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13
14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **FOR THE COUNTY OF LOS ANGELES**

16 BRANDI TITKOS, individually, and on behalf
17 of all others similarly situated,

18 Plaintiff,

19 v.

20 RAG TRADERS RETAIL, LLC, an unknown
21 business entity; and DOES 1 through 100,
22 inclusive,

23 Defendants.

Case No.: 22STCV03444 [Lead]
(Related Case No. 22STCV24380)

Assigned for all purposes to:
Hon. Stuart Rice, Dept. 1

CLASS ACTION

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

[Declarations of Anthony J. Orshansky, Selena
Matavosian, Manuel Polanco, Brandi Titkos,
and Julie Green and Proposed Order submitted
concurrently herewith]

Preliminary Approval Hearing

Date: September 10, 2024

Time: 10:30 a.m.

Dept.: 1

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:**

2 **PLEASE TAKE NOTICE** that on September 10, 2024 at 10:30 a.m. before the Honorable
3 Stuart M. Rice in Department 8 of the above-captioned court located at 312 N. Spring Street, Los
4 Angeles, California 90012, Plaintiffs Brandi Titkos and Manuel Polanco (“Plaintiffs” or “Class
5 Representatives”), individually and on behalf of all others similarly situated, will and hereby do
6 move this Court pursuant to California Rules Court, Rule 3.769 for an order:

7 1. Preliminarily approving the Class Action and PAGA Settlement Agreement
8 (“Settlement Agreement”) entered into with Defendants Rag & Bone Industries LLC (“RBI”) and
9 Rag Trader Retail, LLC (“RTR”);

10 2. Pursuant to Code of Civil Procedure section 382, provisionally certifying the
11 following Class defined as:

12 **Class Members:** All hourly or non-exempt employees who worked for RBI in
13 California any time from December 6, 2020 through the Class Period End Date;¹ and
14 all hourly or non-exempt employees who worked for RTR in California any time
from January 27, 2018 through the Class Period End Date (“RTR Class Period”) (the
“Class” or “Class Members”).²

15 3. Preliminarily appointing Plaintiffs as Class Representatives;

16 4. Preliminarily appointing CounselOne, PC and Lawyers *for* Justice, PC as Class
17 Counsel;

18 5. Scheduling a Final Approval Hearing to consider whether the settlement should be
19 finally approved and whether to award the agreed-upon amounts for the Class Representative
20 Service Payments, Administration Expenses Payment, penalties pursuant to the Private Attorneys
21 General Act of 2004 (Lab. Code, § 2698 et seq.; “PAGA”) to the California Labor and Workforce
22 Development Agency, as well as the Class Counsel Fees Payment and Class Counsel Litigation
23 Expenses Payment;

24 6. Appointing CPT Group, Inc. as the Settlement Administrator; and

25 _____
26 ¹ “Class Period End Date” is defined as the date that is selected by the Parties under paragraph 8 of
the Settlement Agreement, which is still to be determined. Exhibit 1 to the Declaration of Anthony
27 J. Orshansky (“Orshansky Decl.”), Exh. 1 (Settlement Agreement) at ¶ 1.13.)

28 ² Settlement Agreement ¶ 1.6. “Participating Class Members” are defined as all Class Members who
do not submit a valid and timely Request for Exclusion from the Settlement. (Settlement Agreement
¶ 1.35.)

1 7. Approving the proposed Court Approved Notice of Class and Representative Action
2 Settlement and Hearing Date for Final Court Approval and directing it to be disseminated to the
3 Class as provided by in the settlement.

4 This motion is based on this Notice, the attached Memorandum of Points and Authorities,
5 the concurrently-filed Declarations of Anthony J. Orshansky, Selena Matavosian, Manuel Polanco,
6 Brandi Titkos, and Julie Green, and the exhibits attached thereto, all pleadings and other papers filed
7 in this action, and on any further oral or documentary evidence or argument presented at the time of
8 hearing.

9 Finally, given the multiplicity of issues addressed in this Motion, Plaintiffs respectfully
10 submit there is good cause to exceed the 20-page limit set forth in California Rules of Court, Rule
11 3.764, subdivision (c)(2), and respectfully requests that the Court consider the attached
12 Memorandum of Points and Authorities, which is 31 pages in length.

13
14 Dated: August 16, 2024

Respectfully submitted,
COUNSELONE, PC

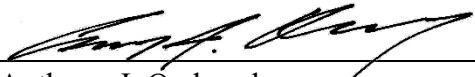
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16 By: 
17 Anthony J. Orshansky
18 Justin Kachadoorian
19 Attorneys for Plaintiff Manuel Polanco
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Brandi Titkos (“Titkos”) and Manuel Polanco (“Polanco”) (collectively, “Plaintiffs” or “Class Representatives”), individually and on behalf of all others similarly situated,³ seek preliminary approval of the global settlement set forth in the Class Action and PAGA Settlement Agreement (“Settlement Agreement”) entered into with Defendants Rag & Bone Industries LLC (“RBI”) and Rag Trader Retail, LLC (“RTR”) (collectively, “Defendants”). The Settlement Agreement between Plaintiffs and Defendants (together, the “Parties”), if approved, will resolve specific claims of the Participating Class Members⁴ and Aggrieved Employees⁵ in exchange for Defendants’ agreement to pay the amount of *Three Hundred Ninety-Six Thousand Dollars (\$396,000) into a non-reversionary common settlement fund*. There are approximately 208 Class Members employed as hourly, non-exempt employees during the RTR and RBI Class Periods.

This Motion for Preliminary Approval follows the Parties’ collective settlement of both PAGA representative and class claims stemming from two different, related actions—*Titkos v. Rag Trader Retail, LLC*, Case No. 22STCV03444 (the “Titkos Action”), a class action, and *Polanco v. Rag & Bone Industries LLC, et al.*, Case No. 22STCV24380 (the “Polanco Action”), a PAGA representative action. On March 14, 2024, this Court related the two actions for purposes of Settlement, with the Titkos Action designated as the lead action. The global settlement discussed herein resolves the claims of both actions.

By way of their individual lawsuits (Titkos’ class action and Polanco’s representative action), Plaintiffs pursued their rights against Defendants for abusing their hourly-paid or non-

³ “Class Members” are defined as all hourly or non-exempt employees who worked for RBI in California any time from December 6, 2020 through the Class Period End Date (“RBI Class Period”); and all hourly or non-exempt employees who worked for RTR in California any time from January 27, 2018 through the Class Period End Date (“RTR Class Period”). (Settlement Agreement ¶ 1.6.) “Class Period End Date” is defined as the date that is selected by the Parties under paragraph 8 of the Settlement Agreement, which is still to be determined. (*Id.* at ¶ 1.13.)

⁴ “Participating Class Members” are defined as all Class Members who do not submit a valid and timely Request for Exclusion from the Settlement. (Settlement Agreement ¶ 1.35.)

⁵ “Aggrieved Employees” are defined as all Class Members who worked for Defendants during the PAGA Period. (Settlement Agreement ¶ 1.5.) “PAGA Period” is defined as the period beginning on December 6, 2020 through the Class Period End Date. (*Id.* at ¶ 1.30.)

1 exempt employees by violating wage-and-hour laws under the Labor Code and Business and
2 Professions Code.

3 After engaging in substantial independent investigation, and after mediation with Mark J.
4 Feder, Esq., the Parties agreed to settle the Participating Class Members' and Aggrieved Employees'
5 claims alleged in this litigation for the non-reversionary sum of Three Hundred Ninety-Six
6 Thousand Dollars (\$396,000) ("Gross Settlement Amount"). A true and correct copy of the fully
7 executed Settlement Agreement is attached as **Exhibit 1** to Declaration of Anthony J. Orshansky
8 ("Orshansky Decl."), filed concurrently herewith. After deductions of amounts for Class Counsel
9 Fees Payment and Class Counsel Litigation Expenses, Class Representative Service Payments,
10 Administration Expenses Payment, and PAGA Penalties, the remaining amount (the "Net
11 Settlement Amount") of approximately \$167,400.00 will be distributed to Participating Class
12 Members. (Settlement Agreement ¶ 1.28.) The entire Net Settlement Amount shall be paid out to
13 Participating Class Members. Participating Class Members will automatically receive payments
14 ("Individual Class Payments") without the need to submit a claim form, and Aggrieved Employees
15 shall receive their pro rata share of the 25% of the PAGA Penalties amount ("Individual PAGA
16 Payment") irrespective of whether or not they opt-out of the class settlement. (*Id.* at ¶¶ 3.1, 4.4.1.)

17 The settlement is fair, reasonable, and adequate, and in the best interests of Class Members.
18 Consequently, Plaintiffs, with the consent and approval of Defendants, hereby move for an order:
19 (1) conditionally certifying the Class for settlement purposes; (2) granting preliminary approval of
20 the Settlement Agreement; (3) approving the proposed Court Approved Notice of Class Action
21 Settlement and Hearing Date for Final Court Approval ("Class Notice"); and (4) setting a hearing
22 for final approval of the settlement.

23 **II. THE EXTENT OF INVESTIGATION AND STAGE OF PROCEEDINGS**

24 On December 6, 2021, CounselOne, PC ("CounselOne"), counsel for Polanco, provided pre-
25 filing written notice to the California Labor and Workforce Development Agency ("LWDA") and
26 by certified mail to Defendant RBI of representative action claims stemming from alleged wage-
27 and-hour violations on behalf of Polanco and similarly situated aggrieved employees in accord with
28 the Private Attorneys General Act of 2004, Labor Code section 2698 et seq. ("PAGA"). (Orshansky

Decl. ¶ 31.) On November 1, 2023, CounselOne provided an amended written notice to the LWDA and by certified mail to Defendants RBI and RTR on behalf of Plaintiff Polanco and similarly situated aggrieved employees in accord with the PAGA. (*Ibid.*) The LWDA did not provide notice of its intent to investigate the alleged violations within 65 calendar days of each of the submissions. (*Ibid.*)

On January 27, 2022, Titkos commenced the Titkos Action by filing her Class Action Complaint against Defendant RTR alleging a cause of action for Violation of Business and Profession Code section 17200 et seq. for failure to pay minimum wages, failure to pay overtime wages, failure to provide meal periods and rest breaks, failure to timely pay wages during employment and upon termination, failure to provide compliant wage statements, failure to keep complete or accurate payroll records, and failure to reimburse necessary business expenses.(Orshansky Decl. ¶ 32.)

On July 28, 2022, Polanco commenced the Polanco Action by filing his Representative Action Complaint against Defendant RBI for penalties under PAGA for RBI’s violations of Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2800, and 2802, along with the applicable California Industrial Welfare Commission (“IWC”) Wage Order(s). (Orshansky Decl. ¶ 33.) On October 23, 2023, Polanco filed his First Amended Representative Action Complaint in the Polanco Action to add Defendant RTR. (*Id.* at ¶ 34.)

Defendants deny Plaintiffs’ allegations of wrongdoing. Defendants do not believe that any liability to Plaintiffs or Class Members exists, or that Plaintiffs or Class Members are entitled to any recovery. (Settlement Agreement ¶ 2.1; Orshansky Decl. ¶ 36.) In settling, Defendants do not admit liability with respect to the alleged claims made by Plaintiffs and make no admission regarding any facts or law related to the lawsuit. (Settlement Agreement ¶ 12.1.)

A. Discovery and Investigation

Here, the Parties engaged in extensive discovery—exchanging information, documents and reviewing and analyzing extensive data made available by Defendants—which enabled the Parties to thoroughly evaluate Plaintiffs’ claims, the claims of the putative Class Members, and Aggrieved

1 Employees' PAGA claim, along with Defendants' affirmative defenses, and the likely outcomes,
2 risks, and expense of pursuing litigation.

3 Prior to initiating the lawsuits, CounselOne and Lawyers *for* Justice, PC (collectively, "Class
4 Counsel") independently and thoroughly investigated the claims and considered the facts and
5 circumstances underlying the pertinent issues and applicable law. (Orshansky Decl. ¶ 30.) This
6 required thorough discussions and interviews with Plaintiffs and other Class Members as well as
7 research into the various legal issues involved in the case. (*Ibid.*) After conducting their initial
8 investigation, Class Counsel determined that the claims were well suited for class action
9 adjudication owing to what appeared to be a common course of conduct affecting a similarly situated
10 group of employees. (*Ibid.*)

11 Class Counsel conducted substantial discovery prior to mediation. (Orshansky Decl. ¶ 37.)
12 Defendants produced information and documentation concerning the alleged violations, such as
13 Defendants' written policies concerning those claims, including Defendants' employee handbooks,
14 policies and procedures regarding the payment of wages, the provision of meal and rest breaks, and
15 time keeping policies, such as recording hours, issuance of wage statements, and providing all wages
16 at separation, as well as composite data regarding the number of Class Members and Aggrieved
17 Employees and the mix of current versus former employees, total number of pay periods, total
18 number of workweeks, and the average hourly rate in effect. (*Ibid.*) Defendants also produced a
19 sample of time and pay records for Class Members and Aggrieved Employees. (*Ibid.*) Counsel met
20 and conferred at length regarding the information and documents produced. (*Ibid.*) Class Counsel
21 interviewed Plaintiffs and Class Members and analyzed the documents and data produced to
22 determine Defendants' degree of liability and potential amounts due in damages. (*Id.* at ¶ 38.)

23 **B. Mediation and Settlement**

24 After having performed extensive investigation and analysis of the legal and factual issues
25 and risks, the Parties collectively participated in a full-day mediation before Mark J. Feder, Esq.,
26 where they debated and discussed their respective positions in an attempt to resolve the
27 actions.(Orshansky Decl. ¶ 39.) Mr. Feder is a well-respected mediator with considerable experience
28 mediating wage and hour class actions and PAGA representative actions. (*Ibid.*) During the

1 mediation, the Parties exchanged further information and discussed all aspects of the two actions,
2 including the risks and delays of litigation and the risk to all Parties for proceeding with a motion
3 for class certification, liability under the claims asserted, and the implications of a PAGA
4 representative action. (*Ibid.*) Pursuant to a mediator's proposal, the Parties came to an agreement on
5 all material terms of the global settlement of both actions. (Orshansky Decl. ¶ 40.) The Parties
6 entered into a Memorandum of Understanding, and thereafter prepared the Settlement Agreement,
7 along with the Class Notice. (*Ibid.*)

8 From Class Counsel's review of the facts, strengths, and weaknesses of the case, the risks
9 and delays posed by further litigation, and Class Counsel's own prior litigation experience, Class
10 Counsel believe that the recovery being made available to Class Members and Aggrieved
11 Employees is fair, reasonable, and adequate taking into consideration the amounts received in other
12 wage and hour class and representative actions, the risks inherent in litigation of this genre, and the
13 reasonable tailoring of each Class Member's and Aggrieved Employee's claim to the settlement
14 award he or she will receive. (Orshansky Decl. ¶ 40.) Class Counsel believe that the settlement
15 serves the best interests of Class Members and Aggrieved Employees. (*Ibid.*) Further, and based on
16 the settlement negotiations, which were hard fought and conducted in good faith and at arm's length
17 between attorneys with substantial experience litigating class actions, representative actions, and
18 wage and hour cases, the settlement was the product of a non-collusive settlement process in which
19 the Parties were forced to make significant compromises in the interest of reaching a full and
20 complete settlement of the action. (*Id.* at ¶ 41.) The Parties have concluded that it is in their best
21 interests to compromise, settle, and accept the terms of the Settlement Agreement.

22 **III. SUMMARY OF BASIC SETTLEMENT TERMS**

23 Under the terms of the Settlement Agreement, Defendants have agreed to pay the *non-*
24 *reversionary* Gross Settlement Amount of *Three Hundred Ninety-Six Thousand Dollars*
25 *(\$396,000)* into a common fund to settle the specific wage and hour claims of Participating Class
26 Members and Aggrieved Employees. (Settlement Agreement ¶¶ 1.22, 3.1, 7.3.) This Gross
27 Settlement Amount shall be inclusive of all settlement payments to Participating Class Members,
28 Service Payments to the Class Representatives, Administration Expenses Payment to the

1 Administrator, Class Counsel Fees Payment and Class Counsel Expenses Payment, and PAGA
2 Penalties, including payment to Aggrieved Employees and to the LWDA for civil penalties pursuant
3 to statute. (*Id.* at ¶ 1.22.)

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

- 6 • Up to \$138,600—which is 35% of the Gross Settlement Amount—in attorneys’
7 fees (“Class Counsel Fees Payment”), and up to \$20,000 in litigation costs (“Class
8 Counsel Litigation Expenses Payment”), to Class Counsel;
- 9 • Up to \$7,500 to each of the Plaintiffs (\$15,000 in the aggregate) (“Class
10 Representative Service Payments”)—as a service award and in exchange for a
11 general release of claims by each of them;
- 12 • \$40,000 in PAGA Penalties—of which 75% is allocated for payment to the
13 LWDA for civil penalties pursuant to statute (“LWDA PAGA Payment”), and
14 25% is allocated to Aggrieved Employees; and
- 15 • Up to \$15,000 to the Settlement Administrator (“Administration Expenses
16 Payment”) to notify Class Members and administer the settlement.

17 The amount remaining after the foregoing deductions, approximately \$167,400, is called the “Net
18 Settlement Amount.” (Settlement Agreement ¶ 1.28; Orshansky Decl. ¶ 7.) The entire Net
19 Settlement Amount will be paid out to Participating Class Members. Participating Class Members
20 will automatically receive payments without the need to submit a claim form, and Aggrieved
21 Employees shall receive their pro rata share of the 25% of the PAGA Penalties amount (“Individual
22 PAGA Payment”) irrespective of whether or not they opt-out. (Settlement Agreement ¶¶ 3.1, 4.4.1;
23 Orshansky Decl. ¶ 7.)

24 Defendants will fund the Gross Settlement Amount in three installments of \$132,000, with
25 the first installment to be paid within 10 days of notice of this Court’s final approval of the
26 settlement, the second installment due 60 days after the first installment is due, and the third
27 installment due 60 days after the second installment is due. (Settlement Agreement ¶ 4.3; Orshansky
28 Decl. ¶ 13.) The Settlement Agreement will be effective upon the date that Defendants fully fund

1 the Gross Settlement Amount (e.g., the date that the third installment is paid). (Settlement
2 Agreement ¶¶ 4.4, 5; Orshansky Decl. ¶ 13.) Defendants separately pay any and all employer payroll
3 taxes owed on the Wage Portions of the Individual Class Payment. (Settlement Agreement ¶ 3.1;
4 Orshansky Decl. ¶ 13.)

5 Settlement checks will be valid for a period of 180 days following the date of mailing.
6 (Settlement Agreement ¶ 4.4.1; Orshansky Decl. ¶ 14.) For any Class Member whose Individual
7 Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void
8 date, the funds associated with such checks will be transferred to a Court-approved *cy pres* recipient
9 nonprofit organization or foundation, consistent with Code of Civil Procedure section 384,
10 subdivision (b). (Orshansky Decl. ¶ 15.) Class Counsel will identify the *cy pres* recipient the Parties
11 have chosen in the Final Approval Motion, along with providing representations from the Parties,
12 Class Counsel and Defense Counsel that they have no interest or relationship, financial or otherwise,
13 with the intended *cy pres* recipient. (*Ibid.*)

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

15 Although exact recovery amounts depend on each Participating Class Members' relative
16 number of qualifying workweeks, for estimation purposes only, if all of the approximate 208 Class
17 Members participate in the settlement, then the average Individual Class Payment would be an
18 estimated \$804.81 per Class Member. (Orshansky Decl. ¶ 11.) Of course, any Class Member who
19 prefers to preserve his or her right to pursue relief or seek an alternative recovery may opt out.
20 (Settlement Agreement ¶ 7.5; Orshansky Decl. ¶ 11.)

21 The Net Settlement Amount will be the amount that is available for distribution to
22 Participating Class Members on a pro rata basis based on Workweeks during the RBI and RTR Class
23 Periods. (Settlement Agreement ¶ 1.23; Orshansky Decl. ¶ 8.) Each payment ("Individual Class
24 Payment") shall be calculated as follows: the Net Settlement Amount shall be divided by the total
25 of all Workweeks of Participating Class Members during the RBI and RTR Class Periods, then that
26 amount will be multiplied by each Participating Class Member's individual Workweeks. (Settlement
27 Agreement ¶ 3.2.4; Orshansky Decl. ¶ 8.) The Individual Settlement Share to each Settlement Class
28

1 Member shall be calculated by multiplying his or her individual Workweeks by the Workweek
2 Value. (*Ibid.*)

3 In addition, each Aggrieved Employee will receive a proportional share of the 25% of the
4 PAGA Penalties based on his or her pay periods during the PAGA Period. (Settlement Agreement
5 ¶ 1.24; Orshansky Decl. ¶ 9.) Specifically, the Aggrieved Employees' 25% portion of the PAGA
6 Penalties amount (or, \$10,000) shall be divided by the total of all pay periods worked by Aggrieved
7 Employees during the PAGA Period; then, this amount will be multiplied by the number of pay
8 periods worked by that Aggrieved Employee during the PAGA Period to reach the Aggrieved
9 Employee's Individual PAGA Payment. (Orshansky Decl. ¶ 9.)

10 The net payment to each Participating Class Member/Aggrieved Employee will be the sum
11 of his or her Individual Class Payment⁶ plus, if applicable, the Individual PAGA Payment.
12 (Orshansky Decl. ¶ 10.) As a result of the distribution formulas, the consideration paid to each
13 Participating Class Members/Aggrieved Employee is tailored to the impact of Defendants' alleged
14 violations as well as to the claims he or she is releasing. (*Ibid.*) Further, a Class Member or
15 Aggrieved Employee may submit a written notice to the Settlement Administrator disputing the
16 number of workweeks or PAGA Pay Periods credited if he or she believes that count is inaccurate.
17 (Settlement Agreement ¶ 7.6.) Finally, any Class Member who prefers to preserve his or her right
18 to pursue relief or seek an alternative recovery may opt out.⁷ (Settlement Agreement ¶ 7.5.)

19 **B. Class Representatives' Service Payments, Class Counsel Fees Payment and**
20 **Class Counsel Litigation Expenses Payment.**

21 As part of the settlement, Plaintiffs will apply for Class Representative Service Payments at
22 the time of seeking final approval, in the amount of \$7,500 to each Plaintiff (for an aggregate total
23 of \$15,000) for their services to the settlement class and their general release of all claims against
24 Defendants. (Settlement Agreement ¶¶ 1.10, 2.2.1; Orshansky Decl. ¶ 12.) "[I]ncentive awards are
25

26 ⁶ Individual Class Payments will be classified as twenty percent (20%) wages to be reported on an
27 IRS Form W-2, and eighty percent (80%) penalties and interest to be reported on an IRS Form
1099. (Settlement Agreement ¶ 3.2.4.1.)

28 ⁷ Again, if approved, Aggrieved Employees will receive their Individual PAGA Payments
irrespective of whether they opt-out of the class settlement. (Orshansky Decl. ¶ 7.)

1 fairly typical in class action cases . . . and are intended to compensate class representatives for work
2 done on behalf of the class [and] to make up for financial or reputational risk undertaken in bringing
3 the action.” (*In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1393-1394.)
4 Plaintiffs’ requested service payments are intended to recognize the significant benefits conferred
5 upon the settlement class and be proportional to the time and effort that Plaintiffs expended on behalf
6 of the Class, including providing factual information and documents to Class Counsel, discussing
7 the claims and theories at issue in the case with Class Counsel, identifying potential witnesses and
8 reviewing documents, and reviewing the Settlement Agreement, as well as the significant risks
9 Plaintiffs undertook by agreeing to serve as a named plaintiffs in the actions, and the fact that
10 Plaintiffs have agreed to a general release of all claims subject to a waiver of Civil Code section
11 1542.. (*See* Settlement Agreement ¶¶ 1.15, 5.1.1; Orshansky Decl. ¶ 17.)

12 Class Counsel will apply for an attorneys’ fees award of no more than thirty-five percent
13 (35%) of the Gross Settlement Amount, and reimbursement of litigation costs in an amount up to
14 \$20,000. (Settlement Agreement ¶¶ 1.8, 3.2.2; Orshansky Decl. ¶ 18.) The fee award will be split
15 between the two firms evenly—fifty percent (50%) to Lawyers *for* Justice, PC and fifty percent
16 (50%) to CounselOne. (Orshansky Decl. ¶ 18.) Plaintiffs have approved this fee split. (*Ibid.*)
17 Plaintiffs submit that the requested fee is fair compensation for undertaking complex, risky,
18 expensive, and time-consuming litigation on a purely contingent fee basis. (*Ibid.*) Class Counsel
19 have incurred substantial attorneys’ fees conducting their pre-filing investigation, analyzing
20 Plaintiffs’ claims, conducting legal research and analysis, conducting discovery, meeting and
21 conferring with defense counsel, interviewing putative class members, analyzing documents
22 produced by Defendants (including corporate policies and employee time and payroll records),
23 consulting with an expert, building damages models, preparing for and attending mediation, routine
24 case updates and consultations with Plaintiffs, and negotiating and preparing the Memorandum of
25 Understanding, long-form Settlement Agreement, Court Approved Notice of Class Action
26 Settlement and Hearing Date for Final Approval (“Class Notice”), and this motion for preliminary
27 approval and supporting documents. (*Ibid.*) Class Counsel will also expend future attorney time in
28 attending the hearing on this Motion, overseeing the notice and administration process, drafting the

1 Final Approval Motion and supporting documents, and attending the Final Approval hearing, among
2 other tasks, such as addressing questions from Class Members. (*Id.* at ¶ 20.)

3 Both California and federal courts have recognized that an appropriate method for awarding
4 attorneys' fees in class actions is to award a percentage of the "common fund" created as a result of
5 the settlement. (See *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 506 ["the
6 percentage of fund method survives in California class action cases..."]; *Wershba v. Apple
7 Computer, Inc.* (2001) 91 Cal.App.4th 224, 254 [recognizing both the "percentage of recovery" and
8 "lodestar/multiplier" methods].) Historically, courts have awarded percentage fees in the range of
9 20% to 50%, depending on the circumstances of the case. (See 4 Conte & Newberg, Newberg on
10 Class Actions (4th Ed. 2002) § 14.6 ["No general rule can be articulated on what is a reasonable
11 percentage of a common fund. Usually, 50% of the fund is the upper limit on a reasonable fee award
12 from a common fund in order to assure that the fees do not consume a disproportionate part of the
13 recovery obtained for the class, although somewhat larger percentages are not unprecedented."].)

14 Class Counsel submit that their request for attorneys' fees is reasonable when viewed as an
15 overall percentage of the settlement amount in light of the substantial risks and significant work
16 undertaken, the excellent results obtained for the Class Members, and the efficiency with which the
17 Parties have conducted the related actions. (Orshansky Decl. ¶ 21.) Assuming that the Court grants
18 preliminary approval, Assuming that the Court grants preliminary approval, Class Counsel will seek
19 an award of the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment at the
20 time of seeking final approval of this settlement.

21 **IV. CERTIFICATION FOR SETTLEMENT PURPOSES IS APPROPRIATE**

22 Express judicial policy favors maintaining wage and hour actions as class actions. (*Prince
23 v. CLS Transp., Inc.* (2004) 118 Cal.App.4th 1320, 1328; *Richard v. Dart Industries, Inc.* (1981) 29
24 Cal.3d 462 [finding that California public policy "encourages the use of the class action device"].)
25 Any doubt as to the appropriateness of class treatment should be resolved in favor of class
26 certification, subject to later modification if necessary. (*Id.* at pp. 473-475.) The decision to certify
27 a class is purely a procedural one and should be based on the allegations in the operative complaint,
28

1 and not in the perceived factual or legal merit of the class claims. (*Linder v. Thrifty Oil Co.* (2000)
2 23 Cal.4th 429, 439-441.)

3 To certify a settlement class, the trial court must find the two primary requirements for
4 maintaining a class action: (1) there must be an ascertainable class and (2) there must be a well-
5 defined community of interest in the questions of law and fact involving the parties to be
6 represented. (*Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 805-809; *Daar v. Yellow Cab*
7 *Company* (1967) 67 Cal.2d 695, 704; *Daniels v. Centennial Capital Group* (1993) 16 Cal.App.4th
8 467, 471; *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341.) These criteria
9 are met here for the reasons set forth below.

10 **A. There Is an Ascertainable and Sufficiently Numerous Class**

11 Whether a class is ascertainable is determined by examining the class definition, the size of
12 the class and the means available for identifying class members. (See *Vasquez, supra*, 4 Cal.3d at
13 pp. 821-822; *Reyes v. Board of Supervisors of San Diego County* (1987) 196 Cal.App.3d 1263,
14 1271; *Miller v. Woods* (1983) 148 Cal.App.3d 862, 873.) Class members are “ascertainable” where
15 they may be readily identified without unreasonable expense or time.

16 Here, the class definition is “precise, objective and presently ascertainable.” (*Sevidal v.*
17 *Target Corp.* (2010) 189 Cal.App.4th 905, 919.) Class Members are comprised of all hourly or non-
18 exempt employees who worked for Defendant RBI in California during the RBI Class Period and
19 Defendant RTR in California during the RTR Class Period. (Settlement Agreement ¶¶ 1.6, 1.10.)
20 Further, the RBI Class Period is defined as the period from December 6, 2020 through the Class
21 Period End Date, and the RTR Class Period is defined as the period from January 27, 2018 through
22 the Class Period End Date. (*Id.* at ¶ 1.6, 1.13.) Thus, all Class Members are of a specific type (hourly
23 or non-exempt employees) employed within California during the relevant time periods. Defendants
24 are required to and do maintain employment records of such persons, including contact information
25 and Social Security numbers. (Orshansky Decl. ¶ 96.) Documents and information exchanged reflect
26 a class of approximately 208 current and former hourly or non-exempt employees working in
27 California during the RTR and RBI Class Periods. (*Ibid.*) Thus, the proposed Class satisfies the
28

ascertainability and numerosity requirements. (See, e.g., *Collins v. Rocha* (1972) 7 Cal.3d 232 [finding a class of 44 farm workers sufficiently numerous].)

B. There Is a Well-Defined Community of Interest

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

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

(*Id.* at p. 809.) Here, litigation in these two related actions is predicated on uniform company policies and systemic top-down business practices, revolving principally around Defendants' timekeeping and pay practices—e.g., off-the-clock work attributed to mandatory bag checks as well as interrupted meal breaks and common pre- and post-shift job duties, failure to provide compliant meal period and rest breaks, failure to make premium payments for non-compliant meal and rest periods, and unreimbursed business expenses, as well as derivative inaccurate wage statements and pay owed upon separation. These allegations have given rise to the following claims: failure to pay minimum and overtime wages; meal period liability; rest break liability; failure to reimburse necessary business expenses; failure to timely pay all final wages due upon termination; failure to maintain and provide accurate itemized wage statements; and derivative UCL and PAGA claims arising therefrom. (Orshansky Decl. ¶ 98.)

Plaintiffs have alleged a single top-down compensation scheme where “the relevant proof [does] not vary among class members” and “clearly present[] a common question fundamental to all class members.” (See *In Re NASDAQ Market-Makers Antitrust Litigation* (S.D.N.Y. 1997) 172 F.R.D. 119, 123 [citing *In Re NASDAQ Market-Makers Antitrust Litigation* (S.D.N.Y. 1997) 169 F.R.D. 493, 518].) California courts show “no hesitancy” in inferring class-wide causation, class-wide injury, and class-wide damages when a common course of action has been shown. (*B.W.I. Custom Kitchen, supra*, 191 Cal.App.3d at p. 1350 [granting class certification in a manufacturing

defect case when a common course of action had been proven].) This inference “*eliminates* the need for each class member to prove individually the consequences of the defendants’ actions to him or her.” (*Id.* at p. 1351 [emphasis added].) Thus, the outcome of this matter depends upon questions that are common to members of the Class. (Orshansky Decl. ¶ 98.) These types of claims are commonly held to be proper for class certification. (*Ibid.*; see, e.g., *Bluford v. Safeway, Inc.* (2013) 216 Cal.App.4th 864, 871 [reversing denial of rest period claim]; *Benton v. Telecom Network Specialists, Inc.* (2013) 220 Cal.App.4th 701, 726 [certifying meal period claim].)

C. The Claims of the Named Plaintiffs Are Typical.

The typicality requirement is satisfied where class representatives have claims that are typical of those of the rest of the class. (*B.W.I. Custom Kitchen, supra*, 191 Cal.App.3d at p. 1347.)

Here, Plaintiffs’ claims are typical of those held by the members of the Class. (Orshansky Decl. ¶ 99.) Like all other Class Members, Plaintiffs were hourly employees working for either RBI or RTR in California during either the RBI or RTR Class Periods. (*Ibid.*) As alleged, Plaintiffs were not compensated for all overtime hours they worked, not provided with legally compliant meal and rest breaks, required to incur business expenses necessary to perform their job duties without reimbursement, not provided with accurate itemized wage statements, and so forth. (*Ibid.*) Plaintiffs were therefore impacted by the same challenged policies that allegedly injured the Class as a whole and subject to the same defenses forwarded by Defendants as to the Class, thus their claims are typical. (*Ibid.*)

D. The Named Plaintiffs and Class Counsel Will Fairly and Adequately Represent the Settlement Class.

The adequacy of representation requirement examines conflicts of interest between named parties and the class(es) they seek to represent. (*Capital People First v. Department of Developmental Services* (2007) 155 Cal.App.4th 676, 697.) Here, Plaintiffs and Class Counsel will adequately represent the Class as there are no conflicts between the named Plaintiffs and the Class they seeks to represent. (Orshansky Decl. ¶ 100; *McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450 [finding adequacy satisfied where there was no indication that plaintiff’s counsel were not qualified and the named plaintiff had no interests antagonistic to those of the proposed class].) Class

Counsel also have extensive experience in wage and hour litigation. (Orshansky Decl. ¶¶ 90-94, 100; Declaration of Selena Matavosian (“Matavosian Decl.”) ¶¶ 3-7.)

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

In making its class certification decision, the court must determine that a class action would be superior to alternative means for the fair and efficient adjudication of the litigation. By consolidating over two hundred individual actions into a single proceeding, this Court’s use of the class action device enables it to manage this litigation in a manner that serves the efficiency interests of the litigants and the judicial system. (Orshansky Decl. ¶ 101.) Absent class treatment, the only alternative would be to force these employees to file individual actions. (*Sav-On Drug Stores v. Super. Ct.* (2004) 34 Cal.4th 319, 339, fn. 10 [stating “[t]he relevant comparison lies between the costs and benefits of adjudicating Plaintiff’s claims in a class action and the costs and benefits of proceeding by numerous separate actions – not between the complexity of a class suit that must accommodate some individualized inquires and the absence of any remedial proceeding whatsoever.”].) Finally, in the context of settlement, the superiority concerns are essentially non-existent.

V. THE TWO-STEP APPROVAL PROCESS

Any settlement of class action litigation must be reviewed and approved by a court. This is accomplished in two steps: (1) an early (preliminary) review by the trial court, and (2) a detailed review after the notice has been distributed to the class members for their comments or objections. “A court may preliminarily approve a settlement and direct notice to the class if ‘the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval.’” (*Draney v. Westco Chems., Inc.* (C.D.Cal. Sep. 29, 2021, No. 2:19-cv-01405-ODW (AGRx)) 2021 U.S.Dist.LEXIS 187250, at *11 [citing *In re Tableware Antitrust Litig.* (N.D.Cal. 2007) 484 F.Supp.2d 1078, 1079].)

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., 4 Conte & Newberg, *Newberg on Class Actions* (4th Ed. 2002) § 11.25; *North County*

1 *Contractor's Assn., Inc. v. Touchstone Ins. Services* (1994) 27 Cal.App.4th 1085, 1094-1095.) Thus,
2 the preliminary approval of the class action settlement by the Court is simply a conditional finding
3 that the settlement appears to be within the range of acceptable settlements. A review of the
4 preliminary approval criteria demonstrates a substantial basis for granting the preliminary approval
5 requested by this Motion and proceeding to a full settlement hearing.

6 **VI. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE**

7 As a matter of public policy, courts both encourage the use of the class action device and
8 favor settlement over continued litigation. (*See, e.g., Linder, supra*, 23 Cal.4th at p. 434 [“Courts
9 have long acknowledged the importance of class actions as a means to prevent a failure of justice in
10 our judicial system.”]; *State v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 471; *Class Plaintiffs v.*
11 *City of Seattle* (1992) 955 F.2d 1268, 1276 [“[S]trong judicial policy...favors settlements,
12 particularly where complex class action litigation is concerned.”]; 4 Conte & Newberg, Newberg
13 on Class Actions (4th Ed. 2002) § 11.41.) Settlement is favored, and settlement agreements are
14 realistically assessed. (*Stamburgh v. Superior Court* (1976) 62 Cal.App.3d 231, 236; *Priddy v.*
15 *Edelman* (6th Cir. 1989) 883 F.2d 438, 447 [“The fact that plaintiff might have received more if the
16 case had been fully litigated is no reason not to approve the settlement.”].)

17 To summarize, the settlement here is fair because it offers payment to each Participating
18 Class Member/Aggrieved Employee for releasing his or her claims, extinguishes the risk of
19 litigation, and provides a fair and adequate distribution of the settlement proceeds whereby the funds
20 are allocated proportionally based on the respective number of workweeks/pay periods that he or
21 she worked during the relevant period. (Orshansky Decl., *passim*.) For all of the foregoing reasons,
22 the proposed settlement should be preliminarily approved.

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

24 Moreover, courts presume the absence of fraud or collusion in the negotiation of a settlement
25 unless evidence to the contrary is offered. In short, there is a presumption that the negotiations were
26 conducted in good faith. (*See* 4 Conte & Newberg, Newberg on Class Actions (4th Ed. 2002) §
27 11.51; *Rodriguez v. West Publ. Corp.* (C.D.Cal. August 10, 2007) 2007 U.S.Dist.LEXIS 74767,
28 *24-25; *In re Chicken Antitrust Litigation* (N.D.Ga. 1980) 560 F.Supp. 957, 962; *Priddy, supra*, 883

1 F.2d at p. 447; *Mars Steel Corp. v. Continental Illinois National Bank and Trust Co.* (7th Cir. 1987)
2 834 F.2d 677, 681.) Courts do not substitute their judgment for that of the proponents, particularly
3 when settlement has been reached by experienced counsel familiar with the litigation. (*Rodriguez,*
4 *supra*, 2007 U.S.Dist.LEXIS 74767 at *24.) As detailed at length in the accompanying Orshansky
5 Declaration, the settlement is the result of extensive settlement negotiations between the Parties,
6 conducted at arm's length, and informed by substantial factual and legal investigations. (Orshansky
7 Decl., *passim*; Matavosian Decl. ¶¶ 8-17.)

8 **1. Negotiations Were at Arm's-Length Before a Respected Mediator.'**

9 As noted above, the Parties engaged in a full day mediation session with Mark J. Feder, Esq.
10 (Orshansky Decl. ¶ 39.) Mr. Feder is a well-respected mediator with considerable experience
11 mediating wage and hour class actions and PAGA representative actions. (*Ibid.*) The global
12 settlement was reached pursuant to a mediator's proposal. (*Id.* at ¶ 40.) The settlement negotiations
13 were hard fought and conducted in good faith and at arm's length between attorneys with substantial
14 experience litigating class actions, representative actions, and wage and hour cases. (*Id.* at ¶ 41.)
15 The settlement was the product of a non-collusive settlement process in which the Parties were
16 forced to make significant compromises in the interest of reaching a full and complete settlement of
17 the action. (*Ibid.*)

18 **2. Investigation Was Sufficient to Allow Counsel to Act Intelligently**

19 Throughout this case, Class Members have been represented by counsel who have years of
20 experience in employment class action litigation. (Orshansky Decl. ¶¶ 90-94; Matavosian Decl. ¶¶
21 2-7.) Class Counsel devoted a considerable amount of time to the prosecution of this case, including,
22 but not limited to, conducting pre-filing investigation and research; conducting discovery; reviewing
23 Defendants' written policies concerning the claims set forth in the action, including Defendants'
24 policies and procedures regarding the payment of wages, the provision of meal and rest breaks, time
25 keeping policies, such as recording hours, issuance of wage statements, and providing all wages at
26 separation; reviewing and analyzing time and pay records; meeting and conferring regarding the
27 information and documents produced; interviewing Class Members; drafting pleadings; researching
28 California law; preparing damages models; consulting with an expert; preparing for and attending

1 mediation; and negotiating and finalizing the settlement and related documents. (Orshansky Decl. ¶
2 19.)

3 **B. Class Counsel Are Experienced in Similar Litigation**

4 Class Counsel believe that the settlement is fair and reasonable and serves the best interests
5 of Class Members and Aggrieved Employees. (Orshansky Decl. ¶ 43; Matavosian Decl. ¶ 17.)
6 Although the recommendations of counsel proposing the class settlement are not conclusive, the
7 Court can properly take the recommendations into account, particularly if counsel have been
8 involved in litigation for some period of time, appear to be competent, have experience with this
9 type of litigation, and significant discovery has been completed. (*See* 4 Conte & Newberg, Newberg
10 on Class Actions (4th Ed. 2002) § 11.47.) Here, Plaintiffs are represented by competent and
11 experienced counsel who possess extensive experience litigating wage and hour class actions and
12 have been appointed as class counsel in numerous cases alleging similar claims. (Orshansky Decl.
13 ¶¶ 90-94; Matavosian Decl. ¶¶ 2-7.)

14 **C. The Settlement Is Fair, Reasonable, and Adequate**

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

23 **1. The Strength of Plaintiffs’ Claims**

24 Class Counsel carefully vetted the claims at issue to arrive at a comprehensive damages
25 model for Defendants’ liability. (Orshansky Decl. ¶ 44.) Although Plaintiffs steadfastly maintain
26 that their claims are meritorious, they acknowledge that there are substantial risks and uncertainty
27 in proceeding with class certification and trial. (*Ibid.*) As explained in further detail in Section VI.E.4
28 *infra*, Defendants presented numerous defenses to Plaintiffs’ claims, both on the merits and with

1 respect to class certification. (Orshansky Decl. ¶ 44.) For example, Defendants defended against the
2 unpaid wage allegations by relying on written policies that explicitly prohibited Class Members from
3 engaging in off-the-clock work. (*Id.* at ¶ 45.) Defendants also argued that Class Members worked in
4 different job positions and had different managers, and that, as a result, Defendants contended there
5 was variation to the circumstances that could allegedly cause employees to be deprived of the
6 opportunity to take legally compliant, duty-free meal and rest periods, and this variation in
7 circumstances raised highly individualized questions of fact. (*Ibid.*) Additionally, Defendants argued
8 that employees were apprised of their right to take meal periods and provided compliant meal
9 periods, but some may have voluntarily waived them. (*Ibid.*)

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

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

16 Although Plaintiffs conducted discovery prior to the global settlement, the Parties agreed to
17 focus on exhausting early settlement efforts before launching into full-fledged and hotly contested
18 litigation. (Orshansky Decl. ¶ 46.) Therefore, absent settlement, the Parties would have needed to
19 conduct substantial additional discovery, such as the production of voluminous records and
20 numerous depositions of experts and percipient witnesses and prepare the cases for class
21 certification and trial. (*Ibid.*) The Parties would have had to depose a number of people such as
22 managers, supervisors, human resource representatives, and employees in order to establish liability.
23 (*Ibid.*) Discovery disputes would have been in the offing and liability likely would have entailed a
24 battle of experts. (*Ibid.*) This settlement avoids the considerable time, attorneys' fees and costs, and
25 party resources associated with conducting additional discovery, moving for class certification and
26 potentially summary judgment or adjudication, and ultimately, trial, as well as the risks and the
27 accompanying burden of continued litigation on the Court. (*Ibid.*)

28 Thus, this factor supports preliminary approval of the settlement.

3. Risk of Maintaining Class Action Status

Here, settlement was reached prior to class certification and the result was a successful outcome for the Class. (Orshansky Decl. ¶ 47.) Yet, class certification was by no means a foregone conclusion. (*Ibid.*) For example, Class Members worked in different job positions and had different managers, and as a result, Defendants contended there was variation to the circumstances that could allegedly cause the employees to work off-the-clock and/or be deprived of the opportunity to take legally compliant, duty-free meal and rest periods, and this variation in circumstances raised highly individualized questions of fact. (*Ibid.*)

Defendants disputed Plaintiffs' characterization of working conditions, liability, and damages, and possessed documentary and testimonial evidence rebutting Plaintiffs' allegations. (Orshansky Decl. ¶ 47.) Even if Plaintiffs prevailed and certified a class action, there is no guarantee Defendants would not later move for and obtain decertification. (*Ibid.*) If the Court either denied class certification or later decertified it, the Class would recover nothing, and Class Members would be forced to retain their own counsel and proceed on the basis of individual claims only. (*Ibid.*)

Here, Class Members may avoid each of the risks described and receive substantial monetary benefits, which also weighs in favor of preliminary approval.

4. Amount Offered in Settlement Given Realistic Value of Claims

A settlement is not judged against what might have been recovered had a plaintiff prevailed at trial, nor does the settlement have to provide 100% of the damages to be fair and reasonable. (*Wershba, supra*, 91 Cal.App.4th at pp. 246, 250 [acknowledging that “[c]ompromise is inherent and necessary in the settlement process ... even if the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated, this is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives in the interest of avoiding litigation.”].)

Plaintiffs' estimate of the settlement recovery is a reasonable percentage of possible recoverable damages at trial. Plaintiffs' damages analysis shows that the settlement amount reflects an estimated 37% of the realistic potential damages recoverable at trial. (Orshansky Decl. ¶ 45.) Utilizing a class-wide damages study to assess the nature and magnitude of the claims in question,

1 (see *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 123), this case clearly meets
2 requirements establishing that the class settlement is within the “ballpark” of reasonableness. The
3 settlement provides a fair and reasonable monetary recovery for the Class in the face of disputed
4 claims.

5 Unpaid Wages

6 Plaintiffs alleged that they and other hourly employees were regularly required to perform
7 job duties off-the-clock, both before and after their shifts, and during meal periods, including
8 mandatory bag searches upon exiting the store at the end of their shift, resulting in uncompensated
9 overtime wages in violation of Labor Code sections 510 and 1198. (Orshansky Decl. ¶ 52.) Plaintiffs
10 contend that all off-the-clock work is compensable time. (*Ibid.*)

11 First, Plaintiffs contended that they and other employees were subject to mandatory bag
12 searches when leaving the premises at the end of their daily shifts. These mandatory bag searches
13 were performed at the store exits at the end of their shifts, meaning they always occurred after
14 employees were clocked out. (Orshansky Decl. ¶ 53.) These mandatory bag searches were
15 performed at the store exits at the end of their shifts, meaning they always occurred after employees
16 were clocked out. (*Ibid.*) Thus, all the time employees spent being subjected to these bag searches
17 was off-the-clock. (*Ibid.*) Under *Frlekin v. Apple Inc.* (2020) 8 Cal.5th 1038, an employer is liable
18 for the time an employee spends on an employer’s premises waiting for, and undergoing, mandatory
19 bag searches, as that time is considered “hours worked”:

20 [I]t is clear that [Plaintiffs] are subject to [Defendant’s] control while awaiting, and
21 during, [Defendant’s] exit searches. [Defendant’s] exit searches are required as a
22 practical matter, occur at the workplace, involve a significant degree of control, are
23 imposed primarily for [Defendant’s] benefit, and are enforced through threat of
discipline. Thus according to the “hours worked” control clause, plaintiffs “must be
paid.”

24 (*Id.* at p. 1056 [citing *Bono Enterprises, Inc. v. Bradshaw* (1995) 32 Cal.App.4th 968, 975].)
25 Because Defendants’ bag searches were required as a practical matter, occurred at the workplace,
26 involved a significant degree of control, and were imposed primarily for Defendants’ benefit,
27 Plaintiffs and other employees must be paid for that time as hours worked. (Orshansky Decl. ¶ 53.)

1 Plaintiffs also alleged that they were required to engage in other off-the-clock pre- and post-shift
2 duties, and often experienced interrupted meal breaks. (*Ibid.*)

3 As Plaintiffs and other hourly employees regularly worked full-time schedules, this off-the-
4 clock work resulted in unpaid overtime. (Orshansky Decl. ¶ 54.) Because Defendants did not pay
5 Plaintiffs and other hourly employees wages for hours that were worked off the clock, including
6 work performed during meal periods, during mandatory bag searches, and pre- and post-shift,
7 Plaintiffs and other hourly employees were deprived wages at overtime premium amounts
8 attributable to overtime hours. (*Ibid.*) Labor Code section 510 requires an employer to compensate
9 an employee who works more than eight (8) hours in one workday, forty (40) hours in a workweek,
10 and for the first eight (8) hours worked on the seventh consecutive day no less than one and one-
11 half times the regular rate of pay for an employee, and no less than twice the regular rate of pay
12 when an employee works more than twelve (12) hours in a day or more than eight (8) hours on the
13 seventh consecutive day of work. Thus, Plaintiffs allege Defendants violated Labor Code sections
14 510 and 1198, and the applicable IWC Wage Orders, by failing to compensate Plaintiffs and other
15 hourly employees at the correct overtime rate for all hours worked. (*Id.* at ¶ 55.)

16 Class Counsel analyzed the documents and data produced by Defendants, and in conjunction
17 with interviews of Plaintiffs and Class Members, determined Defendants' degree of liability and
18 amounts due in damages—specifically, the incidence and amount of purported off-the-clock
19 activity. (Orshansky Decl. ¶ 56.)

20 In opposition to certification, Defendants contended that Plaintiffs' claim regarding off-the-
21 clock work is not amenable to class treatment, because employees worked in a variety of
22 departments with different requirements, and it would require an unmanageable series of mini-trials
23 to determine how much time was spent without pay. (Orshansky Decl. ¶ 57.) Further, in terms of
24 merit defenses, Defendants vigorously disagreed with Plaintiffs' theories regarding how much off-
25 the-clock work occurred in reality and the credibility of those claimed hours given Defendants'
26 express written policies to the contrary. (*Id.* at ¶ 58.) The failure to track all hours poses evidentiary
27 difficulties because it is hotly contested how much off-the-clock work actually occurred. (*Id.* at ¶
28 59.) Although Class Counsel conducted multiple Class Member interviews, for Plaintiffs to establish

1 the quantity of specific disputed and unrecorded work activities—especially over multiple job titles,
2 at differing pay rates—would have been costly, time-consuming, and daunting. (*Ibid.*)

3 Defendants further responded that any off-the-clock time is de minimis. (Orshansky Decl. ¶
4 60.) Plaintiffs countered that such defense lacks viability in light of *Troester v. Starbucks Corp.*
5 (2018) 5 Cal.5th 829, given that the California Supreme Court refused to allow the de minimis
6 defense to insulate Starbucks from having to pay employees for small amounts of work regularly
7 performed off-the-clock. (Orshansky Decl. ¶ 60.) What is not clear, however, is to what extent the
8 de minimis defense would apply where the uncaptured hours were associated with an occasionally
9 recurring activity. (*Ibid.*)

10 As to Plaintiffs’ allegation that overtime was underpaid because Defendants incorrectly
11 calculated the regular rate by failing to include non-discretionary forms of pay, because Defendants
12 vigorously disputed the discretionary nature of certain payments, and the degree to which they were
13 required to be included in calculating the regular rate of pay. (Orshansky Decl. ¶ 61.) In light of this,
14 Plaintiffs assigned a nominal value there. (*Ibid.*) However, notwithstanding the obvious evidentiary
15 challenge of quantifying unrecorded off-the-clock hours, based on Defendants’ records, Plaintiffs
16 otherwise estimate that Defendants are liable for an aggregate of approximately one hour of unpaid
17 overtime pay per workweek. (*Ibid.*) Based on Defendants’ records, Plaintiffs determined that 84.2%
18 of Class Members’ shifts qualified for overtime rate of pay. (*Ibid.*) At the average overtime hourly
19 rate of \$26.43, such yields an estimated damages amount of **\$130,772.78**, without discounting for
20 risks associated with certification or merits. (*Ibid.*)

21 **Meal and Rest Period Violations**

22 Plaintiffs asserted that there are compliance issues *vis-à-vis* meal breaks—some are late,
23 missed, short, or interrupted—and further contended that Defendants also failed to provide Plaintiffs
24 and Class Members with second 30-minute meal periods for shifts lasting longer than 10 hours.
25 (Orshansky Decl. ¶ 62.) Finally, there is no evidence that Defendants made any premium payments
26 for non-compliant meal periods. (*Ibid.*) Consequently, Plaintiffs alleged that Defendants violated
27 Labor Code sections 226.7 and 512, and the applicable IWC Wage Orders, by failing to provide
28

1 compliant, duty-free meal periods and failing to compensate Plaintiffs and Class Members for short,
2 late, interrupted, and missed meal periods. (*Ibid.*)

3 On February 25, 2021, in *Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58, the
4 California Supreme Court reversed the Fourth Appellate District and set forth two clear rules: (1)
5 employers are not permitted to round time records when determining if employees are entitled to
6 meal premium pay, and (2) it is the employer's burden to show that compliant meal periods were
7 provided to employees if the time records show otherwise. Using this opportunity to echo its long
8 stance that California liberally construes the Labor Code and wage orders to favor protection of
9 employees, the California Supreme Court emphasized that meal periods are part of the remedial
10 worker protection framework to protect the health and safety of employees.

11 Defendants, however, contended that they had practices, policies, and procedures to provide
12 meal and rest breaks every workday to their employees that fully complied with the law. (Orshansky
13 Decl. ¶ 64.) Defendants vehemently argued that they complied with the requirements articulated by
14 the California Supreme Court in *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004.
15 (Orshansky Decl. ¶ 64.)

16 Like most employers facing meal period litigation, Defendants argued that employees were
17 apprised of their right to take meal periods and provided compliant meal periods, but some may have
18 voluntarily waived them. (Orshansky Decl. ¶ 65.) Defendants contended that the issue of voluntary
19 waiver would necessarily devolve into a series of individualized mini-trials, precluding class
20 certification. (*Ibid.*; see *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 25 [holding
21 that the defendant must be provided an opportunity to litigate affirmative defenses, even when they
22 turn on individual questions].)

23 Based upon the analysis of Class Members' time and payroll records and, in conjunction
24 with interviews of Plaintiffs and Class Members, Plaintiffs determined that 31% of eligible shifts
25 were the subject of unique violations for missed, short, or late meal periods, and calculated the
26 potential exposure of this claim to be **\$40,524.06**. (Orshansky Decl. ¶ 66.)

27 Plaintiffs also alleged that Class Members did not receive authorized rest breaks as required
28 whereby employers "relinquish control over how employees spend their time and relieve employees

of all duties.” (Orshansky Decl. ¶ 67; *Augustus v. ABM Security Service, Inc.* (2016) 2 Cal.5th 257, 260.) Due to Defendants’ work demands, Plaintiffs and Class Members did not receive timely and compliant rest breaks, nor did Defendants relinquish control over how employees spent their 10-minute rest breaks. (Orshansky Decl. ¶ 67.) As with the meal periods, Plaintiffs did not receive rest break premium payments for non-compliant rest breaks, nor is there evidence that Defendants made rest break premium payments to Class Members at any time. (*Id.* at ¶ 68.) Thus, Plaintiffs also alleged that Defendants did not provide premium pay for each non-compliant rest break as required under Labor Code section 226.7. (Orshansky Decl. ¶ 68.)

Here again, Defendants disputed liability and damages. Defendants maintained that they authorized and permitted duty-free rest breaks of not less than ten minutes for every major fraction of four hours worked as required by Labor Code section 226.7. (Orshansky Decl. ¶ 69.) Defendants explained that Class Members had ample opportunity to take, and did take, regular rest breaks. (*Ibid.*) As with meal periods, Defendants argued that any Class Member who failed to take a rest break, or took a short or late rest break, did so voluntarily and that all applicable rest breaks were still authorized and provided. (*Ibid.*) Defendants also attempted to distinguish *Augustus, supra*, which involved security guards who were required to monitor a pager, phone, or other device as having an added constraint that is not present in the matter *sub judice*. (Orshansky Decl. ¶ 69.)

Unlike meal periods, rest breaks need not be recorded and thus establishing Defendants' exertion of pressure, control, and resulting violations is likely to be more difficult. (Orshansky Decl. ¶ 70.) Thus, Class Counsel applied a 40% violation rate based on the narratives of Plaintiffs and other Class Members for a maximum exposure of **\$52,289.11**. (*Ibid.*) For settlement purposes, and to account for the difficulties of certifying and proving unrecorded rest break violations, a downward departure from that maximum exposure was and is warranted. (*Id.* at ¶ 71.)

Unreimbursed Expenses

Plaintiffs asserted that Defendants violated Labor Code sections 2800 and 2802, subdivision (a), by failing to reimburse Plaintiffs and Class Members for all necessary business expenses incurred. (Orshansky Decl. ¶ 72.) Specifically, Plaintiffs and Class Members were required to use

1 their personal cell phones to communicate with supervisors and coworkers for reasons related to
2 work, yet Defendants failed to reimburse for these necessary business expenses. (*Ibid.*)

3 Defendants contended that they have a policy and practice of reimbursing employees for
4 necessary business-related expenses. (Orshansky Decl. ¶ 73.) Defendants also contended that, with
5 respect to the alleged expenses for which Plaintiffs and other Class Members never requested
6 reimbursement from Defendants, Defendants did not know and had no reason to know that the
7 alleged business-related expenses were incurred. (*Ibid.*) Moreover, to the extent it occurred,
8 Defendants asserted that this claim is not suitable for class treatment as it would require
9 individualized determinations as to whether each employee used a personal cell phone for work-
10 related purposes and, if so, how much of that use was a reasonable percentage of his or her individual
11 monthly phone bill. (*Ibid.*)

12 Defendants also argued that the California Labor Code only requires reimbursement of
13 “necessary” expenses—as opposed to any expense that is incurred in the course of performing
14 work—and argued that distinguishing a necessary expense from an unnecessary one would require
15 individualized inquiry. (Orshansky Decl. ¶ 74; see Lab. Code, § 2802; *Gattuso v. Harte-Hanks*
16 *Shoppers, Inc.* (2007) 42 Cal.4th 554.) Furthermore, whether an expense was necessary would
17 depend in part on the reasonableness of the employee’s choice and would thus have to be established
18 by way of extensive individual factual inquiry and/or statistical evidence. (*Cochran v. Schwan’s*
19 *Home Services, Inc.* (2014) 228 Cal.App.4th 1137.)

20 For the foregoing reasons, and taking into account the wide variety of telephone plans,
21 providers and costs which creates evidentiary complexities on an individual basis, let alone class-
22 wide, Plaintiffs assigned de minimis value to this claim. (Orshansky Decl. ¶ 75.)

23 **Wage Statement Violations**

24 Plaintiffs asserted that Defendants failed to provide accurate itemized wage statements under
25 Labor Code section 226, subdivision (a). (Orshansky Decl. ¶ 76.) Failure to comply with the statute
26 entitles employees to recover the greater of all actual damages or fifty dollars (\$50) for the initial
27 pay period in which a violation occurs and one hundred dollars (\$100) for each violation in a
28 subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000). (See

1 Lab. Code, § 226, subd. (e).) This claim is derivative of the foregoing claims because if Defendants
2 did not pay all overtime for all hours worked, premiums for non-compliant meal and rest breaks,
3 reimbursement of business expenses, and so forth, then the wage statements were inevitably
4 inaccurate. (Orshansky Decl. ¶ 76.)

5 Defendants contended, however, that Labor Code section 226, subdivision (e), penalties are
6 not automatic. (Orshansky Decl. ¶ 77.) Rather, the employee must show that Defendants’
7 noncompliance was “knowing and intentional.” (*Ibid.*) Defendants suggested that any non-
8 compliance was not knowing and intentional. (*Ibid.*) Moreover, Defendants argued that meal and
9 rest period violations cannot support derivative wage statement penalties. (*Ibid.*)

10 Because the damages for this cause of action are penalties, the statute of limitations is only
11 one year prior to the filing of the original complaint. . (See Code Civ. Proc., § 340.) Based on the
12 \$50 initial violation, plus the \$100 per pay period subsequent violation rates, Plaintiffs estimate the
13 total wage statement exposure is \$80,750.00, without deductions for certification and liability.
14 (Orshansky Decl. ¶ 78.) However, for settlement purposes, and in consideration of the risks of a loss
15 on the merits of the underlying derivative claim(s) and/or good faith defense,⁸ a downward departure
16 from that maximum exposure was and is warranted. (Orshansky Decl. ¶ 78.)

17 **Derivative Waiting Time and UCL Claims**

18 Plaintiffs asserted that Defendants failed to timely pay all wages due employees at separation
19 (see Lab. Code, §§ 201-204), and Plaintiff Titkos asserted a cause of action against Defendants for
20 engaging in unfair, unlawful, and fraudulent business practices (see Bus. & Prof. Code, § 17200 et
21 seq.). (Orshansky Decl. ¶ 79.) As with other claims, Defendants vigorously disagreed that they
22 engaged in any conduct giving rise to liability or entitlement to recovery of penalties or equitable
23 relief. (*Ibid.*)

24
25 ⁸ (See, e.g., *Naranjo v. Spectrum Security Services, Inc.* (2022) 15 Cal.5th 93.) In 2023, the Court
26 of Appeals, re-visiting *Naranjo* on remand, substantiated such good faith arguments because
27 penalties for missed meal rest breaks were not clearly established law until the May 2022 California
28 Supreme Court decision. (See *Naranjo v. Spectrum Security Services, Inc.* (2023) 88 Cal.App.5th
937.) On May 6, 2024, the California Supreme Court, on review, clarified that an employer is not
liable for statutory penalties for inaccurate wage statements when it had a good faith and reasonable
belief that the issued statements were accurate. (*Naranjo v. Spectrum Security Services, Inc.* (2024)
15 Cal.5th 1056.)

1 Defendants argued that waiting time penalties are not appropriate because they attempted to
2 pay employees all final wages owed in good faith upon their separation, thereby precluding a finding
3 of willfulness necessary to obtain waiting time penalties. (Orshansky Decl. ¶ 80.) Moreover, as with
4 wage statements, Defendants maintained that no waiting time penalties were recoverable from
5 alleged meal or rest period violations and/or the fluctuating legal landscape arguably engendered a
6 good-faith dispute defense precluding penalties. (*Id.* at ¶ 81.)

7 Based on the count of 130 former employees at the time of mediation, Class Counsel
8 appraised the maximum value of the waiting time claim as \$549,744.00. (Orshansky Decl. ¶ 82.)
9 However, to account for the risks of a loss on the merits of the underlying derivative claim(s) and/or
10 good faith defense, a downward departure from that maximum exposure was and is warranted.
11 (*Ibid.*)

12 **PAGA Penalties**

13 Plaintiff Polanco asserted a cause of action for PAGA penalties on behalf of himself and
14 Aggrieved Employees based on the foregoing alleged violations by Defendants. (Orshansky Decl.
15 ¶ 83.) The success of Polanco's PAGA claim is wholly dependent upon the success of his underlying
16 claims occurring within the one-year statute of limitations applicable to the PAGA. (Orshansky
17 Decl. ¶ 83.) Defendants maintained and continue to maintain that they had legally compliant
18 employment policies and practices throughout the statutory period. (*Id.* at ¶ 84.) Defendants denied
19 and continue to deny that they ever violated any provision of the California Labor Code, and argued
20 that even assuming such violations occurred, Defendants will not be treated as having engaged in
21 subsequent violations giving rise to heightened penalties.. (*Ibid.*) In other words, Defendants argued
22 that heightened civil penalties for subsequent violations would not be assessed unless it could be
23 shown that Defendants had notice that they was violating the law— *e.g.*, they had been cited by a
24 labor agency or adjudged by a court to have done so. (*Ibid.*; see, *e.g.*, *Amaral v. Cintas Corp.* (2008)
25 163 Cal.4th 1157, 1209.) Thus, Defendants contended that, at best, even if a violation giving rise to
26 a penalty was shown for each pay period, only the lower civil penalty associated with initial
27 violations would apply. (Orshansky Decl. ¶ 84.)

28 ///

Moreover, Defendants asserted that under existing law, before a PAGA claim could be tried, the court of law would have to be satisfied that the adjudication of the PAGA claim based on a theory of uniform wage and hour practices relating to a large group of aggrieved employees is sufficiently “manageable,” so as not to interfere with Defendants’ right to due process. (Orshansky Decl. ¶ 85.) Defendants reiterated how hourly employees’ job duties and work hours varied. (*Id.* at ¶ 86.) Defendants contended that there was variation as to the circumstances that could allegedly cause employees to work off-the-clock or to be deprived of the opportunity to take legally compliant, duty-free meal and/or rest periods. (*Ibid.*) Defendants further opined that these issues presented challenges not only to liability, but also to Polanco’s ability to show that a PAGA claim could be efficiently and manageably adjudicated without abridging Defendants’ due process rights. (*Ibid.*)

Finally, Defendants maintained that the Court has discretion to reduce any award of PAGA penalties where it views them as duplicative. (Orshansky Decl. ¶ 87; see Lab. Code, § 2699, subd. (e)(2) [the Court may “award a lesser amount than the maximum civil penalty amount [authorized by PAGA] if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.”].)

Although, strictly speaking, class certification requirements are not required to be satisfied in order to adjudicate a PAGA claim, the state of the law with respect to the adjudication and valuation of a PAGA claim is uncertain. (Orshansky Decl. ¶ 88.) Thus, Class Counsel applied discounts for the risks in establishing manageability, the risks regarding success on the merits and establishing liability, and the risks with proving the extent of penalties that are warranted and possible discretionary reduction of penalties by the Court. (*Ibid.*) As a result, Plaintiff Polanco used the initial \$100 penalty violation rate (as opposed to the \$200 subsequent per violation rate) per pay period to calculate an estimated **\$204,100.00** in potential PAGA penalty exposure, of which, by statute, only 25% (\$51,025) would be recoverable by the Aggrieved Employees. (*Ibid.*)

Summary

Class Counsel calculated that the realistic recovery for each of the above claims, in the aggregate, is **\$1,058,129.55**. (Orshansky Decl. ¶ 89.) Hence, the gross settlement amount of \$396,000.00 represents approximately 37% of Plaintiffs’ potential realistic recovery, while avoiding

1 the further expense and serious risk of proceeding toward class certification and trial. (*Ibid.*) “The
2 fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in
3 and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved.”
4 (*Linney v. Cellular Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242 [internal quotations
5 omitted]; see, e.g., *Altamirano v. Shaw Industries, Inc.* (N.D.Cal. 2015) 2015 WL 4512372, at *9
6 [preliminarily approving wage and hour class action settlement stating, “[a]lthough 15% represents
7 a modest fraction of the hypothetical maximum recovery estimated by Plaintiff, that figure is
8 sufficient for the Court to grant preliminary approval given the merits of Plaintiff’s claims.”].)
9 Taking into account the risk of non-certification, failure to prevail on the merits, and the Court’s
10 power to reduce the civil penalties, the proposed settlement falls within the realm of being fair,
11 reasonable, and adequate. (Orshansky Decl. ¶ 89.)

12 **VII. PROPOSED SETTLEMENT ADMINISTRATOR SHOULD BE APPOINTED**

13 After obtaining competing bids from potential settlement administrators, the Parties agreed
14 to retain CPT Group, Inc. (“CPT” or “Administrator”), to handle the notice and settlement
15 administration process. (Orshansky Decl. ¶ 102.) The Parties respectfully request that the Court
16 appoint CPT to handle these procedures and serve as the Administrator. CPT’s qualifications and
17 experience are experience are attested to in the Declaration of Julie Green (“Green Decl.”), filed
18 concurrently herewith. The Administrator has procedures in place to protect the security of class
19 data and adequate insurance in the event of a data breach or defalcation of funds. (See Green Decl.
20 ¶¶ 9-10.) Further, the bid from CPT is fair, because it was the lowest bid received, and will result in
21 more money available for Participating Class Members, and the parties and their respective counsel
22 have no interest or relationship, financial or otherwise, with the Administrator, other than a
23 professional relationship arising out of prior experiences administering settlements. (Orshansky
24 Decl. ¶¶ 104-105.)

25 **VIII. PROPOSED NOTICE PROVIDES ADEQUATE NOTICE TO THE CLASS**

26 This Court should order distribution of the proposed Class Notice, a copy of which is
27 attached as internal Exhibit A to the Settlement Agreement (Exhibit 1 to the Orshansky Decl.), to
28 the Class by first class mail, postage prepaid, using the last known mailing address information

provided by Defendants. (Orshansky Decl. ¶ 106.) Class Members' addresses will be ascertainable through Defendants' personnel and payroll records ("Class Data"), which Defendants will provide to CPT in the form of an excel spreadsheet not later than ten (10) calendar days following preliminary approval of the settlement. (Settlement Agreement ¶ 4.2; Orshansky Decl. ¶ 107.) Pursuant to the terms of the Settlement Agreement, the Class Notice will be mailed in English and Spanish no less than 10 days after receipt of the Class Data. (Settlement Agreement ¶ 7.4.2; Orshansky Decl. ¶ 107.) To the extent that notices are returned, CPT will run those addresses through the National Change of Address database and/or conduct skip traces to obtain current address information. (Settlement Agreement ¶ 7.4.2; Orshansky Decl. ¶ 107.)

The content of the proposed notice satisfies California Rules of Court, Rule 3.766(d), because it advises Class Members and Aggrieved Employees of the nature of the claims, the basic contentions and denials of the Parties, the key terms of the settlement, the 45-day deadline to submit a dispute, opt-out, or object to the class settlement from the date the Class Notices are mailed (plus an additional 14 days for Class Members whose notices are remailed) and the procedure by which to do so, and explains the recovery formula and credited number of workweeks and pay periods for each Class Member and Aggrieved Employee. (Orshansky Decl. ¶ 108.) The proposed notice will also notify Class Members and Aggrieved Employees of the final approval hearing date, provide the contact information for Class Counsel, and advise Participating Class Members that they may enter an appearance through counsel if they wish. (Orshansky Decl. ¶ 109.) This manner of giving notice satisfies California Rules of Court, Rule 3.766(e) as the most reliable and cost-effective method of reaching Class Members and Aggrieved Employees. Thus, the proposed method of notice is reasonably calculated to reach Class Members and Aggrieved Employees by the best means practicable and should be approved.

IX. THE COURT SHOULD SET A FINAL APPROVAL HEARING

Finally, this Court should set a hearing for final approval of the settlement on a date appropriately scheduled to follow the deadline by which Class Members must file objections to the settlement or opt out. (See California Rules of Court, Rule 3.769.)

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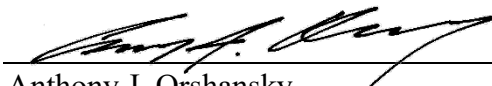
1 **X. CONCLUSION**

2 Based upon the foregoing, and because the proposed settlement is fair, reasonable, and
3 advantageous to the Class Members, Plaintiffs respectfully requests that the Court enter an Order:

- 4 1. Preliminarily approving the Settlement Agreement as fair, reasonable, and adequate;
5 2. Preliminarily approving the form and content of the Class Notice, attached as Exhibit
6 A to the Settlement Agreement;
7 3. Provisionally certifying the Settlement Agreement's proposed Class comprised of the
8 Class Members identified during the RBI and RTI Class Periods under Civil Code section 382 for
9 settlement purposes only;
10 4. Approving and appointing Plaintiffs Brandi Titkos and Manuel Polanco as the Class
11 Representatives;
12 5. Approving and appointing the law firms of CounselOne, P.C. and Lawyers *for*
13 Justice, PC as Class Counsel;
14 6. Approving and appointing CPT Group, Inc. as the Settlement Administrator;
15 7. Setting a date for the Final Approval Hearing; and
16 8. For Any further relief the Court deems just and proper.

17
18 Dated: August 16, 2024

Respectfully submitted,
COUNSELONE, PC

19
20 By: 

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Justin Kachadoorian
Attorneys for Plaintiff Manuel Polanco