Action  
27 Settlement and Hearing Date for Final Court Approval (“Class Notice”)  
28

1 along with the Order that they be disseminated to the Settlement Class  
2 Members as provided in the Settlement Agreement.

3 This motion is based on this notice of motion, the attached memorandum of  
4 points and authorities, the declarations of Haig B. Kazandjian, Cathy Gonzalez,  
5 Fletcher W. Schmidt, Matthew K. Moen and the exhibits attached thereto, Kevin  
6 Murphy, Gabriel Schwartz, Marc Brewer, Garrison Moreno, and Julie Green on  
7 behalf of CPT Group, Inc., the pleadings and other papers filed in this action, and  
8 on any further oral or documentary evidence or argument presented at the time of  
9 hearing.

10  
11 Dated: November 9, 2023

Respectfully submitted,  
HAINES LAW GROUP, APC

12  
13  
14 By:

  
Matthew K. Moen, Esq.  
Attorneys for Plaintiffs

## **TABLE OF CONTENTS**

|                                                                       |    |
|-----------------------------------------------------------------------|----|
| I. INTRODUCTION .....                                                 | 1  |
| II. FACTUAL SUMMARY .....                                             | 3  |
| A. Factual and Procedural Background .....                            | 3  |
| B. Plaintiffs' Claims .....                                           | 4  |
| C. Defendants Deny Plaintiffs' Claims .....                           | 6  |
| D. Discovery Completed.....                                           | 8  |
| III. THE SETTLEMENT MERITS PRELIMINARY APPROVAL.....                  | 9  |
| A. The Settlement Is Fair, Adequate, and Reasonable .....             | 9  |
| 1. The Strength of Plaintiffs' Case.....                              | 10 |
| 2. Risk, Expense, Complexity, and Duration of Further Litigation..... | 10 |
| 3. Risk of Maintaining Class Action Status .....                      | 11 |
| 4. Amount Offered in Settlement Given Realistic Value of Claims.....  | 11 |
| 5. Discovery Completed and the Status of Proceedings .....            | 17 |
| 6. The Experience and Views of Counsel.....                           | 17 |
| B. The Preliminary Approval Standard Is Met.....                      | 18 |
| 1. The Settlement is Within the Range of Possible Approval .....      | 18 |
| 2. The Settlement Resulted from Serious, Informed and                 |    |
| Non-Collusive Negotiations.....                                       | 19 |
| 3. The Settlement is Devoid of Obvious Deficiencies.....              | 20 |
| IV. THE SETTLEMENT MERITS CERTIFICATION.....                          | 22 |
| A. Rule 23(a)(1) Numerosity Is Satisfied .....                        | 22 |
| B. Rule 23(a)(2) Commonality Is Satisfied .....                       | 22 |
| C. Rule 23(a)(3) Typicality Is Satisfied.....                         | 23 |
| D. Rule 23(a)(4) Adequacy Is Satisfied.....                           | 23 |
| E. Rule 23(b)(3) Predominance Is Satisfied .....                      | 24 |
| V. THE PROPOSED NOTICE PROCESS SATISFIES DUE PROCESS .....            | 25 |
| VI. CONCLUSION.....                                                   | 25 |

## **TABLES OF AUTHORITIES**

### **Federal Cases**

|                                                                            |       |
|----------------------------------------------------------------------------|-------|
| <i>Amchem Products, Inc. v. Windsor</i>                                    |       |
| 521 U.S. 591 (1997).....                                                   | 24    |
| <i>Churchill Village, L.L.C v. General Electric</i>                        |       |
| 361 F.3d 566 (9th Cir. 2004) .....                                         | 25    |
| <i>Class Plaintiff v. Seattle</i>                                          |       |
| 955 F.2d 1268 (9th Cir. 1992) .....                                        | 18    |
| <i>Dunleavy v. Nadler</i>                                                  |       |
| 213 F.3d 454 (9th Cir. 2000) .....                                         | 17    |
| <i>Eisen v. Carlisle &amp; Jacqueline</i>                                  |       |
| 417 U.S. 156 (1974).....                                                   | 25    |
| <i>Franklin v. Kaypro Corp.</i>                                            |       |
| 884 F.2d 1222 (9th Cir. 1989) .....                                        | 9     |
| <i>Hanlon v. Chrysler Corp.</i>                                            |       |
| 150 F.3d 1011 (9th Cir. 1998) .....                                        | 23    |
| <i>Hill v. Walmart Inc.</i>                                                |       |
| 32 F.4th 811 (9th Cir. 2022) .....                                         | 15    |
| <i>Ikonen v. Hartz Mountain Corp.</i>                                      |       |
| 122 F.R.D. 258 (S.D. Cal. 1988) .....                                      | 22    |
| <i>In re Autozone, Inc., Wage and Hour Employment Practices Litigation</i> |       |
| 289 F.R.D. 526 (N.D. Cal. 2012) .....                                      | 22-23 |
| <i>In re Mego Financial Corp. Securities Litig.</i>                        |       |
| 213 F.3d 454 (9th Cir. 2000) .....                                         | 19    |
| <i>In re Pacific Enterprises Securities Litigation</i>                     |       |
| 47 F.3d 373 (9th Cir. 1995) .....                                          | 17    |
| <i>Linney v. Cellular Alaska Partnership</i>                               |       |
| 151 F.3d 1234 (9th Cir. 1998) .....                                        | 17    |
| <i>National Rural Tele. Coop. v. DIRECTTV, Inc.</i>                        |       |
| 221 F.R.D. 523 (C.D. Cal. 2004).....                                       | 10    |

|    |                                                   |        |
|----|---------------------------------------------------|--------|
| 1  | <i>Rodriguez v. West Publishing Corp.</i>         |        |
| 2  | 563 F.3d 948 (9th Cir. 2003) .....                | 10, 22 |
| 3  | <i>Stuart v. RadioShack Corp.</i>                 |        |
| 4  | 641 F.Supp.2d 901 (N.D. Cal. Apr. 30, 2009) ..... | 6      |
| 5  | <i>Valentino v. Carter-Wallace</i>                |        |
| 6  | 97 F.3d 1227 (9th Cir. 1996) .....                | 24     |
| 7  | <b><u>Federal Rules</u></b>                       |        |
| 8  | Fed. R. Civ. Proc. 23(e)(2).....                  | 9      |
| 9  | <b><u>State Cases</u></b>                         |        |
| 10 | <i>Amaral v. Cintas Corp. No. 2</i>               |        |
| 11 | (2008) 163 Cal.App.4th 1157 .....                 | 16     |
| 12 | <i>Augustus v. ABM Security Services, Inc</i>     |        |
| 13 | (2016) 2 Cal.5th 257 .....                        | 6      |
| 14 | <i>Bradley v. Networkers Internat., LLC</i>       |        |
| 15 | (2012) 211 Cal.App.4th 1129 .....                 | 24-25  |
| 16 | <i>Brinker v. Superior Court</i>                  |        |
| 17 | (2012) 53 Cal.4th 1004 .....                      | 5      |
| 18 | <i>Carrington v. Starbucks Corporation</i>        |        |
| 19 | (2018) 30 Cal.App.5th 504 .....                   | 8      |
| 20 | <i>Chindarah v. Pick Up Stix, Inc.</i>            |        |
| 21 | (2009) 171 Cal.App.4th 796 .....                  | 11     |
| 22 | <i>Cochran v. Schwan’s Home Service, Inc.</i>     |        |
| 23 | (2014) 228 Cal.App.4th 1137 .....                 | 6, 14  |
| 24 | <i>Naranjo v. Spectrum Sec. Servs., Inc.</i>      |        |
| 25 | (2023) 88 Cal.App.5th 937 .....                   | 8, 15  |
| 26 | <i>Price v. Starbucks Corp.</i>                   |        |
| 27 | (2011) 192 Cal.App.4th 1136 .....                 | 8      |
| 28 | <i>Robinson v. Southern Counties Oil Company</i>  |        |
|    | (2020) 53 Cal.App.5th 476 .....                   | 2      |

**State Statutes and Rules**

|                                   |       |
|-----------------------------------|-------|
| 8 Cal. Code Regs. § 13520.....    | 8     |
| Cal Lab. Code § 226(e)(1) .....   | 8     |
| Cal. Lab. Code § 512(a) .....     | 5     |
| Cal Lab. Code § 516 .....         | 6     |
| Cal. Lab. Code § 1182.12 .....    | 5     |
| Cal. Lab. Code § 1197 .....       | 5     |
| Cal. Lab. Code § 2699(e)(2) ..... | 8, 16 |
| Cal. Lab. Code § 2802(a).....     | 6     |

**Unpublished Cases**

|                                                                                                                                             |       |
|---------------------------------------------------------------------------------------------------------------------------------------------|-------|
| <i>Altamirano v. Shaw Industries, Inc.</i><br>2015 WL 4512372 (N.D. Cal. 2015).....                                                         | 16-17 |
| <i>Casique v. ValleyCrest Landscape Development, Inc.</i><br>Case No. CV09-9114 GHK (SSx) (C.D. Cal. November 2, 2011).....                 | 21    |
| <i>Chu v. Wells Fargo Investments, LLC</i><br>Case Nos. C 05-4526 MHP, C 06-7924 MHP,<br>2011 WL 672645 (N.D. Cal. February 16, 2011) ..... | 21    |
| <i>Fleming v. Covidien Inc.</i><br>Case No. ED CV 10-01487 RGK (OPx),<br>2011 WL 7563047 (C.D. Cal. Aug. 12, 2011) .....                    | 16    |
| <i>Green v. Lawrence Service Co.</i><br>2013 WL 3907506 (C.D. Cal. 2013) .....                                                              | 16    |
| <i>Gribble v. Cool Transports Inc.</i><br>Case No. CV 06-04863 GAF SHx,<br>2008 WL 5281665 (C.D. Cal. December 15, 2008).....               | 18    |
| <i>In re Brazilian Blowout Litigation</i><br>Case No. CV10-8452-JFW (MANx),<br>2011 WL 10962891 (C.D. Cal. April 12, 2011).....             | 24    |

|    |                                                                |        |
|----|----------------------------------------------------------------|--------|
| 1  | <i>In re First Capital Holdings Corp. Financial Products</i>   |        |
| 2  | Case No. MDL No. 901,                                          |        |
| 3  | 1992 WL 226321 (C.D. Cal. June 10, 1992).....                  | 19     |
| 4  | <i>In re Portal Software, Inc. Securities Litig.</i>           |        |
| 5  | Case No. C-03-5138 VRW,                                        |        |
| 6  | 2007 WL 4171201 (N.D. Cal. Nov. 26, 2007).....                 | 11     |
| 7  | <i>Jaime v. Standard Parking Corp.</i>                         |        |
| 8  | Case No. CV08-04407 AHM (Rzx) (C.D. Cal. June 22, 2011).....   | 21     |
| 9  | <i>Lazarin v. Pro Unlimited, Inc.</i>                          |        |
| 10 | Case No. C11-03609 HRL,                                        |        |
| 11 | 2013 WL 3541217 (N.D. Cal. July 11, 2013) .....                | 21     |
| 12 | <i>Ribot v. Farmers Insurance Group</i>                        |        |
| 13 | Case No. CV 11-02404 DDP (FMOx),                               |        |
| 14 | 2013 WL 3778784 (C.D. Cal. July 17, 2013) .....                | 5, 22  |
| 15 | <i>Schiller v. David’s Bridal, Inc.</i>                        |        |
| 16 | Case No. 1:10-cv-00616-AWI-SKO,                                |        |
| 17 | 2012 WL 2117001 (E.D. Cal. June 11, 2012).....                 | 21     |
| 18 | <b><u>Other Sources</u></b>                                    |        |
| 19 | 4 Newberg et al., Newberg on Class Actions (4th ed. 2013)..... | 18, 24 |
| 20 | Manual for Complex Litigation (3rd Ed. 1995).....              | 9, 18  |
| 21 |                                                                |        |
| 22 |                                                                |        |
| 23 |                                                                |        |
| 24 |                                                                |        |
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION.**

3 Plaintiff Kevin Murphy, Gabriel Schwartz, Marc Brewer, and Garrison  
4 Moreno (collectively, “Plaintiffs”),<sup>1</sup> on behalf of the proposed Settlement Class,  
5 request that this Court preliminarily approve the Class Action and PAGA  
6 Settlement Agreement and Class Notice (“Settlement Agreement”),<sup>2</sup> entered into  
7 by Plaintiffs and Defendants Fusion Learning, Inc. and Danielle Ryckman  
8 (collectively, “Defendants”). The proposed FAC alleges Defendants failed to: (i)  
9 pay all straight and overtime wages; (ii) provide all lawful meal periods; (iii)  
10 authorize and permit all lawful rest periods; (iv) keep accurate payroll records; (v)  
11 pay waiting time penalties; (vi) pay wages upon termination; (vii) reimburse  
12 necessary business expenses; (viii) pay all minimum wages; (ix) comply with  
13 California’s Unfair Competition laws; and (x) is liable for civil penalties under the  
14 Private Attorneys General Act, Labor Code § 2698 *et seq.* (“PAGA”).

15 Plaintiffs respectfully request that this Court preliminarily approve this non-  
16 reversionary, \$1,250,000.00 class and PAGA settlement on behalf of the following  
17 Settlement Class Members:  
18  
19

---

20 <sup>1</sup> To facilitate the settlement approval process, the parties have agreed to file a joint  
21 stipulation for leave to file a consolidated First Amended Complaint (“FAC”),  
22 which will be filed with the Court imminently for its consideration. The FAC is  
23 intended to consolidate all claims alleged in the initial PAGA-only complaint in this  
24 action [Dkt. No. 1-1] with all claims alleged in the related Class Action, Case No.  
25 2:22-cv-04497-JAK-AS, as well as to name Defendant Danielle Ryckman—as a  
26 named Defendant in the related class action—as a named defendant in the instant  
27 action, and to add Gabriel Schwartz, Marc Brewer, and Garrison Moreno as named  
28 plaintiffs in this action. *See* Declaration of Matthew K. Moen (the “Moen Decl.”),  
¶ 12. All Plaintiffs and Defendants are signatories to the Settlement Agreement.

<sup>2</sup> The Settlement Agreement is attached as Exhibit 1 to the Moen Decl. The  
proposed Class Notice is attached as Exhibit A to the Settlement Agreement.

1 All current and former non-exempt employees who worked for  
2 Defendant Fusion Learning, Inc. in California at any time during the  
3 Class Period (April 14, 2018 through June 2, 2023).

4 Based upon the data provided by Defendants, there are approximately 1,280  
5 potential Settlement Class Members. After Court-approved deductions for  
6 Plaintiffs' Class Representative Service Payments, settlement administrator costs,  
7 the PAGA Payment to the Labor & Workforce Development Agency ("LWDA")  
8 and Aggrieved Employees, and attorneys' fees and litigation costs to Class Counsel,  
9 the remaining Net Settlement Amount ("NSA") is estimated to be no less than  
10 \$683,833.40. This results in average Individual Class Payments of approximately  
11 \$534.24. Significantly, Settlement Class Members do not need to file a claim form  
12 in order to receive an Individual Class Payment, and all Settlement Class Members  
13 who do not opt-out will automatically receive their share of the Settlement. This  
14 represents a fair and reasonable result for the Settlement Class Members, who will  
15 be agreeing to a release of only those claims that were actually asserted, or which  
16 could have been asserted based on the facts alleged, in the operative complaint.

17 Further, given the tenet that aggrieved employees do not have the ability to  
18 opt-out of a representative PAGA claim, all Aggrieved Employees<sup>3</sup> shall receive a  
19 portion of the settlement monies designated as the PAGA Penalties payable to the  
20 Aggrieved Employees and shall release their claims for civil penalties under PAGA  
21 based on the Labor Code violations that were pled in the operative complaint or  
22 Plaintiff Kevin Murphy's April 29, 2021 PAGA Notice letter to the LWDA, or  
23 which reasonably could have been alleged in the operative complaint based on the  
24 factual allegations therein, that arose during the PAGA Period. *See Robinson v.*  
25 *Southern Counties Oil Company* (2020) 53 Cal.App.5th 476.

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26  
27 <sup>3</sup> Defined as "all current and former non-exempt employees who were employed by  
28 Defendant in the State of California at any time during the PAGA Period (April 29,  
2020 through June 2, 2023)." *See* Settlement, ¶¶ 1.4, 1.32.

1 Prior to reaching this proposed Settlement, Defendants provided Plaintiffs  
2 with the payroll and timekeeping records for a random sample of Settlement Class  
3 Members covering the relevant time period, as well as key policy documents and  
4 data points. Plaintiffs then retained an expert with a Ph.D. in economics to analyze  
5 the data and create a class-wide exposure model for the claims at issue. On May 30,  
6 2023, after extensive legal research and analysis, along with Plaintiffs' and their  
7 expert's comprehensive review of the data, the parties participated in a mediation  
8 session with Mark S. Rudy, Esq., a preeminent California wage and hour mediator.  
9 At the conclusion of mediation, Mr. Rudy made a mediator's proposal for a class-  
10 wide resolution of all claims at issue that the parties ultimately accepted. Over the  
11 following months, the parties negotiated and executed the long-form Settlement  
12 Agreement now before this Court for preliminary approval.

13 As detailed below, this proposed Settlement is well within the range of  
14 possible approval in light of the significant legal and factual obstacles that Plaintiffs  
15 faced, the risks and costs of further litigation, and the monetary benefit to the  
16 Settlement Class Members. For the reasons discussed herein, Plaintiffs respectfully  
17 request that the Court grant preliminary approval of the Settlement.

## 18 **II. FACTUAL SUMMARY.**

### 19 **A. Factual and Procedural Background**

20 Defendant Fusion Learning, Inc. is a licensed private, alternative school for  
21 students in grades 6-12. Moen Decl., ¶ 9. Defendant Danielle Ryckman is Fusion's  
22 former Head of School. *Id.* Plaintiff Murphy worked for Defendants as an hourly,  
23 non-exempt Teacher from approximately December 2019 to March 2021.  
24 Declaration of Kevin Murphy ("Murphy Decl."), ¶ 2. Plaintiff Brewer worked for  
25 Defendants as a Homework Café Teacher and Substitute Teacher from  
26 approximately August 2015 through August 2019. Declaration of Marc Brewer  
27 ("Brewer Decl."), ¶ 2. Plaintiff Schwartz worked for Defendants as a Teacher from  
28 approximately January 2020 through July 2022. Declaration of Gabriel Schwartz

1 (“Schwartz Decl.”), ¶ 2. Plaintiff Moreno worked for Defendants as a Teacher from  
2 approximately January 2022 through July 2022. Declaration of Garrison Moreno  
3 (“Moreno Decl.”), ¶ 2. Like all Settlement Class Members, Plaintiffs were subject  
4 to Defendants’ wage and hour policies and practices. Murphy Decl., ¶¶ 2-3; Brewer  
5 Decl., ¶¶ 2-3; Schwartz Decl., ¶¶ 2-3; Moreno Decl., ¶¶ 2-3.

6 On July 8, 2021, Plaintiff Murphy filed a Representative Action Complaint,  
7 alleging a single cause of action for civil penalties under PAGA, which was  
8 removed to federal court on August 19, 2021. Dkt. No. 1. On April 14, 2022, the  
9 parties attended a private mediation, which ultimately proved unsuccessful. Moen  
10 Decl., ¶ 10. Thereafter, on April 14, 2022, Plaintiff Murphy filed a separate class  
11 action lawsuit against Defendants, Case No. 2:22-cv-04497-JAK-AS, asserting the  
12 same theories of liability on a class-wide basis. *Id.* Defendants removed Plaintiff  
13 Murphy’s class action complaint to federal court on June 30, 2022. *Id.*

14 On March 22, 2023, the parties attended a Settlement Conference before  
15 Magistrate Judge Maria A. Audero. Moen Decl., ¶ 11. Again, the parties were  
16 unable to resolve the matter. *Id.* Following the Settlement Conference, Defendants  
17 produced additional policy-related documents, and Plaintiffs’ counsel took the  
18 deposition of Defendants’ Rule 30(b)(6) corporate witness. *Id.* On May 30, 2023,  
19 the parties attended a full-day mediation with Mark S. Rudy, Esq., whose  
20 mediator’s proposal was ultimately accepted by the parties. *Id.*

21 As a material term of the Settlement, the parties have agreed to file a joint  
22 stipulation for leave to file a consolidated FAC, consolidating all PAGA claims  
23 alleged in the instant action [Dkt. No. 1-1] and all class action claims alleged in the  
24 related action, Case No. 2:22-cv-04497-JAK-AS, as well as naming Defendant  
25 Danielle Ryckman as a named defendant and adding Gabriel Schwartz, Marc  
26 Brewer, and Garrison Moreno as named plaintiffs in this action. Moen Decl., ¶ 12.

27 **B. Plaintiffs’ Claims.**

28 Plaintiffs allege that Defendants failed to record all time worked by Plaintiffs

1 and the Settlement Class Members and failed to accurately compensate them for all  
2 time for which they were subject to the employer's control, resulting in unpaid  
3 minimum and overtime wages. *See Ribot v. Farmers Insurance Group*, Case No.  
4 CV 11-02404 DDP (FMOx), 2013 WL 3778784 (C.D. Cal. July 17, 2013)  
5 (certifying claim for failing to compensate for pre-shift work); Cal. Lab. Code §§  
6 1197 and 1182.12.

7 Specifically, teachers are scheduled to work one-on-one instruction sessions  
8 with their students, usually in 50-minute sessions, with additional time budgeted for  
9 preparing for the session. Moen Decl., ¶ 13. However, Defendants do not maintain  
10 a policy or practice for recording the actual time worked by their employees. *Id.*  
11 Instead, employees were paid for presumed hours based on their class schedules  
12 and budgeted prep time, which frequently failed to account for all time for which  
13 employees were performing work in order to complete their essential job duties. *Id.*  
14 This unlawful practice/policy resulted in employees performing uncompensated  
15 work before the start time for their shifts, after the end times of their shifts, from  
16 home at nights and on weekends, through purported rest periods or scheduled meal  
17 periods, and during periods of time throughout the day for which they were not  
18 otherwise scheduled to conduct classes with students. *Id.*

19 Plaintiffs also allege that Defendants failed to provide all duty-free,  
20 uninterrupted 30-minute meal periods. *See* Cal. Lab. Code § 512(a); *see also*  
21 *Brinker v. Superior Court* (2012) 53 Cal.4th 1004. For a portion of the relevant time  
22 period, Plaintiffs allege that Defendants maintained a facially unlawful written meal  
23 period policy that failed to provide for second meal periods, and was silent as to the  
24 timing of first meal periods. Moen Decl., ¶ 14. Further, the immense workload  
25 required of Plaintiffs and the Settlement Class Members resulted in employees  
26 regularly performing work during their scheduled meal periods. *Id.*

27 Plaintiffs further allege that Defendants failed to authorize and permit all  
28 legally-complaint rest periods during the relevant time period. Moen Decl., ¶ 15.

Specifically, Defendants maintained a facially unlawful rest period policy that fails to incorporate the “major fraction thereof” language of the Wage Order, and an attendance policy that prohibits employees from leaving the company premises. *See* Labor Code § 516; *Augustus v. ABM Security Services, Inc* (2016) 2 Cal.5th 257, 269 (“[O]ne cannot square the practice of compelling employees to remain at the ready, tethered by time and policy to particular locations or communications devices, with the requirement to relieve employees of all work duties and employer control during 10-minute rest periods.”). Further, employees were unable to take rest periods during the workday due to the work requirements set by Defendants, requiring employees to work through purported rest periods. Moen Decl., ¶ 15.

Plaintiffs also allege that Defendants required Plaintiffs and the Settlement Class Members to incur personal cell phone expenses for work purposes, but failed to reimburse employees for these necessary business expenses. Moen Decl., ¶ 16; Cal. Lab. Code § 2802(a); *Stuart v. RadioShack Corp.*, 641 F.Supp.2d 901, 904 (N.D. Cal. Apr. 30, 2009) (“[An employer] has the duty to exercise due diligence and take any and all reasonable steps to ensure that the employee is paid for the expense.”); *Cochran v. Schwan’s Home Service, Inc.* (2014) 228 Cal.App.4th 1137, 1144 (“If an employee is required to make work-related calls on a personal cell phone, then he or she is incurring an expense for purposes of section 2802.”).

Based on these predicate violations, Plaintiffs seek derivative wage statement penalties under Labor Code § 226, waiting time penalties under Labor Code §§ 201-203, and civil penalties under PAGA.

### **C. Defendants Deny Plaintiffs’ Claims.**

Defendants deny Plaintiffs’ allegations and maintain that none of Plaintiffs’ claims are suitable for class certification. Moen Decl., ¶ 17. Defendants assert that they properly recorded and paid for all hours worked at all times during the relevant time period, and that Plaintiffs’ theory of off-the-clock liability would present individualized inquiries that would preclude class certification of any such class. *Id.*

Defendants assert that employees are paid for all student sessions, even in scenarios where a student fails to show up for a scheduled class, such that there are instances when employees are paid for time during which they were not required to perform any work. *Id.* Furthermore, with regard to prep time, Defendants maintain that there was a simple process in place for teachers to request and be granted additional prep time, and that Plaintiffs themselves had requested and been approved for additional prep time beyond the standard budget. *Id.* Moreover, Defendants assert that they maintained lawful written timekeeping policies that required employees to accurately track all time for which they were performing work and to report such time to Defendants for payroll purposes. *Id.*

As to Plaintiffs' claims for meal and rest period violations, Defendants argue that they maintained lawful meal and rest period practices at all times. Moen Decl., ¶ 18. Further, Defendants argue that they schedule employee meal periods to ensure that all lawful meal periods are provided, and pay meal period premiums pursuant to Labor Code § 226.7 in the event a lawful meal period is not taken. *Id.* Defendants also assert that employees have at all times been permitted to leave the company premises during rest periods, and argue that the attendance policy Plaintiffs rely upon only applies when employees are teaching classes, not when they are taking duty-free rest periods. *Id.* Defendants produced policies encouraging employees to "take a walk" in between student sessions which they argued was inconsistent with the idea that employees were confined to work premises. *Id.* Further, Defendants assert that Plaintiffs' rest period claim is unmanageable and not suited for class certification, as it requires individualized inquiries into whether each employee was authorized and permitted to take a lawful rest period, and on which days, which Defendants argue Plaintiffs will be unable to substantiate with any common evidence, as rest periods are not required to be recorded, resulting in an unmanageable series of mini-trials. *Id.*

As to Plaintiffs' claim for unreimbursed expenses, Defendants assert that this

1 claim will fail on its merits, as Defendants never required employees to use their  
2 personal cell phones for work purposes. Moen Decl., ¶ 19. In fact, Defendants  
3 contend, employee work computers have both telephone and zoom capabilities,  
4 obviating the need for employees to ever use their personal cell phones to contact  
5 students or parents for work purposes. *Id.*

6 As to Plaintiffs’ derivative claims, Defendants argue that Plaintiffs’  
7 underlying claims will fail and, as a result, the derivative wage statement, waiting  
8 time, and PAGA claims will also fail. Moen Decl., ¶ 20; *see Price v. Starbucks*  
9 *Corp.* (2011) 192 Cal.App.4th 1136, 1147 (“Because the underlying causes of  
10 action fail, the derivative UCL and PAGA claims also fail.”). Defendants also  
11 maintain that Plaintiffs cannot show that the wage statement violations were  
12 “knowing and intentional,” or that the putative class members “suffer[ed] injury”  
13 as a result of the alleged violations, as required by Labor Code § 226(e) for the  
14 imposition of wage statement penalties. Moen Decl., ¶ 20; *see* Cal. Lab. Code §  
15 226(e)(1). Moreover, Defendants maintain that their good faith defenses to  
16 Plaintiffs’ underlying claims would preclude the recovery of waiting time penalties,  
17 which are only available for the “willful” failure to pay wages, and that this Court  
18 would exercise its discretion to substantially reduce any PAGA penalties awarded.  
19 Moen Decl., ¶ 20; *see also* 8 Cal. Code Regs. § 13520 (“[A] good faith dispute that  
20 any wages are due will preclude imposition of waiting time penalties under Section  
21 203.”); Cal. Lab. Code § 2699(e)(2); *Naranjo v. Spectrum Sec. Servs., Inc.* (2023)  
22 88 Cal.App.5th 937; *Carrington v. Starbucks Corporation* (2018) 30 Cal.App.5th  
23 504 (affirming reduction of PAGA penalties to 10% of exposure).

#### 24 **D. Discovery Completed.**

25 Prior to attending mediation, Defendants provided Plaintiffs with electronic  
26 timekeeping and payroll records for a 15% sampling of the Settlement Class  
27 Members spanning the entire relevant time period, as well as key policy documents  
28 and data points. Moen Decl., ¶ 21. Plaintiffs retained an expert with a Ph.D. in

economics to analyze the produced data and create a class-wide exposure model for the claims at issue. *Id.* On April 14, 2022, the parties attended a private mediation, which ultimately proved unsuccessful. *Id.* On March 22, 2023, the parties attended a Settlement Conference before Magistrate Judge Maria A. Audero, but again were unable to resolve the matter. *Id.* Thereafter, on May 26, 2023, Plaintiffs took the deposition of Defendants’ Rule 30(b)(6) corporate witness. *Id.* On May 30, 2023, the parties attended mediation with Mark S. Rudy, Esq., during which the parties exchanged divergent views on Defendants’ liability and exposure valuations, their legal positions, and the likelihood of certification of Plaintiffs’ claims. *Id.* At the conclusion of mediation, Mr. Rudy made a mediator’s proposal that the parties ultimately accepted. *Id.* Over the following months, the parties finalized the terms of the proposed Settlement now before the Court for preliminary approval. *Id.*

### **III. THE SETTLEMENT MERITS PRELIMINARY APPROVAL.**

It is the policy of the federal courts to encourage settlement. *See Franklin v. Kaypro Corp.*, 884 F.2d 1222, 1225 (9th Cir. 1989). Judicial approval of a class action settlement entails a two-step process: (1) an early (preliminary) review by the Court; and (2) a final review after notice has been distributed to the class members for their comment or objections. *See Manual for Complex Litigation* § 30.41 (3rd Ed. 1995).

#### **A. The Settlement Is Fair, Adequate, and Reasonable.**

To receive judicial approval, a proposed class action settlement must be “fair, reasonable, and adequate.” *See Fed. R. Civ. Proc.* 23(e)(2). In making this determination, this Court may consider the following factors: (1) the strength of the plaintiff’s case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status throughout trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members to the proposed

1 settlement. *See Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 963 (9th Cir.  
2 2003). Plaintiff addresses each relevant factor below.<sup>4</sup>

3 **1. The Strength of Plaintiffs' Case.**

4 Plaintiffs' Counsel carefully vetted the claims at issue, reviewed Settlement  
5 Class Member data spanning the entire relevant time period and all relevant policy  
6 documents, and created a comprehensive damages model for Defendants' liability.  
7 Moen Decl., ¶ 24. Although they steadfastly maintain that their claims are  
8 meritorious, Plaintiffs acknowledge that there were substantial risks and uncertainty  
9 in proceeding with class certification and trial. As explained in detail in Section  
10 II.C., *supra*, Defendants presented numerous defenses to Plaintiffs' claims, both on  
11 the merits and with respect to class certification. Although they were prepared to  
12 litigate these claims through class certification and ultimately through trial, it was  
13 far from certain that Plaintiffs would be able to recover a greater amount should this  
14 matter proceed through trial. Indeed, "[i]n most situations, unless the settlement is  
15 clearly inadequate, its acceptance and approval are preferable to lengthy and  
16 expensive litigation with uncertain results." *National Rural Tele. Coop. v.*  
17 *DIRECTTV, Inc.*, 221 F.R.D. 523, 526 (C.D. Cal. 2004) (internal quotations  
18 omitted). Thus, this factor supports preliminary approval.

19 **2. Risk, Expense, Complexity, and Duration of Further**  
20 **Litigation.**

21 Although the parties engaged in some formal discovery, including taking the  
22 deposition of Defendants' Rule 30(b)(6) corporate witness, as well as substantial  
23 informal discovery and information exchange prior to mediation, the parties had not  
24

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25  
26 <sup>4</sup> Because the proposed Settlement includes settlement of Plaintiffs' representative  
27 PAGA claim, Plaintiffs submitted notice of the proposed Settlement to the LWDA.  
28 *See Moen Decl.*, ¶ 23, Exhibit 2. Should the Court preliminarily approve the  
proposed Settlement such that notice is given to the Settlement Class Members,  
Plaintiffs will address the eighth factor in their motion for final approval.

1 yet completed formal written or deposition discovery. Moen Decl., ¶ 25. Moreover,  
2 Plaintiffs has not yet filed for class certification, and thus, preparation for class  
3 certification and a trial remained for the parties as well as the prospect of appeals in  
4 the wake of a disputed class certification ruling for Plaintiffs and/or adverse  
5 summary judgment ruling. *Id.* Even if Plaintiffs succeeded in certifying one or more  
6 classes, the parties would incur considerably more attorneys’ fees and costs through  
7 a possible decertification motion, trial, and possible appeal. *Id.* This Settlement  
8 avoids these considerable costs, risks, and the accompanying burden of continued  
9 litigation on the Court. *See, e.g., In re Portal Software, Inc. Securities Litig.*, Case  
10 No. C-03-5138 VRW, 2007 WL 4171201 at \*3 (N.D. Cal. Nov. 26, 2007) (noting  
11 that the “inherent risks of proceeding to summary judgment, trial and appeal also  
12 support the settlement”). Thus, this factor supports preliminary approval.

13 **3. Risk of Maintaining Class Action Status.**

14 At the time of the proposed Settlement, Plaintiffs had not filed a motion for  
15 class certification. Moen Decl., ¶ 26. Had the Court certified any claims, Plaintiffs  
16 anticipated that Defendants would seek decertification. *Id.* There was also a risk  
17 that Defendants would engage in a *Pick-up-Stix* campaign that could either affect  
18 Plaintiffs’ ability to maintain the numerosity required to proceed as a class action,  
19 or significantly reduce the size of the putative class for a fraction of what Settlement  
20 Class Members are receiving through this Settlement. *Id.*; *see Chindarah v. Pick*  
21 *Up Stix, Inc.* (2009) 171 Cal.App.4th 796. Therefore, absent the Settlement, there  
22 was a serious risk that Plaintiffs would be unable to move forward on a class-wide  
23 basis. *Id.* Thus, this factor supports preliminary approval.

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

26 This proposed Settlement provides a fair and reasonable recovery for the  
27 Settlement Class Members in the face of disputed claims. After analyzing  
28 Defendants’ produced data, Class Counsel and Plaintiffs’ retained expert conducted

1 a class-wide exposure analysis, forecasting the total expected recovery as follows:

2 **Off-the-Clock Violations: \$332,160**

3 Plaintiffs' data analysis determined that Settlement Class Members worked  
4 an aggregate total of 338,014 shifts during the relevant portion of the Class Period  
5 in which Plaintiffs allege Defendants maintained unlawful timekeeping  
6 policies/practices that resulted in off-the-clock wage violations. Moen Decl., ¶ 27.  
7 Plaintiffs reasonably estimate that Settlement Class Members were required to  
8 spend an average of approximately 25 minutes per workweek performing off-the-  
9 clock work prior to or after the conclusion of the employee's workday. *Id.*  
10 Accordingly, Plaintiffs calculated Defendants' maximum potential exposure for  
11 off-the-clock wage violations at approximately \$1,193,184 (67,602 workweeks \*  
12 25 minutes per week \* \$29.34 average rate of pay). *Id.*

13 Defendants, however, maintain that they properly recorded and paid  
14 Settlement Class Members for all time worked during the Class Period, and argue  
15 that its written policies mandate that Plaintiffs and other non-exempt employees  
16 track all time for which they are performing work, including in situations where the  
17 budgeted prep time was insufficient and the employee needed additional prep time  
18 which could be requested and approved. Moen Decl., ¶ 28. Defendants also assert  
19 this claim is not suitable for class certification, as it requires individualized inquiries  
20 into whether or not each individual employee was off-the-clock performing work  
21 on any given day—which is time inherently not recorded—and whether Defendants  
22 knew or should have known about the off-the-clock work, resulting in an  
23 unmanageable series of mini-trials. *Id.* Plaintiffs discounted the maximum exposure  
24 by 55% for the risk of non-certification, and by an additional 40% for risk of losing  
25 on the merits, for an estimated exposure of \$332,160. *Id.*

26 **Meal Period Violations: \$164,687**

27 Plaintiffs' data analysis determined that Settlement Class Members worked  
28 an aggregate total of 22,679 shifts in excess of 5.0 hours during the Class Period

1 that contained a facially unlawful first or second meal period, whether by being  
2 missed, late and/or short, for which Plaintiffs' expert concluded no meal period  
3 premiums were paid. Moen Decl., ¶ 29. Accordingly, Plaintiffs calculated  
4 Defendants' liability on this claim at \$665,401 (22,679 meal period violations \*  
5 \$29.34 average premium). *Id.*

6 Defendants assert, however, that they maintained a lawful meal period  
7 policy/practice at all times during the Class Period and that any failure by an  
8 employee to take a lawful meal period was the result of employee choice rather than  
9 company policy, requiring individual inquiries into the reasons why each non-  
10 compliant meal period was untimely or missed on any given day. Moen Decl., ¶ 30.  
11 Defendants further asserts that it paid meal period premium payments at all times  
12 during the relevant time period, and Plaintiffs' claim will therefore fail on its merits.  
13 *Id.* Given these defenses, Plaintiffs discounted the maximum exposure by 45% for  
14 the risk of non-certification, and by an additional 55% for risk of losing on the  
15 merits, to arrive at an estimated exposure of \$164,687. *Id.*

16 **Rest Period Violations: \$393,938**

17 Plaintiffs' expert's data analysis revealed that non-exempt employees  
18 worked an aggregate total of 298,372 shifts in excess of 3.5 hours during the Class  
19 Period. Moen Decl., ¶ 31. Plaintiffs assert that employees were required to work  
20 through purported rest periods on approximately 40% of their work shifts. *Id.*  
21 Accordingly, Plaintiffs calculated Defendants' maximum potential exposure on this  
22 claim at \$3,501,670 (119,348 rest period violations \* \$29.34 average premium). *Id.*

23 But as noted above, Defendants argue it has always authorized and permitted  
24 duty-free rest periods in accordance with California law, including providing 10  
25 minutes for every *hour*-long class session, and assert that employees will testify that  
26 they were never prevented from leaving the work premises during rest periods, nor  
27 were they ever instructed they could not. Moen Decl., ¶ 32. Further, Defendants  
28 assert that this claim is not amenable to class certification given the individual

1 inquiries required to determine whether each employee experienced a rest period  
2 violation on any given shift, particularly given that rest periods were not recorded.  
3 *Id.* Given these defenses, Plaintiffs discounted the maximum exposure by 75% for  
4 the risk of non-certification, and by an additional 55% for risk of losing on the  
5 merits, to arrive at an estimated exposure of \$393,938. *Id.*

6 Failure to Reimburse Violations: \$82,420

7 Prior to mediation, Plaintiffs analyzed JD Power and Consumer Reports  
8 analyses of cell phone plans and average cell phone bills in America, and  
9 determined that \$25 per month in expense reimbursements represents a reasonable  
10 percentage of employees' cell phone bills, as required by *Cochran, supra*, 228  
11 Cal.App.4th 1137. Moen Decl., ¶ 33. Therefore, Plaintiffs calculated Defendants'  
12 maximum potential exposure on this claim at \$392,475 (\$25 in monthly expenses \*  
13 15,699 work-months). *Id.*

14 Defendants maintain that, at all relevant times, employees were never  
15 required to use their personal cell phones for work purposes. Moen Decl., ¶ 34.  
16 Further, Defendants assert that it provided employees with computer systems with  
17 both telephone and zoom capabilities, removing any need for employees to use their  
18 personal cell phones to begin with. *Id.* As such, Defendants contend this claim is  
19 not certifiable since it would require a series of mini-trials to determine which  
20 employees incurred expenses, and whether those expenses were reasonable and  
21 necessary, including why the employee had not previously submitted an expense  
22 reimbursement request. *Id.* Therefore, Plaintiffs discounted the maximum potential  
23 exposure by 40% for the risk of non-certification and 65% for the risk of being  
24 unsuccessful on the merits, to arrive at an estimated exposure of \$82,420. *Id.*

25 Wage Statement Penalties: \$148,995

26 Plaintiffs' expert's data analysis determined that approximately 232  
27 Settlement Class Members are eligible for wage statement penalties, and a total of  
28 6,136 wage statements were issued during the relevant period. Moen Decl., ¶ 35.

1 Plaintiffs calculated Defendants’ maximum possible wage statement exposure as  
2 approximately \$602,000 ((232 initial violations \* \$50 per pay period) + (5,904  
3 subsequent pay periods \* \$100 per pay period)). *Id.* However, Defendants raised  
4 numerous defenses, including that the alleged violations, if any, were not “knowing  
5 and intentional,” and that Plaintiffs could not show that the Settlement Class  
6 Members “suffer[ed] injury” as a result of any alleged violations. *Id.* Defendants  
7 further argued that Plaintiffs’ underlying claims would fail, and, therefore, his  
8 wholly derivative wage statement claim—which attributes a wage statement  
9 penalty to each and every applicable wage statement, which Defendants assert  
10 results in a drastic overstatement of damages—would also fail. *Id.* Therefore,  
11 Plaintiffs discounted the maximum exposure by 45% for the risk of non-  
12 certification of the underlying claims and 55% for a risk of being unsuccessful on  
13 the merits or overstating damages, including failing to prove the violations were  
14 “knowing and intentional,” that the Settlement Class members “suffer[ed] injury,”  
15 for an estimated recovery of \$148,995. *Id.*

16 Waiting Time Penalties: \$607,268

17 Plaintiffs’ expert’s data analysis determined that approximately 392  
18 Settlement Class Members separated their employment during the relevant period  
19 applicable to this claim. Moen Decl., ¶ 36. Plaintiffs therefore calculated  
20 Defendants’ maximum exposure of \$2,760,307 (392 former employees \* average  
21 waiting time penalty of \$7,041.60 (\$29.34 average hourly rate \* 8 hours \* 30 days)).  
22 *Id.* Defendants maintain that waiting time penalties are not appropriate because  
23 Plaintiffs’ claims fail on the merits, and given their good-faith defenses, Plaintiffs  
24 cannot show that any failure by Defendants to pay all final wages was willful. *Id.*;  
25 *see Hill v. Walmart Inc.*, 32 F.4th 811 (9th Cir. 2022); *Naranjo, supra*, 88  
26 Cal.App.5th 937. Plaintiffs discounted this claim by 45% for the risk of non-  
27 certification and by an additional 60% for risk of being unsuccessful on the merits  
28 or failing to establish willfulness, for an estimated recovery of \$607,268. *Id.*

1            **PAGA Penalties: \$148,599**

2            Plaintiffs allege that PAGA civil penalties would be recoverable for each pay  
3 period in which they could prove an underlying Labor Code violation. Moen Decl.,  
4 ¶ 37. According to Plaintiffs' expert's data analysis, the Settlement Class Members  
5 worked a combined total of 13,509 pay periods during the PAGA Period in which  
6 at least one of Plaintiffs' alleged Labor Code violations occurred. *Id.* Plaintiffs  
7 therefore calculate Defendants' maximum PAGA exposure at \$1,350,900 (13,509  
8 pay periods \* \$100 per violation). *Id.*; *see also Amaral v. Cintas Corp. No. 2* (2008)  
9 163 Cal.App.4th 1157, 1207 (finding "initial" violation rate applies). However,  
10 these penalties are exclusively derivative of the violations that Defendants  
11 vigorously dispute, both as to certification and the merits. Moen Decl., ¶ 37; *see*  
12 *also Green v. Lawrence Service Co.*, 2013 WL 3907506, \*5, fn. 5 (C.D. Cal. 2013)  
13 (explaining a PAGA claim's success was determined by the merits of its underlying  
14 claims). Plaintiffs also recognize that the Court has discretion to reduce any award  
15 of PAGA penalties. Moen Decl., ¶ 37; *see* Cal. Lab. Code § 2699(e)(2); *Fleming v.*  
16 *Covidien Inc.*, Case No. ED CV 10-01487 RGK (OPx), 2011 WL 7563047, \*4  
17 (C.D. Cal. Aug. 12, 2011) (reducing PAGA penalties from \$2.8 million to  
18 \$500,000). Therefore, Plaintiffs discounted the maximum figure by 55% for the risk  
19 of losing on the merits of the underlying claims and by 90% for risk of the Court  
20 reducing penalties, to arrive at an estimated exposure of \$60,791. Moen Decl., ¶ 37.

21            Using these estimated figures, Plaintiffs estimated that the potential  
22 reasonable recovery for the Settlement Class would be approximately \$1,780,257.  
23 Moen Decl., ¶ 38. Thus, the proposed recovery to the Settlement Class of  
24 \$1,250,000 represents approximately 70.21% of Plaintiffs' reasonably forecasted  
25 class-wide recovery, which is well within the range approved by courts as being  
26 fair, reasonable and adequate, while also avoiding further expense and risk of  
27 proceeding towards class certification and trial. *Id.*; *see, e.g., Altamirano v. Shaw*  
28 *Industries, Inc.*, 2015 WL 4512372, \*9 (N.D. Cal. 2015) (finding 15% of the

1 maximum recovery sufficient to grant preliminary approval); *Dunleavy v. Nadler*,  
2 213 F.3d 454, 459 (9th Cir. 2000) (approving settlement of “roughly one-sixth of  
3 the potential recovery”); *Linney v. Cellular Alaska Partnership*, 151 F.3d 1234,  
4 1242 (9th Cir. 1998) (“The fact that a proposed settlement may only amount to a  
5 fraction of the potential recovery does not, in and of itself, mean that the proposed  
6 settlement is grossly inadequate and should be disapproved.”) (internal quotations  
7 omitted). Preliminary approval is appropriate since the Settlement will provide  
8 tangible monetary relief to the Settlement Class Members without the uncertainty,  
9 delay, and additional expense of further litigation.

10 **5. Discovery Completed and the Status of Proceedings.**

11 The parties engaged in significant investigation, informal class-wide  
12 discovery and analysis prior to reaching the proposed settlement. *See* Moen Decl.,  
13 ¶ 21. Not only did Defendants produce all relevant written policies and handbooks,  
14 Defendants also produced voluminous timekeeping and payroll data for a  
15 representative sample of approximately 15% of the putative class (which was then  
16 extrapolated to cover the entire Settlement Class). *Id.* Plaintiffs had the payroll and  
17 timekeeping data statistically analyzed by a third-party expert with a Ph.D. in  
18 economics. *Id.* Plaintiffs also deposed Defendants’ Rule 30(b)(6) corporate witness.  
19 *Id.* It was only after the exchange of this data and information, as well as the parties  
20 attending an initial mediation session and subsequent Settlement Conference, that  
21 the parties participated in a further, full-day mediation session and ultimately  
22 reached this proposed settlement following a mediator’s proposal. *Id.* Thus, this  
23 factor supports preliminary approval.

24 **6. The Experience and Views of Counsel.**

25 “Parties represented by competent counsel are better positioned than courts  
26 to produce a settlement that fairly reflects each party’s expected outcome in  
27 litigation.” *In re Pacific Enterprises Securities Litigation*, 47 F.3d 373, 378 (9th  
28 Cir. 1995). Here, Plaintiffs are represented by competent and experienced counsel

1 who possess extensive experience litigating wage and hour class actions from both  
2 the plaintiff and defense side and have been appointed as class counsel in numerous  
3 cases alleging similar claims. *See* Moen Decl., ¶¶ 2-7; Declaration of Fletcher W.  
4 Schmidt (“Schmidt Decl.”), ¶¶ 2-7; Declaration of Haig B. Kazandjian  
5 (“Kazandjian Decl.”), ¶¶ 3-4; Declaration of Cathy Gonzalez (“Gonzalez Decl.”),  
6 ¶¶ 2-4. Plaintiffs’ Counsel conducted an extensive review and analysis of  
7 Defendants’ produced timekeeping and payroll records and drew on their extensive  
8 experience in similar cases to assess the strengths and weaknesses of Plaintiffs’  
9 case. Moen Decl., ¶¶ 21, 27-37. It was only after the completion of this work that  
10 the parties ultimately accepted a mediator’s proposal for a class-wide settlement.  
11 *Id.* Thus, this factor supports preliminary approval. *See, e.g., Gribble v. Cool*  
12 *Transports Inc.*, No. CV 06-04863 GAF SHx, 2008 WL 5281665 at \*9 (C.D. Cal.  
13 December 15, 2008) (“Great weight is accorded to the recommendation of counsel,  
14 who are most closely acquainted with the facts of the underlying litigation.”).

15 **B. The Preliminary Approval Standard Is Met.**

16 At this stage, the Court can grant preliminary approval of the settlement and  
17 direct that notice be given if the proposed settlement (1) falls within the range of  
18 possible approval; (2) appears to be the product of serious, informed and non-  
19 collusive negotiations; and (3) has no obvious deficiencies. *See* Manual for  
20 Complex Litigation (3d ed. 1995) § 30.41; 4 Newberg *et al.*, Newberg on Class  
21 Actions (4th ed. 2013) § 11:24-25. The Ninth Circuit has a “strong judicial policy  
22 that favors settlements, particularly where complex class action litigation is  
23 concerned.” *See Class Plaintiff v. Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992).

24 **1. The Settlement is Within the Range of Possible Approval.**

25 As detailed above, the proposed Settlement reflects a fair and reasonable  
26 recovery in light of significant obstacles to a class-wide recovery. The proposed  
27 Settlement will provide compensation for contested claims, while only releasing the  
28 claims actually at issue in this litigation. Thus, Plaintiffs submit that the proposed

1 settlement is within the range of possible approval, such that notice should be  
2 provided to the Settlement Class so that they can consider the settlement. *See In Re*  
3 *Mego Financial Corp. Securities Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (finding  
4 Settlement of one-sixth of the potential recovery is fair and adequate). The Court  
5 will have the opportunity to again assess the reasonableness of the settlement after  
6 the Settlement Class has had the opportunity to opt-out or object.

7                   **2. The Settlement Resulted from Serious, Informed and Non-**  
8                   **Collusive Negotiations.**

9           This proposed Settlement is entitled to an initial presumption of fairness as it  
10 is the result of the exchange of pertinent information, including all relevant policies,  
11 employee timekeeping and payroll records, and key data points which were  
12 analyzed by Plaintiffs and their retained expert; arm's-length negotiations by  
13 counsel; two mediations and a Settlement Conference, including mediation before  
14 an experienced and well respected wage and hour class action mediator who made  
15 a mediator's proposal; and additional negotiations until the terms of the long-form  
16 Settlement were agreed upon and finalized. Moen Decl., ¶¶ 11, 21, 39; *see also In*  
17 *re First Capital Holdings Corp. Financial Products*, Case No. MDL No. 901, 1992  
18 WL 226321 at \*2 (C.D. Cal. June 10, 1992) (“[T]here is typically an initial  
19 presumption of fairness where the settlement was negotiated at arm's length.”).

20           The parties reached this settlement only after mediating with Mark S. Rudy,  
21 a well-respected mediator with extensive experience in mediating wage and hour  
22 class actions. Moen Decl., ¶ 39. The parties each supplied the mediator with detailed  
23 mediation briefs outlining their views of the strengths and weaknesses of each claim  
24 and defense. *Id.* Plaintiffs' mediation brief included detailed calculations of the  
25 damages he would expect the class to be awarded were he to prevail on each claim.  
26 *Id.* As noted, the parties mutually accepted the mediator's proposal which reflected  
27 what the mediator determined to be the settlement value of the case. *Id.* Even after  
28 coming to an initial agreement, both sides continued to negotiate the finer points of

the proposed settlement during the following month while drafting the long-form settlement agreement. *Id.* Therefore, this factor also supports preliminary approval.

**3. The Settlement is Devoid of Obvious Deficiencies.**

If the Court preliminarily approves this Settlement, Defendants will pay a non-reversionary Gross Settlement amount of \$1,250,000.00. No Settlement Class Members will be required to submit claim forms to claim their shares of the Settlement. The principal terms of the proposed settlement agreement are summarized below:

|                                                   |                       |
|---------------------------------------------------|-----------------------|
| <b>Gross Settlement Amount:</b>                   | <b>\$1,250,000.00</b> |
| Minus Court-approved attorney's fees (up to 1/3): | \$416,666.66          |
| Minus Court-approved costs (up to):               | \$60,000.00           |
| Minus Court-approved service payments:            | \$25,000.00 total     |
| Minus PAGA payment:                               | \$50,000.00           |
| Minus settlement administration costs (up to):    | \$14,500.00           |
| <b>Net Settlement Amount:</b>                     | <b>\$683,833.34</b>   |

After deducting amounts for Court-approved Plaintiffs' service payments, costs of settlement administration, Court-approved attorney's fees and costs, and the PAGA payment, the settlement provides for an estimated NSA of at least \$683,833.34. Moen Decl., ¶ 40; Settlement, ¶ 3.2.

Individual Class Payments will be calculated based on the proportionate number of Hours worked by each Participating Settlement Class Members during the Class Period divided by the total number of Hours Worked by all Participating Settlement Class Members during the Class Period. *See* Settlement, ¶ 3.2.4. Further, 25% of the PAGA Payment will be paid to all Aggrieved Employees, regardless of their election to opt-out from participating in the Settlement, based on the proportionate number of Hours Worked by the Aggrieved Employees during the PAGA Period, divided by the total number of Hours Worked by all Aggrieved Employees during the PAGA Period. *Id.*, ¶ 3.2.5.

According to Defendants' records, there are approximately 1,280 putative Settlement Class Members. Settlement, ¶ 4.1. Based on the estimated NSA, average

Individual Class Payments are projected to be approximately \$534.24. Moen Decl., ¶ 41. This average recovery per class member is on par with or exceeds those in other wage and hour class action settlements that have been approved.<sup>5</sup>

The parties have designated \$50,000.00 of the Gross Settlement Amount as the PAGA Penalties. Plaintiffs represent that this amount is appropriate given the size of the settlement and similar results in other wage and hour class actions. *See, e.g., Chu v. Wells Fargo Investments, LLC*, Case Nos. C 05-4526 MHP, C 06-7924 MHP, 2011 WL 672645 at \*1 (N.D. Cal. February 16, 2011) (approving PAGA payment of \$7,500 out of \$6.9 million settlement); *Lazarin v. Pro Unlimited, Inc.*, Case No. C11-03609 HRL, 2013 WL 3541217 (N.D. Cal. July 11, 2013) (approving PAGA payment of \$7,500 out of \$1.25 million settlement); Moen Decl., ¶ 40.

At the time of seeking final settlement approval, Plaintiffs will apply for Class Representative Service Payments in the amounts of \$10,000.00 to Plaintiff Kevin Murphy and \$5,000 each to Plaintiffs Schwartz, Brewer, and Moreno, for their service to the Settlement Class and general release of all claims. Moen Decl., ¶ 42; *see* Settlement ¶¶ 3.2.1, 6.1-6.2. Plaintiffs' requested class representative Service Payments are intended to recognize the significant time and effort that Plaintiffs expended on behalf of the Settlement Class, the significant risks Plaintiffs undertook by serving as the named plaintiffs, and the fact that they are agreeing to a general release of all claims subject to a waiver of Civil Code § 1542. Moen Decl., ¶ 42; Murphy Decl., ¶¶ 4-7; Brewer Decl., ¶¶ 4-7; Schwartz Decl., ¶¶ 4-7; Moreno

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<sup>5</sup> *See, e.g., Schiller v. David's Bridal, Inc.*, Case No. 1:10-cv-00616-AWI-SKO, 2012 WL 2117001 at \*17 (E.D. Cal. June 11, 2012) ("Class Members will receive an average of approximately \$198.70 . . . Overall, the Court finds that the results achieved are good"); *Casique v. ValleyCrest Landscape Development, Inc.*, Case No. CV09-9114 GHK (SSx) (C.D. Cal. November 2, 2011) (granting final approval with average recovery of \$345); *Jaime v. Standard Parking Corp.*, Case No. CV08-04407 AHM (Rzx) (C.D. Cal. June 22, 2011) (granting final approval with average recovery of \$462.22).

Decl., ¶¶ 4-7.<sup>6</sup>

When seeking final approval, proposed Class Counsel will also file a separate motion for approval of verified costs (not to exceed \$60,000) and attorney’s fees not to exceed one-third of the Gross Settlement Amount for all past and future attorney’s fees necessary to prosecute, settle and administer the litigation and this proposed Settlement. Moen Decl., ¶ 43; *see* Settlement, ¶ 3.2.2. Because the proposed settlement is devoid of obvious deficiencies, this factor supports approval.

#### **IV. THE SETTLEMENT MERITS CERTIFICATION.**

##### **A. Rule 23(a)(1) Numerosity Is Satisfied.**

Numerosity is satisfied because there are approximately 1,280 current and former non-exempt employees in the proposed Settlement Class. *See Ikonen v. Hartz Mountain Corp.*, 122 F.R.D. 258, 262 (S.D. Cal. 1988) (holding that classes of 40 or more members satisfy numerosity); Settlement, ¶ 4.1.

##### **B. Rule 23(a)(2) Commonality Is Satisfied.**

Plaintiffs maintain that the Settlement Class satisfies commonality because there are common questions of fact and law arising from Plaintiffs’ and the proposed Settlement Class Members’ employment with Defendants, such as Defendants’ allegedly unlawful timekeeping policies/practices, uniform meal and rest period policies and practices, uniform reimbursement practice, and derivative waiting time, wage statement and PAGA penalties – all of which Plaintiffs contend arise from a common core of salient facts. *See, e.g., Ribot, supra*, 2013 WL 3778784 (certifying claim for failing to compensate for pre-shift work); *In re Autozone, Inc., Wage and Hour Employment Practices Litigation*, 289 F.R.D. 526, 534 (N.D. Cal.

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<sup>6</sup> As will be fully briefed in Plaintiffs’ final approval motion, Plaintiffs’ requested incentive awards are intended to recognize the time and effort that Plaintiffs expended on behalf of the Settlement Class. *See Rodriguez, supra*, 563 F.3d at 958 (“Incentive awards are fairly typical in class action cases ... and are intended to compensate class representatives for work done on behalf of the class [and] to make up for financial or reputational risk undertaken in bringing the action.”).

2012) (certifying rest period claim, because the claim was “based entirely on the legality of Defendant’s uniform written rest break policy”).

**C. Rule 23(a)(3) Typicality Is Satisfied.**

According to the Ninth Circuit, “[u]nder [Rule 23(a)(3)’s] permissive standards, representative claims are ‘typical’ if they are reasonably co-extensive with those of absent class members.” *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998). Here, like other Settlement Class Members, Plaintiffs were employed by Defendants as non-exempt employees in California during the relevant time period and were subject to Defendants’ allegedly unlawful wage and hour policies/practices during the Class Period. Murphy Decl., ¶¶ 2-3; Brewer Decl., ¶¶ 2-3; Schwartz Decl., ¶¶ 2-3; Moreno Decl., ¶¶ 2-3. Plaintiffs were therefore impacted by the same challenged policies that allegedly injured the Settlement Class as a whole and were subject to the same defenses forwarded by Defendants as to the Settlement Class, and are therefore typical.

**D. Rule 23(a)(4) Adequacy Is Satisfied.**

Plaintiffs are also adequate as class representatives under Rule 23(a)(4). To satisfy this requirement, Plaintiffs and their counsel must not have conflicts of interest with the proposed class, and must vigorously prosecute the action on behalf of the class. *See Hanlon, supra*, 150 F.3d at 1020. Here, Plaintiffs and Class Counsel will adequately represent the Settlement Class Members as there are no conflicts between the named Plaintiffs and the Settlement Class Members they seek to represent, and Plaintiffs possess claims that are in line with those of the Settlement Class Members. As non-exempt employees, Plaintiffs pressed forward claims for unpaid minimum and overtime wages, meal and rest period premium wages, expense reimbursement, and related penalties resulting from Defendants’ allegedly unlawful policies and practices. As detailed above, the proposed Settlement reflects a fair and reasonable recovery of the Settlement Class Members’ alleged damages. Finally, Plaintiffs’ counsel diligently litigated this case and undertook an extensive

1 analysis of the claims and potential damages, and there are no conflicts with the  
2 Settlement Class Members. Class Counsel also has extensive experience in wage  
3 and hour class action litigation. *See* Moen Decl., ¶¶ 2-7; Schmidt Decl., ¶¶ 2-7;  
4 Kazadjian Decl., ¶¶ 3-4; Gonzalez Decl., ¶¶ 2-4. Plaintiffs’ counsel is adequate,  
5 capable, and prepared to represent the proposed Settlement Class given their  
6 qualifications, skills, and experience.

7 **E. Rule 23(b)(3) Predominance Is Satisfied.**

8 The “predominance inquiry tests whether proposed classes are sufficiently  
9 cohesive to warrant adjudication by representation.” *Amchem Products, Inc. v.*  
10 *Windsor*, 521 U.S. 591, 623 (1997). “Implicit in the satisfaction of the  
11 predominance test is the notion that the adjudication of common issues will help  
12 achieve judicial economy.” *Valentino v. Carter-Wallace*, 97 F.3d 1227, 1234 (9th  
13 Cir. 1996). Superiority exists when the class procedure is “superior” to other  
14 methods, such as joinder, “for the fair and efficient adjudication of the controversy.”  
15 Typically, a class action is superior if the case presents a large volume of individual  
16 claims that could strain judicial resources if tried separately and if each potential  
17 plaintiff’s recovery may not justify the cost of individual litigation. *See Amchem*,  
18 *supra*, 521 U.S. at 616–17; *In re Brazilian Blowout Litigation*, Case No. CV10-  
19 8452-JFW (MANx), 2011 WL 10962891 at \*9 (C.D. Cal. April 12, 2011)  
20 (“...individual prosecution of Plaintiffs’ claims is impractical because the cost of  
21 litigating a single case would likely exceed the potential return.”). In the context of  
22 a proposed settlement, the manageability of a proposed class need not be  
23 considered. *See Amchem, supra*, 521 U.S. at 620; 4 Newberg *et al.*, Newberg on  
24 Class Actions (4th ed. 2013) § 11:27.

25 As all non-exempt employees were subject to Defendants’ timekeeping, meal  
26 and rest period, and reimbursement policies, the proposed Settlement Class is  
27 “sufficiently cohesive” since a “common nucleus of facts” and “potential legal  
28 remedies” dominate. *Bradley v. Networkers Internat., LLC* (2012) 211 Cal.App.4th

1 1129, 1134, 1156, (the court held that the trial court erred in declining to certify the  
2 plaintiffs' meal- and rest-break claims).

3 **V. THE PROPOSED NOTICE PROCESS SATISFIES DUE PROCESS.**

4 Due process requires that notice be provided to class members by the best  
5 reasonable method available. *See Eisen v. Carlisle & Jacqueline*, 417 U.S. 156  
6 (1974). Notice is satisfactory if it "generally describes the terms of the settlement  
7 in sufficient detail to alert those with adverse viewpoints to investigate and to come  
8 forward and be heard." *See Churchill Village, L.L.C. v. General Electric*, 361 F.3d  
9 566, 575 (9th Cir. 2004). Here, Plaintiffs propose that the settlement be  
10 administered by CPT Group, Inc., an experienced class action settlement  
11 administrator. *See* Declaration of Julie Green. The proposed Class Notices advise  
12 class members of the key terms of the settlement; the 60-day deadline to submit  
13 disputes, opt-out, or object to the settlement. The Class Notice supplies a summary  
14 of the alleged claims; explains the recovery formula and expected recovery amount  
15 for each Settlement Class Member; provides contact information for Class Counsel;  
16 and notifies Settlement Class Members of the date for the final approval hearing.  
17 *See* Settlement, Exhibit A.

18 **VI. CONCLUSION.**

19 For the foregoing reasons, Plaintiffs respectfully request that the Court  
20 preliminarily approve the proposed Settlement, provisionally certify the Settlement  
21 Class for settlement purposes, and enter the [Proposed] Order lodged herewith. In  
22 accordance with the Court's October 10, 2023 Order RE Status Report [Dkt. No.  
23 48], Plaintiffs propose the dismissal of this action and related class action should  
24 this Motion and subsequent Motion for Final Approval both be granted.

25 Respectfully submitted,  
26 Dated: November 9, 2023 HAINES LAW GROUP, APC  
27 By:   
28 Matthew K. Moen, Esq.  
Attorneys for Plaintiff