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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF FRANCISCO**

MICHAEL MEJIA JR., an individual on
behalf of himself and all others similarly
situated,

Plaintiff,

vs.

GUS'S MARKET CHANNEL, LLC., a
California Limited Liability Company;
GUS'S COMMUNITY MARKET, LLC., a
California Limited Liability Company; and
DOES 1 through 50, inclusive,

Defendants.

Case No.: CGC-21-593231

CLASS ACTION

Assigned for All Purposes To:
Hon. Christine Van Aken

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR AN ORDER
(1) PRELIMINARILY APPROVING THE
CLASS ACTION SETTLEMENT; (2)
APPROVING NOTICE OF SETTLEMENT;
AND (3) SETTING HEARING FOR FINAL
APPROVAL**

Date: April 1, 2025
Time: 9:00 am
Dept: 301

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff MICHAEL MEJIA, JR. (hereinafter “Plaintiff” or “Class Representative”) filed a
4 class action complaint in the Superior Court of the State of California, San Francisco, Case No.
5 CGC-21-593231 against Defendant Gus’s Market Channel, LLC and Gus’s Community Market,
6 LLC (collectively “Defendants”). Plaintiff alleged the following causes of action: (1) Failure to
7 Pay Minimum Wages; (2) Failure to Pay Wages and Overtime Under Labor Code § 510; (3)
8 Meal Period Liability Under Labor Code § 226.7; (4) Rest Break Liability Under Labor Code §
9 226.7; (5) Violation of Labor Code § 226(a); (6) Violation of Labor Code § 203; (7) Violation of
10 Labor Code §204; (8) Failure to Keep Required Payroll Records Under Labor Code §§ 1174 and
11 1174.5; (9) Failure to Reimburse Necessary Business Expenses § 2802; (10) Violation of
12 Business & Professions Code § 17200 *et seq*; and (11) Penalties under Private Attorney General
13 Act (“PAGA”).

14 Pursuant to the proposed Class Action and PAGA Settlement Agreement (“Settlement” or
15 “Settlement Agreement”), filed concurrently herewith, the class consists of “all persons employed
16 by Defendants as non-exempt employees who worked in California at any time between July 28,
17 2017 through October 11, 2024.” After engaging in substantial investigation and extensive
18 negotiations with the assistance of a respected third-party neutral Brandon McKelvey, Esq., the
19 parties have agreed to settle all claims alleged in the lawsuit on a class-wide non-reversionary
20 basis for Eight Hundred Sixty-Nine Thousand Dollars and Zero Cents (\$869,000.00), inclusive of
21 all fees and costs. All 940 Class Members shall receive a settlement share unless they opt out.

22 The proposed settlement reflected in the Settlement Agreement is fair, reasonable, and
23 adequate, and in the best interests of the Class. Consequently, Plaintiff, with the consent of
24 Defendants, hereby move this Court for an order: (1) granting preliminary approval of the
25 proposed class action settlement, as embodied in the Settlement Agreement filed concurrently
26 herewith; (2) approving the Notice of Settlement to be sent to Class Members; and (3) setting a
27 hearing for final approval of the class action settlement.
28

II. STATUS OF THE LITIGATION

A. Procedural History

On July 28, 2021, Plaintiff filed a class action complaint against Defendants alleging ten causes of action: (1) Failure to Pay Minimum Wages; (2) Failure to Pay Wages and Overtime Under Labor Code § 510; (3) Meal Period Liability Under Labor Code § 226.7; (4) Rest Break Liability Under Labor Code § 226.7; (5) Violation of Labor Code § 226(a); (6) Violation of Labor Code § 203; (7) Violation of Labor Code §204; (8) Failure to Keep Required Payroll Records Under Labor Code §§ 1174 and 1174.5; (9) Failure to Reimburse Necessary Business Expenses § 2802; (10) Violation of Business & Professions Code § 17200 *et seq.* (Declaration of Natalie Haritounian (“Haritounian Decl.”), filed concurrently herewith, ¶ 10).

Plaintiff contends that Defendants failed to pay Class Members all wages due and owing, including by requiring off the clock work, unlawfully rounding to their detriment, failing to provide meal and rest breaks, failing to furnish accurate wage statements, failing to timely pay wages including final wages, failing to maintain accurate records, and failing to reimburse necessary business expenses. (Haritounian Decl., ¶ 11.)

On July 28, 2021, Plaintiff submitted a Private Attorneys General Act (“PAGA”) notice letter to the Labor Workforce Development Agency (“LWDA”) and served Defendants. (Haritounian Decl., ¶ 12.) The LWDA did not express an interest in investigating Plaintiff’s claims within the 65 day period. (*Id.*) Therefore, on July 20, 2022, Plaintiff filed a First Amended Complaint adding a cause of action for penalties under the Private Attorneys General Act (“PAGA”). (*Id.*)

B. Investigation

Before filing the lawsuit, Class Counsel investigated and researched the facts and circumstances underlying the pertinent issues and the law applicable thereto. (Haritounian Decl., ¶ 13.) This required thorough discussions and interviews between Class Counsel and Plaintiff, as well as preliminary research into the various legal issues involved in the case. (*Id.*) After conducting their initial investigation, Class Counsel determined that Plaintiff’s claims were well-suited for class and representative action adjudication owing to what appeared to be a common

1 course of conduct affecting a similarly situated group of employees. (*Id.*)

2 After filing the lawsuit, Class Counsel conducted a thorough investigation of the facts and
3 claims giving rise to the action, including: (1) conducting informal and formal discovery and
4 meeting and conferring with defense counsel about same; (2) reviewing and analyzing a sampling
5 of time and pay records as well as employment handbooks, Plaintiff's personnel files, relevant
6 policies and other documentation; (3) researching the applicable law and potential defenses; (4)
7 constructing damage models based on interpretations of California law; and (5) reviewing
8 information provided by Defendants at the mediation. (Haritounian Decl., ¶ 14.) The Class
9 enumerated in this action is ascertainable because the Class Members may be readily identified
10 by reference to Defendants' records. (*Id.*) Defendants have agreed to share the information from
11 these records with the Settlement Administrator in order to identify and contact the Class
12 Members. (*Id.*) There are approximately 940 total Class Members. (*Id.*)

13 Defendants, for their part, vigorously contested liability, the amount of claimed damages,
14 and the propriety of class certification. (Haritounian Decl., ¶ 15.) After Class Counsel analyzed
15 the relevant documents and other gathered data, Class Counsel believed that this case was
16 appropriate for resolution via mediation. (*Id.*) Given the high level of risk present for both sides,
17 the parties elected to mediate Plaintiff's claims and explore the possibility of settlement. (*Id.*)

18 **C. Settlement Efforts**

19 On June 7, 2022, the parties mediated this case with Jill Sperber, Esq., a respected and
20 highly experienced mediator in wage and hour class actions. (Haritounian Decl., ¶ 16.) Plaintiff
21 and Defendant did not come to an agreement to settle this matter during the mediation. (*Id.*) On
22 August 12, 2024, the parties mediated this case a second time with Brandon McKelvey, Esq., who
23 is also a respected and highly experienced mediator in wage and hour class actions. (*Id.*) During
24 mediation, Plaintiff's and Defendants' counsel discussed all aspects of the case, including the
25 risks of litigation and the risks to both parties of proceeding with a motion for class certification
26 as well as the law relating to unpaid wages, meal periods, rest periods, wage statements, and final
27 pay. (*Id.*) As a result of the second mediation, the Parties agreed to settle the lawsuit according to
28 the terms set forth in the Settlement Agreement. (*Id.*; See Exhibit 1 attached to Haritounian Decl.,

1 “Settlement” or “Settlement Agreement”).

2 From Class Counsel’s review of the facts, strengths, and weaknesses of the case, the risks
3 and delays posed by further litigation, and Class Counsel’s own prior litigation experience, Class
4 Counsel believes that the recovery for each Class Member is fair and reasonable taking into
5 consideration the amounts received in other wage and hour class actions, the risks inherent in
6 litigation of this genre, and the reasonable tailoring of each Class Member’s claim to the
7 settlement award he or she will receive. (*Id.*) Further, and based on the settlement negotiations,
8 which were extensive, and conducted in good faith and at arm’s length between attorneys with
9 substantial experience litigating class actions and wage and hour cases, the Settlement Agreement
10 was the product of a non-collusive settlement process in which the Parties were forced to make
11 significant compromises in the interest of reaching a full and complete settlement of the lawsuit.
12 (*Id.*)

13 **III. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS**

14 Under the terms of the proposed Settlement Agreement, the Defendants have agreed to
15 pay Eight Hundred Sixty-Nine Thousand Dollars and Zero Cents (\$869,000.00) (“Gross
16 Settlement Amount”) on a non-reversionary basis to settle and release all claims asserted by
17 Plaintiff in the Class Action and PAGA Action on behalf of the proposed Class. (Haritounian
18 Decl., ¶ 17; Exh. 1, §3.1.) The Settlement Agreement defines the “Class Members” as “all
19 persons employed by Defendants as non-exempt employees who worked in California at any time
20 between July 28, 2017, through October 11, 2024.” (Haritounian Decl., ¶ 18; Exh. 1, §1.5 and
21 §1.12) The “Net Settlement Amount,” available for distribution to Class Members, shall be the
22 Gross Settlement Amount, less the Attorneys’ Fees and Costs, the Class Representative
23 Enhancement Payment, Settlement Administration Costs, and seventy-five percent (75%) of the
24 LWDA Payment. (Haritounian Decl., ¶ 19; Exh. 1, §1.27.) These amounts are detailed as follows:

- 25 • not more than Two Hundred Eighty-Nine Thousand Six Hundred and Sixty-Six
26 Dollars and Sixty-Seven Cents (\$289,666.67) to Class Counsel for attorneys’ fees,
27 and not more than Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00) to
28 Class Counsel for litigation costs; (Haritounian Decl., ¶ 19; Exh. 1, §3.2.2);

- not more than Thirteen Thousand Five Hundred Dollars and Zero Cents (\$13,500.00) for the Settlement Administration Costs; (Haritounian Decl., ¶ 19; Exh. 1, §3.2.3);
- not more than Five Thousand Dollars and Zero Cents (\$5,000.00) to Plaintiff for a Class Representative Enhancement Payment; and (Haritounian Decl., ¶ 19; Exh. 1, §3.2.1);
- Seventy-Five Thousand Dollars and Zero Cents (\$75,000.00) for civil penalties under the PAGA, where 75% (\$56,250.00) will be paid to the LWDA and 25% (\$18,750.00) will be paid to Class Members for their Individual PAGA Payments. (Haritounian Decl., ¶ 19; Exh. 1, §3.2.5)

The “Individual Class Payment,” which is each Class Member’s share of the Net Settlement Amount, will be calculated and apportioned from the Net Settlement Amount based on the number of workweeks a Class Member worked during the Class Period as a non-exempt employee in California. (Haritounian Decl., ¶ 20; Exh. 1, §1.22.)

Defendants shall pay its corporate payroll tax obligations on the payouts to Class Members in addition to the Gross Settlement Amount. (Haritounian Decl., ¶ 21; Exh. 1, §3.1.)

The settlement amount was a compromise figure, factoring in the inherent risks related to certification, liability and damages. (Haritounian Decl., ¶ 22.) However, taking into account all of the circumstances of the action and the defenses raised by Defendants against certification, liability and damages, Class Counsel believes that the settlement is fair and reasonable. (*Id.*)

Attached to the Settlement Agreement as Exhibit A is the Notice of Settlement (“Class Notice”). Class Members shall each receive a Class Notice via first class mail (after the Settlement Administrator conducts a national change of address search). (Haritounian Decl., ¶ 23; Exh. 1, §7.4.2.) Class Members will have an opportunity to dispute the information provided in their Class Notice and they may produce evidence to support the information is inaccurate. (Haritounian Decl., ¶ 24; Exh. 1, § 7.6; *see also* Class Notice, **Exhibit A** attached to the Settlement Agreement.) The Settlement Administrator shall decide the dispute and may ask Defendants to produce the personnel and payroll files of the Class Member disputing their

1 credited workweeks in order to resolve the dispute. (Haritonian Decl., ¶ 24; Exh. 1, §7.6.) Class
2 Members wishing to opt-out from the Settlement Agreement must sign and postmark a written
3 request for exclusion to the Settlement Administrator within the Notice Period. (Haritonian
4 Decl., ¶ 25; Exh. 1, §7.5.) Class Members will also have the opportunity to object to the
5 Settlement Agreement, by serving a copy of the objection to the Settlement Administrator within
6 the Notice Period. (Haritonian Decl., ¶ 25; Exh. 1, §7.7.) The Response Deadline will be sixty
7 (60) calendar days from the initial mailing of the Class Notice. (Exh. 1, §1.41)

8 The parties have also agreed that CPT Group, Inc. shall handle the notice and settlement
9 administration (Exh. 1, § 7.1), and the parties respectfully request this Court to appoint CPT
10 Group, Inc. to handle those procedures. The procedures for mailing notice and processing
11 exclusions and objections as well as distribution of the Net Settlement fund is detailed in the
12 Stipulation. (Exh. 1, §7)

13 **IV. CERTIFICATION FOR SETTLEMENT PURPOSES ONLY IS APPROPRIATE**

14 Express judicial policy favors maintaining wage and hour actions as class actions. (*Prince*
15 *v. CLS Transp., Inc.* (2004) 118 Cal. App. 4th 1320, 1328; *Richmond v. Dart Industries, Inc.*
16 (1981) 29 Cal. 3d 462.) Any doubt as to the appropriateness of class treatment should be resolved
17 in favor of class certification, subject to later modification if necessary. (*Richmond*, 29 Cal. 3d at
18 473-75.) The decision to certify a class is a procedural one, and should be based on the allegations
19 in the operative complaint, and not in the perceived factual or legal merit of the class claims.
20 (*Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 439-41.)

21 To certify a settlement class, the Court must find the two primary requirements for
22 maintaining a class action: (1) there must be an ascertainable class, and (2) there must be a well-
23 defined community of interest in the questions of law and fact involving the parties to be
24 represented. (*See Vasquez v. Superior Court* (1971) 4 Cal. 3d 800, 805-09; *Daar v. Yellow Cab*
25 *Company* (1967) 67 Cal. 2d 695, 704.) These criteria are met here for the reasons set forth below.

26 **A. There Is A Numerous and Ascertainable Class**

27 Whether a class is ascertainable is determined by examining the class definition, the size
28 of the class and the means available for identifying class members. (*See Vasquez, supra*, 4 Cal. 3d

1 at 821-22; *Reyes v. Board of Supervisors of San Diego County* (1987) 196 Cal. App. 3d 1263,
2 1271.) Class members are “ascertainable” where they may be readily identified without
3 unreasonable expense or time.

4 Plaintiff contends, and Defendants do not dispute for settlement purposes only, this
5 requirement and the requirement of numerosity is met. Class Members are “all persons employed
6 by Defendants as non-exempt employees who worked in California at any time between July 28,
7 2017 through October 11, 2024.” (Haritonian Decl., ¶ 72(a).) Documents and information
8 exchanged between the parties reflect a class of approximately 940 Class Members. (Haritonian
9 Decl., ¶ 72(a).) The Class Members have already been identified by reference to Defendants’
10 payroll and personnel records. (Haritonian Decl., ¶ 72(b).)

11 Therefore, and notwithstanding the foregoing, there is a numerous and ascertainable class.

12 **B. There Is A Well-Defined Community of Interest**

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

15 [D]oes not depend upon an identical recovery, and the fact that each
16 member of the class must prove his separate claim to a portion of any
17 recovery by the class is only one factor to be considered ... The mere
18 fact that separate transactions are involved does not of itself preclude
19 a finding of the requisite community of interest so long as every
20 member of the alleged class would not be required to litigate
numerous and substantial questions to determine his individual right
to recover subsequent to the rendering of any class judgment which
determined in plaintiff favor whatever questions were common to
the class.

21 *Id.* at 809.

22 Plaintiff contends, and Defendants do not dispute for settlement purposes only, that
23 common issues of fact and law predominate as to each of the claims alleged by Plaintiff, and the
24 Class is united in its proof. (Haritonian Decl., ¶ 72(e).) Because Plaintiff has alleged a single
25 scheme, “the relevant proof [does] not vary among class members” and “clearly presents a
26 common question fundamental to all class members.” (*See In Re NASDAQ Market-Makers*
27 *Antitrust Litigation* (SDNY 1997) 172 F.R.D. 119, 123 (citing *In Re NASDAQ Market-Makers*
28 *Antitrust Litigation*, (SDNY 1997) 169 F.R.D. 493, 518).) California courts show “no hesitancy”

1 in inferring class-wide causation, class-wide injury, and class-wide damages when a common
2 course of action has been shown. (*B.W.I. Custom Kitchen*, 191 Cal. App. 3d at 1350.) This
3 inference ““eliminates the need for each class member to prove individually the consequences of
4 the defendants’ actions to him or her.”” (*Id.* at 1351 (quoting *Rosack v. Volvo of America Corp*
5 (1982) 131 Cal. App. 3d 741, 753 [emphasis added])).)

6 This action involves, *inter alia*, a determination about Defendants’ alleged failure to
7 provide meal period and rest periods, failure to pay wages and overtime due to allegedly common
8 and unlawful policies, failure to pay final wages when required, failure to provide accurate
9 paystubs, and largely derivative claims under the Business & Professions Code and PAGA.
10 Plaintiff contends these practices affected Class Members in the same way. Plaintiff contends
11 these practices resulted in a failure to compensate employees at termination, and incomplete
12 wages displayed on wage statements. The outcome of litigation on this matter depends upon
13 questions that are common to Class Members. (Haritounian Decl., ¶ 72(e).) While Defendants
14 maintained otherwise, these issues will not be decided on the basis of facts peculiar to each Class
15 Member, but rather on the basis of facts common to them all. It is also true that these issues of
16 liability can be determined on a class-wide basis. (*Id.*)

17 C. The Named Plaintiff’s Claims Are Typical

18 A class representative’s claims are typical when they arise from the same event, practice,
19 or course of conduct that gives rise to the claims of other putative class members, and if their
20 claims rest on the same legal theories. The class representative’s claims must be “typical” but not
21 necessarily identical to the claims of other class members. It is sufficient that the representative is
22 similarly situated so that he or she will have the motive to litigate on behalf of all class members.
23 (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 47; *B.W.I. Custom Kitchens v. Owens-Illinois, Inc.*
24 (1987) 191 Cal.App.3d 1341, 1347 (“[I]t has never been the law in California that the class
25 representative must have identical interests with the class members.”) Thus it is not necessary that
26 the class representative should have personally incurred all of the damages suffered by each of the
27 other class members. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 228.)

28 Plaintiff contends, and Defendants do not dispute for settlement purposes only, that

1 Plaintiff's claims are typical of Class Members' claims because they arose from the same factual
2 basis and are based on the same legal theories. (Haritounian Decl., ¶ 72(c).) Plaintiff was
3 employed by Defendants during the Class Period, and was subject to the allegedly unlawful meal
4 and rest policies and pay practices at issue in this litigation. (*Id.*) Accordingly, Plaintiff is a
5 member of the Class. (*Id.*) The central issues of this litigation (whether Defendants failed to pay
6 all wages, whether Defendants failed to provide meal and rest periods, etc.), which would arise if
7 this was an individual action, applies to the other Class Members as well. The answer to these
8 questions would determine Defendants' liability to the putative class. (*Id.*) Thus, the claims of
9 Plaintiff are typical of the claims of the putative class. (*Id.*) Accordingly, the typicality
10 requirement is satisfied.

11 **D. Adequacy of Class Counsel and Class Representative**

12 Class Counsel are experienced in class actions, have represented their clients zealously
13 and have no conflicts of interest. (Haritounian Decl., ¶¶ 3-9, 72(d).) The Class Representative's
14 interests are aligned with those of the Class Members, he has suffered the same injuries as the
15 Class Members, and has no conflicts of interest. (*Id.*) Therefore, Class Counsel and the Class
16 Representative are adequate.

17 **E. Predominance and Superiority**

18 Individual issues do not predominate over those common to the class. (Haritounian Decl.,
19 ¶72(f).) The class action mechanism is superior to individualized actions because Class Members
20 have little incentive to bring claims that are small. (*Id.*)

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

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

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

possible approval, then the court should direct that notice be given to the class members of a formal fairness hearing, at which evidence may be presented in support of and in opposition to the settlement.

(*Manual for Complex Litigation (Second)* (1985) at § 30.44.) The preliminary approval of the class action settlement by the trial court is simply a conditional finding that the settlement appears to be within the range of acceptable settlements. (See, e.g., *Newberg*, § 11.25; *North County Contractor's Assn., Inc. v. Touchstone Ins. Services* (1994) 27 Cal. App. 4th 1085, 1094-95.) Thus, the preliminary approval of the class action settlement by the trial court is simply a conditional finding that the settlement appears to be within the range of acceptable settlements.

Settlements to resolve PAGA claims also require court approval. (Labor Code § 2699(1)(2).) There is no articulated standard for approving PAGA settlements. PAGA settlements for as little as \$0 have been approved. (See *Nordstrom Com'n Cases* (2010) 186 Cal.App.4th 576, 589 (approving PAGA settlement and release that allocated \$0 to PAGA claim).) Courts have also approved settlements for \$20,000 or less. (See, e.g., *Hicks v. Toys 'R' Us-Delaware, Inc.*, (C.D. Cal. Sept. 2, 2014) 2014 WL 4703915, at *1 (approving \$5,000 PAGA payment in \$4 million settlement); *Chu v. Wells Fargo Invest. LLC* (N.D. Cal. Feb. 16, 2011) 2011 WL 672645, at *1 (approving PAGA payment of \$7,500 in \$6.9 million settlement); *Williams v. Brinderson Constructors* (C.D. Cal. Feb. 6, 2017) 2017 WL 490901, at *5 (\$10,000 PAGA settlement in \$300,000 settlement).)

A review of the preliminary approval criteria demonstrates a substantial basis for granting the instant Motion and proceeding to a full settlement hearing.

VI. THE SETTLEMENT IS FAIR AND ADEQUATE

As a matter of public policy, courts both encourage the use of the class action device and favor settlement over continued litigation. (See, e.g., *Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 434 (“Courts have long acknowledged the importance of class actions as a means to prevent a failure of justice in our judicial system.”); *Class Plaintiff v. City of Seattle* (1992) 955 F.2d 1268, 1276 (“[S]trong judicial policy . . . favors settlements, particularly where complex class action litigation is concerned.”).)

Moreover, courts presume the absence of fraud or collusion in the negotiation of a

1 settlement unless evidence to the contrary is offered. In short, there is a presumption that the
2 negotiations were conducted in good faith. (*Newberg*, §11.51; *Rodriguez v. West Publ. Corp.*
3 (C.D. Cal. August 10, 2007) 2007 U.S. Dist. LEXIS 74767, 24-25 ; *Priddy v. Edelman* (6th Cir.
4 1989) 883 F.2d 438, 447.) Courts do not substitute their judgment for that of the proponents,
5 particularly when settlement has been reached by experienced counsel familiar with the litigation.
6 (*Rodriguez*, 2007 U.S. Dist. LEXIS 74767 at 24; *Hammon v. Barry* (D.D.C. 1990) 752 F. Supp.
7 1087.)

8 In *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008), the court laid out
9 several factors that should be analyzed in determining if a class action settlement should be
10 approved. These factors include: (1) the strength of plaintiff's case; (2) the risk, expense,
11 complexity and likely duration of further litigation; (3) the risk of maintaining class action status
12 through trial; (4) the amount offered in settlement; (5) the extent of discovery completed and
13 stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a
14 governmental participant; and (8) the reaction of the Class Members to the proposed settlement.

15 The Settlement here satisfies each of these factors. Class Counsel conducted extensive
16 informal discovery before entering into meaningful settlement negotiations in this matter,
17 including a detailed analysis of Defendants' policies and a considerable sample of Defendants'
18 time and pay records. (Haritounian Decl., ¶¶ 13-14.) This discovery permitted Class Counsel to
19 fairly evaluate the strengths of the case and the risks associated with ongoing litigation. Class
20 Counsel is very experienced in the handling of wage and hour class actions and supports this
21 Settlement. (Haritounian Decl., ¶¶ 3-9.)

22 **A. The Strength of Plaintiff's Case.**

23 Plaintiff alleges that Defendants failed to pay minimum wages and overtime, failed to
24 provide proper meal breaks or provide premium pay in lieu thereof, failed to provide proper rest
25 breaks or provide premium pay in lieu thereof, failed to provide accurate wage statements, failed
26 to timely pay all wages upon termination, and failed to reimburse necessary business expenses in
27 violation of California law. (Haritounian Decl., ¶ 27.)

28 Class Counsel felt confident that the claims in this case would be certified given that

1 Defendants' policies were applicable to all Class Members and unlawful on their face.
2 (Haritounian Decl., ¶¶ 27-55.) Defendants contended, however, that the policies complied with
3 California law.

4 **B. The Risks Associated with the Merits.**

5 As with all litigation, there are risks that a party will not prevail on the merits. In this case,
6 Plaintiff contends that he and other Class Members were not properly provided meal periods.
7 (Haritounian Decl., ¶¶ 33-36.) Defendants contended that Class Members were given a reasonable
8 opportunity to take their meal periods, and in fact received their meal periods most of the time
9 (*Id.*) If Defendants' contentions are proven true and prevail in trial, the likely outcome of this
10 claim would be no recovery for the Class Members. Plaintiff also contended that Defendants did
11 not provide Class Members with paid 10-minute rest breaks for every four hours or major fraction
12 thereof. (Haritounian Decl., ¶¶ 37-39.) Class Members consistently worked in excess of
13 consecutive four-hour shifts and were entitled to paid rest breaks of not less than ten minutes for
14 each consecutive four hour shift which they were denied. Class Members were required to work
15 through their rest breaks, and through their entire shifts. Defendants maintained that they did
16 provide the reasonable opportunity for Class Members to take duty-free rest breaks. Defendants
17 also pointed out that, unlike meal periods, rest breaks need not be recorded and Defendants
18 dispute all allegations that breaks were not received. As these considerations would likely depress
19 the damages *vel non* ultimately awarded, Class Counsel applied significant and appropriate
20 discounts to the rest-break claim. (*Id.*)

21 Plaintiff alleged that Defendants failed to pay Plaintiff and Class Members minimum
22 wages for all hours worked, in violation of minimum wage laws. (Haritounian Decl., ¶ 30.)
23 Plaintiff contended that Class Members were not paid all wages they were owed including for all
24 work performed and for all overtime hours worked. (*Id.*) Specifically, Plaintiff alleged
25 Defendants unlawfully rounded down the hours Class Members worked. (*Id.*) Plaintiffs contended
26 Defendants required Class Members to perform pre-shift and post-shift off the clock work.
27 Plaintiff and Class Members were required to put on their uniforms and then stand in line to clock
28 into the timekeeping system. Similarly, at the end of their shift, Class Members were required to

1 clock out of the timekeeping system and then take off their uniforms. Moreover, Plaintiff alleged
2 Class Members were required to perform work off the clock by responding to work demands
3 when they were not scheduled to work at the time. (*Id.*)

4 Defendants contended that they paid for all reported hours worked, that Class Members
5 were trained to record all hours worked, and that they paid proper minimum wages. (Haritounian
6 Decl., ¶ 31) Defendants also maintained that the allegations regarding failure to pay wages for
7 hours worked in excess of eight hours in a day did not constitute a basis for violation of Labor
8 Code § 510. Defendants argued that given their written policies and practices, any unrecorded
9 hours were likely subject to individualized inquiry and unlikely to be certified. Given the
10 difficulty in certifying this claim, Class Counsel had to apply a significant discount to damages
11 based on this theory. (*Id.*)

12 **C. The Risks Associated with Paystub Violations and Waiting Time Penalties.**

13 In order to establish liability for these penalties, Plaintiff would first have to establish
14 liability for the underlying claims. Plaintiff would then have to establish that Defendants' conduct
15 was willful and knowing. (Labor Code §§ 203, 226(e).)

16 With waiting time penalties, there is always the risk that the trier of fact would not have
17 held that Defendants' actions were done "willfully." A good faith belief in a legal defense can
18 preclude a finding of willfulness. (*Gonzalez v. Downtown LA Motors* (2013) 215 Cal.App.4th 36,
19 54; 8 C.C.R. § 13520.) As discussed above, Plaintiff alleges that Defendants failed to pay for all
20 hours worked and premiums for non-compliant meal breaks. Plaintiff contends the Class
21 Members are entitled to these wages and premiums, which they allege were not paid at the time
22 of their termination or resignation. If Plaintiff is successful on his claims, the penalties pursuant to
23 Labor Code § 203 shall attach. Defendants, however, contends it provided employees with the
24 reasonable opportunity to take meal breaks, asked Class Members to confirm the accuracy of their
25 time records, and therefore had good-faith defenses under *Brinker* and its progeny. Defendants
26 likewise contends that it properly paid all hours worked by its employees. Based upon
27 Defendants' potential success in establishing both that a good faith dispute existed with regard to
28 unpaid wages, and Defendants endeavored in good faith to supply accurate wage statements,

1 Defendants argue the claims for paystub violations and waiting time penalties have little or no
2 value. *See Maldonado v. Epsilon Plastics, Inc.*, 22 Cal. App. 5th 1308, 1336-1337 (2018) (wage
3 statements that accurately report wages paid to employees do not violate Labor Code § 226, even
4 if it is later determined that employer did not properly pay all wages due). As such, there was risk
5 associated with wage statement and waiting time penalties that Class Counsel had to consider.
6 (Haritounian Decl., ¶¶ 40-46)

7 **D. The Risks Associated with the PAGA Penalties.**

8 Labor Code § 2699.3 gives aggrieved employees the right to recover civil penalties for
9 specific Labor Code violations by way of a civil action. The PAGA provides a penalty amount of
10 one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation
11 and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent
12 violation. Labor Code § 2699(e)(2). However, if a civil penalty is provided in a specified amount
13 by the Labor Code section relating to the underlying alleged Labor Code violation, that amount
14 shall apply. (*Id.*) The PAGA also gives the Court discretion to award any lesser amount than the
15 maximum civil penalty. (*Id.* [“...a court may award a lesser amount than the maximum civil
16 penalty amount specified by this part if, based on the facts and circumstances of the particular
17 case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or
18 confiscatory.”]); *See, e.g., Lopez v. Friant & Assocs., LLC*, 15 Cal. App. 5th 773, 788 (2017), *rev.*
19 *denied* (2018), (recognizing court’s ability to reduce PAGA penalties). Courts have held that
20 situations similar to the current one (e.g. injuryless violations, technical errors, and substantial
21 compliance) should lead to reductions in penalties. *See Thurman v. Bayshore Transit*
22 *Management, Inc.*, 203 Cal. App. 4th 1112, 1134-1135 (2012) (holding that reduction was
23 justified when employer “attempted to comply with the law”); *Fleming v. Covdien, Inc.*, No. ED
24 CV10-01487 RGK (OPx), 2011 U.S. Dist. LEXIS 154590 at *8-9 (C.D. Cal. August 12, 2011)
25 (reducing PAGA penalties more than 80% – from \$2.8 million to \$500,000 – when “employees
26 suffered no injury” employers were “not aware” of the violation and “took prompt steps to correct
27 all violations once notified”).

28 Plaintiff discounted potential penalties under this claim given this authority, and for other

1 reasons. The PAGA claims are premised on the same underlying unpaid wages, meal and rest
2 break, wage statement, and waiting time claims, and thus subject to the same disputes and
3 defenses. There is also a dispute as to whether violations in later pay periods trigger the \$200
4 penalty under PAGA as a “subsequent violation.” (*Amaral v. Cintas Corp. No. 2*, 163 Cal. App.
5 4th 1157, 1203 (2008).) As such, there is a fair amount of risk associated with PAGA claims.
6 (Haritounian Decl., ¶¶ 49-52.) The parties also considered that the purpose of PAGA is to
7 “achieve maximum compliance with state labor laws,” and that through the proposed settlement,
8 Defendants have agreed to ensure policies comply with California law. (*Iskanian v. CLS Transp.*
9 *Los Angeles, LLC* (2014) 59 Cal. 4th 348, 379.) This makes the settlement’s contemplated PAGA
10 payment of \$75,000 appropriate.

11 Based on this analysis, Class Counsel believes that this settlement is fair and reasonable
12 and in the best interest of the Class. (Haritounian Decl., *passim*.)

13 **E. The Risk, Expense, Complexity and Likely Duration of Any Litigation.**

14 Given the risks outlined above, the issues in this case were complex and the risk for
15 Plaintiff and the Class Members associated with this litigation was high. (Haritounian Decl., ¶¶
16 56-58.) A class trial would have required the retention of expensive expert witnesses, the accrual
17 of extensive litigation costs, and the parties would have had to spend a substantial amount of
18 time. (*Id.*)

19 Finally, given the complexity and unsettled nature of the issues, it is likely that any
20 outcome at trial would have resulted in a lengthy and costly appeal. An appeal would result in
21 further delay for the Class Members who have already waited years for resolution in this matter.

22 **F. The Risk of Maintaining Class Action Status Through Trial.**

23 In class actions, decertification is always a possibility. There is always a risk that a trial of
24 this magnitude can become unmanageable. (*Id.*) Given cases like *Duran v. U.S. Bank Nat. Assn.*,
25 59 Cal. 4th 1, 34 (2014) that deal with the complexity of using statistical samples in class actions,
26 decertification is a real risk that Class Counsel must take into account.

27 **G. The Amount Offered in Settlement.**

28 There can be no doubt that this Settlement is the result of vigorous, adversarial, non-

1 collusive, and arms-length negotiations between the parties with an experienced mediator. In
2 order to determine the approximate potential damages which would be owed to each of the Class
3 Members, Class Counsel analyzed the time records for Plaintiff and Defendants provided Class
4 Counsel with records for a sampling of the class members. By analyzing this information, Class
5 Counsel was able to estimate the full value of the case if Plaintiff was to prevail at trial.

6 There are approximately 940 total Class Members. Based on the data provided, Class
7 Counsel estimated the following maximum exposures: unpaid wage claim at \$446,109, meal
8 period claim at \$911,086, rest period claim at \$911,086, wage statement claim at \$886,850,
9 waiting time penalties at \$3,296,066, reimbursement of business expenses claim at \$47,000, and
10 on PAGA, Plaintiff estimated the maximum exposure at \$1,274,300. (Haritounian Decl., ¶ 28)

11 However, taking into account the difficulties of proof, the Defendants' defenses, and other
12 attendant risks, Plaintiff estimates that the total amount of damages, monetary penalties, or other
13 relief that the class could reasonably expect to be awarded at trial is significantly less than the
14 maximum exposure. (Haritounian Decl., ¶ 29.)

15 Once Class Counsel was able to determine the maximum potential damages, it was able to
16 determine a fair and reasonable settlement for the Class. (*Id.* at ¶¶ 27-55) Class Counsel analyzed
17 the likelihood of success on the merits. (*Id.*) It believes that the Class had a reasonable likelihood
18 of success on the core claims. (*Id.*) However, Defendants disputes this contention, denies all
19 wrongdoing in this matter and are confident they have strong legal and factual defenses to
20 Plaintiff's claims. Moreover, Class Counsel determined that the likelihood of success on the
21 claims for unpaid wages and waiting time penalties were not as strong, because various defenses
22 including issues not suitable for class treatment, no detriment to the class members over time, and
23 *de minimis* defenses. Defendants may have had the opportunity to establish that they had a good
24 faith belief that they were complying with law. (*Id.*) After taking into account the likelihood of
25 success on each claim and the challenges faced with certifying these claims, Class Counsel
26 determined that the settlement amount of Eight Hundred Sixty-Nine Thousand Dollars and Zero
27 Cents (\$869,000.00) was fair and reasonable.

28 Under the Settlement, each of the approximately 940 Class Members will receive on

1 average, assuming they worked throughout the class period, \$924.47 after expenses. (Haritounian
2 Decl., ¶ 55) Plaintiff feels that this Settlement is fair, reasonable, and advantageous to the class.
3 (*Id.*)

4 To summarize, the Settlement here is fair because it provides a substantial payment to
5 each Class Member for releasing his or her claims; extinguishes the risk of litigation; and
6 provides a fair and adequate distribution of the settlement proceeds whereby the funds are
7 allocated to Class Members proportionally based on their Payout Ratio.

8 As detailed at length in the accompanying Declaration of Natalie Haritounian, the
9 settlement is the result of extensive settlement negotiations between the parties, conducted at
10 arm's length, and informed by substantial factual and legal investigations. (Haritounian Decl.,
11 *passim.*) Throughout this case, Class Members have been represented by experienced counsel
12 with many years of experience in employment class action litigation. (Haritounian Decl., ¶¶ 3-9.)

13 Class Counsel has devoted a considerable amount of time to the prosecution of this case,
14 including but not limited to, interviewing Plaintiff on repeated occasions; drafting pleadings;
15 conducting considerable discovery, and meeting and conferring with defense counsel about same;
16 reviewing and analyzing time records and various handbooks and policies, Plaintiff's personnel
17 file, and other documentation; researching California law; interviewing numerous class members
18 regarding their experiences; preparing for and attending mediation; and negotiating and finalizing
19 the Settlement Agreement and related documents. (Haritounian Decl., ¶¶ 13-16.)

20 Among those matters considered during the course of settlement negotiations were the
21 strength of Plaintiff's case versus the amounts offered in settlement; the risks, expenses, and
22 length of further litigation, including class certification and the appeals process; the present state
23 of the law as it applies to wage and hour class actions, particularly in light of *Brinker*; the present
24 value of a settlement versus the long wait necessitated by any potential judgment in class
25 members' favor; the burdens of proof necessary to establish liability against Defendants; and
26 Defendants' defenses to the action. (Haritounian Decl., *passim.*)

27 These factors each indicated that the interests of Class Members are best served by a
28 settlement of this action in the manner and upon the terms set forth in the Settlement Agreement.

1 The Settlement Agreement confers a substantial benefit on the class of up to Eight Hundred
2 Sixty-Nine Thousand Dollars and Zero Cents (\$869,000.00). (Exh. 1, §3.1). Moreover, the
3 settlement awards for each Class Member will be tailored to their workweeks during the class
4 period. (Exh. 1, §3.2.4). In addition Class Counsel secured prospective relief for the class in that
5 Defendants will ensure their policies comply with California law. (Haritounian Decl., ¶ 62.)

6 Class Counsel believes that the settlement is fair and reasonable and serves the best
7 interests of the Class Members. Although the recommendations of counsel proposing the class
8 settlement are not conclusive, the Court can properly take the recommendations into account,
9 particularly if counsel has been involved in litigation for some period of time, appear to be
10 competent, and have experience with this type of litigation, and significant discovery has been
11 completed. *See Newberg*, §11.47.

12 **VII. THE CLASS REPRESENTATIVE ENHANCEMENT PAYMENT IS FAIR AND** 13 **REASONABLE**

14 It is appropriate to provide a relatively modest additional incentive payment to the class
15 representative. *See Newberg*, § 12.1; *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901
16 F.Supp. 294.

17 Plaintiff is entitled to a reasonable service payment for his efforts and initiative in
18 bringing and helping to prosecute this class action. Plaintiff spent significant time better apprising
19 himself of his rights, deciding whether remedial action should be taken, how it should be taken,
20 searching for attorneys, and contacting Class Counsel, who spent many hours with Plaintiff
21 discussing his case and the law. (Haritounian Decl., ¶ 67.) In the end, Plaintiff decided to
22 vindicate not only his own rights but also those of his co-workers by filing a class action lawsuit.

23 The courage it took to do this should not be underestimated. By suing Defendants,
24 Plaintiff contends he increased his risk of retaliation by prospective employers. (Haritounian
25 Decl., ¶ 68.) Plaintiff's lawsuit has now cost Defendants considerable resources, and Plaintiff
26 contends such conduct will not be lost on a prospective employer who has to choose between an
27 applicant who has never sued a prior employer and one who has. (*Id.*) Plaintiff contends this risk
28 is particularly real in the information age, where employers can, more easily than ever, perform

1 background checks of prospective employees, sometimes with the stroke of a key. (*Id.*)

2 But Plaintiff did not allow his fear of the potential repercussions of being a class
3 representative deter him from acting for the benefit of Class Members. (Haritounian Decl., ¶ 69.)
4 To the contrary, Plaintiff has been intimately involved in this case since its inception. (*Id.*) He has
5 devoted a substantial amount of time to helping Class Counsel effectively develop and prosecute
6 this action at every stage of the litigation. (*Id.*) Both before and after the filing of this lawsuit,
7 Plaintiff conferred with Class Counsel to discuss every aspect of this case; Plaintiff has provided
8 Class Counsel with information about Defendants and about the industry generally, reviewed
9 documents, identified witnesses, consulted Class Counsel throughout the litigation, participated in
10 the mediation process, monitored the progress of the litigation with Class Counsel, and reviewed
11 and signed the settlement agreement. (*Id.*)

12 Plaintiff has spent a significant amount of time with Class Counsel detailing his
13 knowledge of Defendants' practices. (Haritounian Decl., ¶ 70.) He has diligently, adequately, and
14 fairly represented Class Members, and has not placed his interests above any member of the
15 putative class. (*Id.*) This sort of payment to a class representative has been a common feature of
16 settlements negotiated by Class Counsel and has been routinely approved by trial courts. (*Id.*)

17 In light of the foregoing, Class Counsel believes that the incentive award in the amount of
18 \$5,000.00 to the Class Representative is fair and reasonable. (Haritounian Decl., ¶ 71.)

19 **VIII. THE PROPOSED CLASS NOTICE PROVIDES ADEQUATE NOTICE TO THE**
20 **CLASS MEMBERS.**

21 Constitutional due process requires that class members be provided with notice sufficient
22 to give them an opportunity to be heard in the proceedings. *Mullane v. Central Hanover Bank &*
23 *Trust Co.* (1950) 339 U.S. 306. Proper notice must provide the class members with sufficient
24 information to make an informed decision as to whether to accept or object to the settlement. (*Id.*
25 at 314.) The notice must apprise the class members of the pendency of the action; reasonably
26 convey information regarding the settlement and the class members' rights, entitlements, and
27 obligations; and afford class members the opportunity to present their objections. (*Id.*)

28 The Class Notice meets constitutional standards because it provides all the information a

1 reasonable person would need to make a fully informed decision about the settlement. It will
2 notify all class members of the terms of the settlement, of its effect on their rights, of their options
3 as class members (i.e., participate, object, opt out, do nothing), and of the consequences of
4 exercising those options. (Haritounian Decl., ¶¶ 60-62.) Moreover, the Class Notice will
5 specifically direct any class members who have questions or concerns to contact the Settlement
6 Administrator, CPT Group, Inc., or Class Counsel. (*Id.*)

7 The standard for determining the adequacy of notice is whether the notice has “a
8 reasonable chance of reaching a substantial percentage of the class members.” (*Cartt v. Superior*
9 *Court* (1975) 50 Cal.App.3d 960, 974.) The Judicial Council of California’s Deskbook on the
10 Management of Complex Civil Litigation (Matthew Bender 2003), § 3.74 notes that individual
11 notice by mail is preferred when possible and dissemination of combined certification/settlement
12 notice is a common and accepted practice. (*In re Vitamin Cases* (2003) 107 Cal.App.4th 820,
13 828.)

14 Here, the Class Notice will be sent via first-class mail to each class member. (Haritounian
15 Decl., ¶ 23.) If any Class Notices are returned undeliverable without a forwarding address, the
16 Settlement Administrator will use the national change of address database and perform a skip
17 trace to locate the class member and mail a new Class Notice to him or her at the correct address.
18 (*Id.*) Thus, most, if not all, class members will likely receive the Class Notice.

19 Pursuant to controlling authority, the proposed Class Notice and method of distribution
20 fully comport with due process requirements. Therefore, the Court should approve the Class
21 Notice and direct that it be distributed as proposed herein.

22 **IX. STANDING TO OBJECT TO PROPOSED SETTLEMENT**

23 Non-settling parties and third parties periodically may attempt to object to proposed class
24 action settlements, but the right of non-settling parties to object at the final settlement approval
25 hearing, let alone the preliminary approval hearing, is quite limited. As a general rule, only class
26 members have standing to object to a proposed settlement. “Beginning from the unassailable
27 premise that settlements are to be encouraged, it follows that to routinely allow non-class
28 members to inject their concerns via objection at the settlement stage would tend to frustrate this

1 goal.” (*Gould v. Alleco, Inc.* (4th Cir. 1998) 883 F.2d 281, 284.) Since an application is being
2 filed to obtain a good faith determination, no persons other than class members have standing to
3 object to the proposed settlement. (*In re School Asbestos Litigation* (3rd Cir. 1990) 921 F.2d
4 1330.)

5 **X. THE STIPULATED AWARD OF ATTORNEYS’ FEES AND COSTS IS**
6 **REASONABLE AND SHOULD BE APPROVED.**

7 Under the Settlement Agreement, subject to approval by this Court, Class Counsel will
8 seek an award of fees of no more than Two Hundred Eighty-Nine Thousand Six Hundred and
9 Sixty-Six Dollars and Sixty-Seven Cents (\$289,666.67), approximately one-third of the Gross
10 Settlement Amount, and not more than Twenty-Five Thousand Dollars and Zero Cents
11 (\$25,000.00) in costs. The requested fees are fair compensation for a law firm involved in
12 undertaking complex, risky, expensive, and time-consuming litigation solely on a contingent
13 basis. (Haritounian Decl. ¶¶ 64-66.) Defendants will not oppose Class Counsel’s fees and cost
14 request.

15 California courts routinely look to the federal courts on class action approvals. The Ninth
16 Circuit has recognized that an appropriate method for awarding attorneys’ fees in class actions is
17 to award a percentage of the “common fund” created as a result of the settlement. (*Vincent v.*
18 *Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769.) The purpose of the common
19 fund/percentage approach is to “spread litigation costs proportionally among all the beneficiaries
20 so that the active beneficiary does not bear the entire burden alone.” (*Id.*) Accordingly, courts
21 have discretion to choose either the percentage-of-the-fund method or the lodestar method. (*In re*
22 *Wash. Pub.Power Supply Sys. Sec. Litigation* (9th Cir. 1994) 19 F.3d 1291, 1295-96.)

23 Several courts have, however, expressed frustration with the “lodestar” approach for
24 deciding fee awards, which usually involves wading through voluminous time records. Thus, the
25 percentage approach can be preferable to the lodestar in certain situations because: (1) it aligns
26 the interests of class counsel and absent class members; (2) it encourages efficient resolution of
27 the litigation by providing an incentive for early, yet reasonable, settlement; and (3) it reduces the
28 demands on judicial resources. (*In re Activision Securities Litigation*, (N.D. Cal. 1989) 723

1 F.Supp. 1373, 1378-79.) The Ninth Circuit has used the percentage of the common fund approach
2 to determine the award of attorneys' fees. (*In re Pacific Enterprises Securities Litigation* (9th Cir.
3 1994) 47 F.3d 373, 378-79 (approving attorneys' fee of 33 1/3% of settlement fund).)

4 Class Counsel's application for attorneys' fees in light of the facts and circumstances
5 surrounding this case is well within the range of reasonableness. Historically, courts have
6 awarded percentage fees in the range of 20% to 50% of the common fund, depending on the
7 circumstances of the case. (*Newberg*, at §14.03; *see also In re Activision Securities Litigation*,
8 723 F. Supp. at 1378.) *Newberg* further notes: "[A]chievement of a substantial recovery with
9 modest hours expended should not be penalized but should be rewarded for considerations of
10 time saved by superior services performed." (*Id.* at §§ 14-10:14-11.)

11 The attorneys' fees request provided for in the Settlement Agreement is commensurate
12 with judicial precedent. Both state and federal courts regularly approve fee awards equal to or
13 greater than the percentage requested in this case. (*See, e.g., In re Pacific Enterprises Securities*
14 *Litigation* (9th Cir. 1995) 47 F.3d 373, 379 (affirming an award equal to 33% of the common
15 fund); *In re Activision Securities Litigation* (N.D. Cal. 1989) 723 F.Supp. 1373, 1375 (awarding
16 plaintiff' counsel 32.8% of the common fund created to settle the litigation); *In re Ampicillin*
17 *Antitrust Litigation* (D. D.C. 1981) 526 F.Supp. 494 (awarding 45% of \$7.3 million settlement
18 fund); *Parker v. City of Los Angeles* (1974) 44 Cal.App.3d 556, 557-568 (affirming fee award to
19 counsel of one-third (1/3) of recovery achieved).)

20 In wage and hour class actions in particular, California trial courts have customarily
21 approved attorney's fees consistent with or greater than the percentage of the common fund
22 requested in this case. (*See Evans v. Coca-Cola*, Los Angeles County Super. Ct. Case No. BC
23 220525 (Hon. Richard C. Hubbell) (Dec. 2001) (approving an award of attorneys' fees of at least
24 33-1/3% of the settlement); *see also Estrada v. Dr. Pepper/Seven-Up*, Los Angeles County Super.
25 Ct. Case No. BC 262247 (May 2005) (Hon. Anthony J. Mohr); *Moreno v. Miller Brewing*, Los
26 Angeles County Super.Ct. Case No.BC 278170 (April 2004) (Hon. David M. Minning); *Josiah*
27 *Eaton v. Adolph Coors Company* (2003) Orange County Super. Ct. Case No. 01CC00140 (Hon.
28 Stephen J. Sundvold); *Kimbell v. Abercrombie & Fitch Stores, Inc.*, Los Angeles County

1 Super.Ct. Case No.BC 277359 (Sept. 2006) (Hon. Kenneth R. Freeman); *Daum v. Claim Jumper*
2 *Restaurants*, Orange County Super.Ct. Case No.02CC10201 (2006) (Hon. Ronald L. Bauer).)

3 Here, Class Counsel has borne the entire risk and costs of litigation and will not receive
4 any compensation until recovery is obtained. (*See* Haritounian Decl., ¶¶ 64-66.) The Court should
5 also consider the benefit obtained by Class Counsel on behalf of class members. Thus, the
6 requested award for Class Counsel is reasonable.

7 **XI. ACTION REQUESTED AS A PART OF THE MOTION FOR PRELIMINARY**
8 **APPROVAL**

9 The parties respectfully request this Court, as part of the preliminary approval process, to
10 grant the following relief and make the following orders:

- 11 1. Review and approve the Settlement Agreement;
- 12 2. Review and approve the Class Notice, attached to the Settlement Agreement as Exhibit
13 A;
- 14 3. Consider and determine that the proposed class action settlement as set forth in the
15 Settlement Agreement preliminarily appears fair, reasonable, and adequate;
- 16 4. Enter an order conditionally certifying the action as a class action for settlement
17 purposes only and preliminarily approving the proposed class action settlement and the
18 Settlement Agreement;
- 19 5. Approve and appoint Natalie Haritounian of D.Law, Inc., David Yeremian of David
20 Yeremian & Associates, Inc., and Walter Haines of United Employees Law Group, P.C., to serve
21 as Class Counsel for settlement purposes;
- 22 6. Approve and appoint CPT Group, Inc. as the Settlement Administrator to handle the
23 notice and claims procedures as set forth in the Settlement Agreement;
- 24 7. Approve the proposed settlement's allocation of funds to claims made under PAGA;
- 25 8. Order Defendants to disclose to CPT Group, Inc. the names, last-known addresses,
26 telephone numbers, dates of employment, and social security numbers of class members as set
27 forth in the Settlement Agreement;
- 28 9. Order that CPT Group, Inc. mail the Class Notices to class members; and

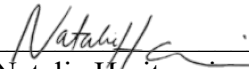
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10. Set a date for the Final Approval Hearing.

Dated: February 21, 2025

Respectfully submitted,

D.LAW, INC.

By  _____
Natalie Haritounian
Attorneys for Plaintiff MICHAEL MEJIA JR.,
on behalf of himself and others similarly situated