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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

JOEL ZELAYA, an Individual; DEMETRIO MONTES, an Individual; Plaintiffs, vs. COMMERCIAL LUMBER & PALLET CO., INC., a California Corporation; RAYMOND GUTIERREZ, an Individual; and DOES 1 through 100, inclusive, Defendants.	**CASE NO.: 22PSCV00340** *Related Case: 22STCV03643* *Reassigned for all purposes to Hon. Stuart M. Rice, Dept. 1* **PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** DATE: August 18, 2023 TIME: 10.30 a.m. DEPT: 1 (Spring Street) Complaint filed: April 6, 2022 Trial Date: *Not yet set*

TO THE HONORABLE COURT AND TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on August 18, 2023, at 10:30 p.m., or as soon thereafter as the matter may be heard before the Honorable Stuart M. Rice in Department 1 of the Los Angeles County Superior Court – Spring Street Courthouse, located at 312 North Spring Street, Los Angeles California 90012, Plaintiff Joel Zelaya, Plaintiff Demetrio Montes and Plaintiff Pedro Negrete (hereinafter "Plaintiffs") will, and hereby do, move for an order:

- Granting preliminary approval of the proposed class action settlement described herein and as will be set forth in the parties' Joint Stipulation of Class Action Settlement (hereinafter "Settlement," "Agreement," or "Settlement Agreement"), attached as "Exhibit B' to the Declaration of Heather K. Cox, including, but not limited to, the means of allocation and distribution of funds, attorneys' fees and litigation costs and expenses to Class Counsel, the enhancement award, the Private Attorney General Action payment; and settlement administration fees;
- Certifying the proposed Class for settlement purposes;
- Appointing Plaintiff Joel Zelaya, Plaintiff Demetrio Montes and Plaintiff Pedro Negrete as the Class Representatives;
- Appointing the Barkhordarian Law Firm, PLC and the Wilshire Law Group as Class Counsel;
- Approving the proposed Notice of Settlement of Class Action Lawsuit ("Notice"), attached as "Exhibit A" to the Settlement Agreement attached as "Exhibit B" to the Declaration of Heather K. Cox;
- Directing the mailing of the Notice to the Class Members;
- Approving the proposed deadlines for the notice and settlement administration process;
- Approving CPT Group, Inc. as the Settlement Administrator; and
- Scheduling a hearing to consider whether to grant final approval of the Settlement, at which time the Court will also consider whether to grant final approval of the requests and

allocations for an award of attorneys' fees and reimbursement of litigation costs and expenses to Class Counsel, the enhancement award to the Class Representative, and the settlement administration fees.

This motion is based upon the following memorandum of points and authorities, the Settlement Agreement, the Declaration of Proposed Class Counsel in support thereof, Declaration of Plaintiffs in support thereof, as well as the pleadings and other records on file with the Court in this matter, and such evidence and oral argument as may be presented at the hearing on this motion.

DATED: August 11, 2023

BARKHORDARIAN LAW FIRM, PLC

By: /s/Heather K Cox

Gregory P. Wong
Heather K. Cox
Attorneys for Plaintiffs Joel Zelaya and Demetrio Montes, on behalf of themselves and all others similarly situated

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Joel Zelaya, Demetrio Montes and Pedro Negrete (collectively hereinafter "Plaintiffs") seek preliminary approval of the Stipulation of Class Action Settlement (hereinafter "Settlement," "Agreement," or "Settlement Stipulation") entered into by and between Plaintiffs, individually and on behalf of all others similarly situated, on the one hand, and Defendant Commercial Lumber & Pallet Co. Inc. and Defendant Raymond Gutierrez (collectively hereinafter "Defendants"), on the other hand (collectively, Plaintiffs and Defendants are referred to as "Parties").

Defendant Commercial Lumber & Pallet Co. Inc. is a California Corporation with its primary place of business located in the City of Industry, California. Defendant is a pallet manufacturer that offers pallets, recycled pallets, crates, industrial lumber, and pallet recycling. Individual Defendant Raymond Gutierrez is an owner and manager of Defendant Commercial Lumber & Pallet Co. Inc. *See* Declaration of Heather K Cox (hereinafter "Cox Decl.") at ¶3.

Plaintiff Zelaya began working for Defendants on or about May 16, 2012, until approximately December 27, 2022. *See* Cox Decl. at ¶4. Plaintiff Montes began working for Defendants in or about March 1990 until approximately December 27, 2022. *See* Cox Decl. at ¶4. Plaintiffs were classified as non-exempt employees. *See* Cox Decl. at ¶4. At all times during Plaintiffs' employment, Defendants maintained certain standard policies and practices. *See* Cox Decl. at ¶4.

Plaintiffs alleges in this action that they and the Class Members were not properly provided their lawful rest and meal breaks, were not paid all their wages, and not reimbursed for all business expenses. *See* Cox Decl. at ¶8.

Defendants deny all substantive allegations and denies that class certification is warranted in this action.

In order to resolve this dispute and subject to court approval, Plaintiffs and Defendants have agreed to settle this lawsuit for a Gross Settlement Amount of $756,465.00. *See* Cox Decl. Exhibit B at ¶13, (hereinafter "Settlement" "Agreement" or "Settlement Stipulation"). The Gross

Settlement Amount includes the following: (1) Settlement Administration Costs of no more than Fifteen-Thousand Dollars ($15,000); (2) attorneys' fees, of $264,762.75 subject to Court approval and not to exceed thirty-five percent of the Maximum Settlement Amount; (3) actual litigation costs, not to exceed $40,000.00, subject to Court approval; (4) Service Payment to the Class Representatives not to exceed a total of Thirty Thousand Dollars ($30,000.00) or $10,000.00 each; (5) Private Attorney General Action (hereinafter "PAGA") payment of Fifty Thousand Dollars ($50,000.00) from which $37,500.00 will be paid to the California Labor Workforce Development Agency and $12,500.00 to Settlement Class members by having that 25% amount flow through to the Net Settlement; and (6) a remaining Net Settlement Fund of approximately Three Hundred Fifty-six Thousand, Seven Hundred and Two Dollars and Twenty-Five cents ($356,702.25).

Plaintiffs also seeks to provisionally certify the following class, set forth in the Settlement at ¶8, for settlement purposes only, which Defendants do not oppose:

> **[A]ll current or former hourly non-exempt employees of Defendants within California at any time during the class period.**

"Class Period" means the period from January 17, 2018, through the date that a preliminary approval order is entered. *See* Settlement at ¶9. Class Members who do not timely opt out of the Settlement (hereinafter "Participating Class Members") will receive a proportionate share of the Net Settlement Fund equal to the Participating Class Member's workweeks. *See* Settlement at ¶38. The Net Settlement Amount refers to the net amount that is available for payment to the settlement class members after deducting from the Gross Settlement Amount the Court-approved amounts for Class Counsels' attorneys' fees and litigation costs and administrative expenses, settlement administration fees, PAGA Settlement, and the enhancement award. *See* Settlement at ¶15. This proposed Settlement resolves the Released Claims of Plaintiffs and the Settlement Class Members. *See* Settlement at ¶¶26-27 and 61-62.

Plaintiffs submit that the proposed settlement, arrived at after substantial investigation and analysis of the claims and through arms' length bargaining, provides a substantial benefit to a class. As set forth below, Plaintiffs submit that the settlement terms are fair and warrant preliminary approval.

II. FACTS AND PROCEDURE

Plaintiff Joel Zelaya and Plaintiff Demetrio Montes (collectively hereinafter the "Zelaya Plaintiffs") initially filed this matter on April 6, 2022. *See* Cox Decl. at ¶6. Thereafter the Zelaya Plaintiffs submitted their Second Amended Complaint, which was filed on February 8, 2023 and alleges claims for: (1) Failure to Provide Required Rest Periods; (2) Failure to Provide Required Meal Periods; (3) Failure to Pay Overtime Wages; (4) Failure to Pay Minimum Wages; (5) Failure to Pay Timely Wages; (6) Failure to Pay All Wages Due to Discharged and Quitting Employees; (7) Failure to Maintain Required Records; (8) Failure to Furnish Accurate Itemized Wage Statements; (9) Unlawful Discount and Deduction of Entitled Wages; (10) Unlawful Assignment of Wages; (11) Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties; (12) Unfair and Unlawful Business Practices; and (13) Civil Penalties Pursuant to California Private Attorneys General Act (Labor Code §2698, et seq.) (the "Operative Complaint"). *See* Cox Decl. at ¶8.

In the course of litigation, Class Counsel has conducted an in-depth investigation of the claims, including the analysis of timekeeping data, payroll data, labor agreements, and various other documents related to the Plaintiffs' claims. *See* Cox Decl. at ¶¶12-14. This analysis included review and quantitative analysis of timekeeping and payroll data. *See* Cox Decl. at ¶¶12-14. After Class Counsel's extensive review and analysis of the timekeeping and payroll data and after completion of a full risk analysis, the Parties participated in a full-day mediation on October 11, 2022 utilizing the services of the Michael Young, a respected mediator with extensive experience and knowledge in the area of wage and hour class action mediation. *See* Cox Decl. at ¶7. At mediation, the Parties engaged in arms' length negotiations to try to come to a resolution of this dispute. *See* Cox Decl. at ¶7. Through good-faith and arms-length negotiations at mediation, each Party, represented by their respective counsel, recognized the substantial risk of an adverse result of the case and agreed to settle the matter and all other matters covered by this Settlement. *See* Cox Decl. at ¶7. Thereafter, this matter was related to the case *Pedro Negrete v Commercial Lumber & Pallet Co. Inc*., Los Angeles Superior Court case number 22STCV03643. *See* Cox Decl. at ¶10.

Subsequently, counsel for Plaintiff Pedro Negrete, counsel for the Zelaya Plaintiff, and counsel for Defendants (herein after collectively the "Parties") drafted and agreed to the terms of settlement. *See* Cox Decl. at ¶11 and Exhibit B attached thereto.

III. SUMMARY OF SETTLEMENT TERMS

Under the terms of the proposed Settlement, Defendants will pay a Gross Settlement Amount of $756,465.00 with an increase to the Gross Settlement Amount should the total number of workweeks exceed 10% of 50,431. *See* Settlement Stipulation at ¶13 & ¶54. The Net Settlement Fund will be calculated by deducting the following amounts from the Gross Settlement Fund: (1) reasonable attorneys' fees and costs as awarded by the Court for Class Counsel (attorneys' fees not to exceed thirty-five percent of the Gross Settlement Amount ($264,762.75); (2) reimbursement of litigation costs and expenses to Class Counsel in an amount of up to $40,000.00; (3) Class Representative Service Enhancement Payment to Plaintiffs in an amount of up to $10,000.00 each ($30,000.00 total); and (4) settlement administration fees in an amount of up to $15,000.00. *See* Settlement Stipulation at ¶13 & ¶15. The Parties have agreed to retain CPT Group (hereinafter, "CPT" or "Settlement Administrator") to handle the notice and settlement administration process.

The Parties have agreed that the Settlement Administrator will calculate the gross estimated payment that each Class Member is eligible to receive as his or her portion of the Net Settlement Fund (hereinafter "Individual Settlement Payment"). See Settlement Stipulation at ¶¶38-40. The Individual Settlement Payment paid to Class Members shall be allocated as follows: 100% of each PAGA Group Members' pro-rata share of the $12,500 allocated for PAGA penalties shall be allocated as penalties; 15% of each Individual Settlement Payment will be considered wages; and 85% of each Individual Settlement Payment will be considered interest and penalties *See* Settlement Stipulation at ¶56. The portion allocated to wages shall be reported on an IRS Form W-2 and the portions allocated to interest and penalties shall be reported on an IRS form 1099 by the Claims Administrator. *Id*.

All Individual Settlement Payment checks issued to the settlement class members will remain valid and negotiable for one hundred and eighty (180) days from the date of issuance. *See*

Settlement Stipulation at ¶53. If the check remains uncashed after 180 days, the amount of such Individual Settlement Payment shall be transferred to the California State Controller's Office Unclaimed Property Fund, under the unclaimed property laws in the name of the Class Member. *Id*.

Any Class Member who wishes to "opt-out" of and be excluded from the Settlement may do so by submitting a timely and valid written Request for Exclusion to the Settlement Administrator however this does not exclude the class member from the PAGA payment *See* Settlement Stipulation at ¶47. To be timely, any such request for exclusion must bear a post-mark date that is no later than the Response Deadline (as defined in Settlement Stipulation at ¶31). *Id*.

A Class Member may object to the Settlement by submitting a Request for Exclusion and may mail a valid Notice of Objection to the Claims Administrator by the Response Deadline. *See* Settlement Stipulation at ¶16 & ¶50. The Notice of Objection must be signed by the Class Member and contain (i) the objector's full name, signature, address, and telephone number; and (ii) a written statement of all grounds for the objection accompanied by any legal support for such objection. *Id*.

IV. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS

The settlement of a class action requires court approval. *Dunk v. Ford Motor Co.* 48 Cal.App.4th 1794, 1800 (1996); Code Civ. Proc. § 1781(f). California courts look to federal authority for guidance with class action settlements. *Dunk*, *supra*, 48 Cal.App.4th at p. 1801, n.7 (citing *Vasquez v. Superior Court* 4 Cal.3d 800, 821 (1971). The decision to approve or reject a proposed settlement is within the court's discretion. *Wershba v. Apple Computer, Inc.* 91 Cal.App.4th 224, 234-35 (2001) ("In general, questions whether a settlement was fair and reasonable, whether certification of the class was proper, and whether the attorney fee award was proper are matters addressed to the trial court's broad discretion."). Accordingly, a court's decision to approve a class action settlement may be reversed only upon a strong showing of "clear abuse of discretion." *Hanlon v. Chrysler Corp.* 150 F.3d 1011, 1026 (9th Cir. 1998); *Class Plaintiffs v. City of Seattle*) 955 F.2d 1268, 1276 (9th Cir. 1982).

Courts review class action settlements in a two-step process: (1) an earlier conditional review by the court; and (2) a later detailed review after the period during which notice is distributed to class members for their comment or objections. Conte & Newberg, *Newberg on Class Actions* § 11.24 (4th ed. 2002). Both federal and state courts commonly utilize this procedure, which assures class members of the protection of procedural due process safeguards and enables the court to fulfill its role as the guardian of the interest of the class.

Accordingly, preliminary approval does not require a court to make a final determination that the settlement is fair, reasonable, and adequate. Rather, that decision is made only at the final approval stage, after notice of the settlement has been given to the class members and they have had an opportunity to voice their views of the settlement or to exclude themselves from the settlement. *See* Cal. R. Ct. 3.769(g). In considering a potential class settlement, the court need not reach any ultimate conclusions on the issues of fact and law that underlie the merits of the dispute (see *City of Detroit v. Grinnell Corporation* 495 F.2d 448, 456 (2d Cir. 1974)), and need not engage in a trial on the merits. See *Officers for Justice v. Civil Service Commission of City and County of San Francisco* 688 F.2d 615, 625 (9th Cir. 1982). Neither formal notice nor a hearing is required for the trial court to grant provisional class certification and preliminary approval; the court may grant such relief upon an informal application by the settling parties and may conduct any necessary hearing in court or in chambers, at the court's discretion. *Newberg,* § 11.25.

V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT

To grant preliminary approval of a class action settlement, the trial court must determine whether the settlement is fundamentally fair, adequate, and reasonable. *Dunk*, *supra*, 48 Cal.App.4th at p. 1800. The trial court has broad powers to determine whether a proposed settlement is fair under the circumstances of the case. *Id.* at p. 1801. To make this fairness determination, courts must consider several relevant factors, including "the strength of the plaintiff's case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed by plaintiff, the experience and view of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement." *Dunk*, *supra*, 48 Cal.App.4th at p. 1801. "The list of factors is not exclusive and the court is free to engage in a balancing and weighing of the factors depending on the circumstances of each case." *Wershba*, *supra*, 91 Cal.App.4th at p. 245. Furthermore, courts give "proper deference to the private consensual decision of the parties." *Hanlon*, *supra*, 150 F.3d at p. 1027 (citation omitted).

The proponent of the settlement has the burden to show that it is fair and reasonable. *Wershba*, *supra*, 91 Cal.App.4th at p. 245. "A presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." *Id.*; *Dunk*, *supra*, 48 Cal.App.4th at p. 1802; *7-Eleven Owners for Fair Franchising v. Southland Corp.* 85 Cal.App.4th 1135, 1151 (2000).

A. <u>The Proposed Settlement Resulted from Arm's-Length Negotiations Based Upon Extensive Investigation.</u>

Throughout the litigation of this case and in preparation for mediation, Class Counsel conducted a thorough investigation of both the factual and legal issues affecting the strengths and weaknesses of Plaintiffs' claims, the potential class recovery. Class Counsel reviewed and analyzed the relevant employer policies and labor agreements. *See* Cox Decl. at ¶12. Defendants provided Class Counsel with time and payroll data in advance of mediation. *See* Cox Decl. at ¶13. This allowed Class Counsel to analyze the viability of the break claims, unpaid wages due to overtime and unpaid wages due to minimum wage allegations on a granular level that provided insight not just into the overall potential violation rate, but also class certification issues such as the distribution and character of the potential violations. *See* Cox Decl. at ¶¶14-35. Class Counsel's extensive factual investigation gave invaluable insight into the nature and extent of the class claims and the reasonable range of settlement. Due to Defendants' broad production of payroll and timekeeping data in advance of mediation, Class Counsel was able to undertake a thorough investigation and analysis of the core claims in this litigation.

Arriving at a settlement that was acceptable to both Parties was not easy. Defendants and their counsel felt strongly about their ability to prevail on the merits and at certification, and Plaintiffs and Class Counsel believed that they would be able to obtain class certification and prevail at trial. In particular, among other defenses, Defendants' position is that Plaintiffs would be unable to obtain class certification not only because the putative class was limited in size, but also because the core legal issue underlying Plaintiffs' combined break claims and disputed points of law. After conducting investigations, as well as informal discovery efforts and settlement negotiations, the Parties have agreed that this case is well-suited for settlement given the legal issues relating to Plaintiffs' principal claims, as well as the costs and risks to both sides that would attend further litigation.

The proposed Settlement takes into account the strengths and weaknesses of each side's position and the uncertainty of how the case might have concluded at certification and/or trial. The parties reached the proposed Settlement based on this large volume of facts, evidence, and investigation. In addition, Class Counsel has extensive experience in employment class actions, including significant experience in California wage-and-hour litigation. *See* Cox Decl. at ¶¶ 37-45.

B. <u>The Proposed Settlement Is Fair, Reasonable, and Adequate.</u>

The Gross Settlement Fund of $756,465.00 represents a fair, adequate, and reasonable resolution of this case. The proposed Settlement was calculated using the information and data uncovered during the litigation, informal and confirmatory discovery, case investigation, as well as the exchange of information in the context of settlement negotiations. The proposed Settlement considers the potential risks and rewards inherent in any case and, in particular, with this case. Moreover, considering all of the facts and circumstances of this case, the proposed Settlement represents a substantial global recovery for the Class.

Assuming that all of the fees, costs, and payments are approved and awarded in the full amounts provided for by the proposed Settlement, the Net Settlement Fund is currently estimated to be approximately $356,702.25 with an additional $50,000.00 being allocated to the PAGA settlement. Settlement Class Members who do not opt out will receive a Settlement Award that is calculated on a *pro rata* basis, based upon their respective number of weeks worked during the Settlement Period. There is no reason to doubt the fairness of the proposed plan of allocation of the settlement funds for purposes of preliminary approval. Even at the final approval stage, "[a]n allocation formula need only have a reasonable, rational basis [to warrant approval], particularly if recommended by experienced and competent class counsel." *In re American Bank Note Holographics, Inc., Securities Litigation* 127 F.Supp.2d 418, 429-430 (S.D.N.Y. 2001).

In light of the above considerations, Class Counsel believe that the proposed Settlement as a whole is fair, reasonable, and adequate, and is in the best interest of the Class. Although the recommendations of Class Counsel are not conclusive, the Court can properly take the recommendations into account, particularly if Class Counsel appears to be competent, has experience with this type of litigation, and significant discovery and investigation have been completed. *Newberg,* §11.47.

C. <u>The Settlement Is of Significant Value.</u>

Pursuant to *Kullar v. Foot Locker Retail, Inc.* 168 Cal.App.4th 116 (2008), Class Counsel conducted significant informal discovery, including extensive review and analysis of a volume of documents and data, including, but not limited to the relevant time and pay records. The class data and information obtained in this case allowed Class Counsel to develop a damages/valuation model and complete evaluation of the claims and Defendants' defenses thereto. As outlined in the Declaration of Heather K. Cox, prior to entering into the proposed Settlement, Class Counsel performed an extensive analysis of each claim pursuant to *Kullar*, based on a volume of documents and data produced by Defendants and obtained through other sources, including Plaintiff. *See* Cox Decl. at ¶ 12-35. The results of the Kullar analysis returned a "Risk-Adjusted" Range of Recovery of $251,445.06 to $1,888,946.80. The total settlement value achieved in this case of $756,465.00 is reasonably within this range. *See* Cox Decl. at ¶¶ 14-35.

VI. CERTIFICATION OF THE PROPOSED CLASS IS APPROPRIATE

For settlement purposes, the requisites for establishing class certification are met, and the Parties have stipulated to certification of the Class for settlement purposes only. California Code of Civil Procedure section 382 "authorizes class actions when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court." Cal. Code Civ. Proc. § 382; *Sav-On Drug Stores, Inc. v. Superior Court* 34 Cal.4th 319, 326 (2004). California courts certify class actions where the plaintiff identifies "both [1] an ascertainable class and [2] a well-defined community of interest among class members." *Id.*

The Class is ascertainable and numerous as to make it impracticable to join all Class Members, and there are common questions of law and fact that predominate over any questions affecting any individual Class Member. Further, Plaintiffs' claims are typical of the claims of the Class Members, and Class Counsel will fairly and adequately protect the interests of the Class. Finally, prosecution of separate actions by individual Class Members would create the risk of inconsistent or varying adjudications, and a class action is superior to other available means for the fair and efficient adjudication of the case. The Class is amenable to class certification for settlement purposes, as discussed below.

A. The Proposed Class Is Ascertainable and Sufficiently Numerous.

"Ascertainability is required in order to give notice to putative class members as to whom the judgment in the action will be res judicata." *Hicks v. Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908, 914. "A class is ascertainable if it identifies a group of unnamed plaintiffs by describing a set of common characteristics sufficient to allow a member of that group to identify himself or herself as having a right to recover based on the description." *Bartold v. Glendale Federal Bank* 81 Cal.App.4th 816, 828 (2000). The proposed class must also be sufficiently numerous. *Linder v. Thrifty Oil Co.* 23 Cal.4th 429, 435 (2000).

This action involves no fewer than 248 Class Members. While established case law provides that there is no prescribed minimum number of aggrieved persons required to meet the numerosity requirement, Plaintiff submits that a proposed class of nearly 300 is sufficiently numerous to merit class treatment. *See Hebberd v. Colgrove*, 28 Cal.App.3d 1017, 1030 (1972) ("there is no set number required as a matter of law for the maintenance of a class action"). All Class Members can and will be identified by Defendants to the Settlement Administrator through a review of Defendants' employment records regarding its non-exempt employees employed in the State of California during the Settlement Class Period. As such, the proposed Class is ascertainable and sufficiently numerous.

B. The Class Members Share a Well-Defined Community of Interest.

The community of interest requirement "embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class." *Sav-On*, supra, 34 Cal.4th at p. 326. "[T]he community of interest requirement for certification does not mandate that class members have uniform or identical claims." *Capitol People First v. Department of Developmental Services* 155 Cal.App.4th 676, 692 (2007) (emphasis in original). Rather, courts focus on the defendant's internal policies and "pattern and practice . . . in order to assess whether that common behavior toward similarly situated plaintiffs renders class certification appropriate." *Id.* (citing *Sav-On*, supra, 34 Cal.4th at p. 333).

The "common issues" requirement "involves analysis of whether the proponent's 'theory of recovery' is likely to prove compatible with class treatment." *Id.* at p. 690 (citing *Sav-On*, *supra*, 34 Cal.4th at p. 327). Furthermore, the commonality inquiry centers on the "reasonableness" of the defendant's labor policies as applied to the potential class. *Ghazaryan v. Diva Limousine, Ltd.*,169 Cal.App.4th 1524, 1534 (2008).

Here, Plaintiffs maintain that common issues of fact and law predominate as to each of the claims alleged by Plaintiffs, for settlement purposes. Plaintiffs seek to represent a class comprised entirely of non-exempt employees who performed duties that were similar to each other or who were subjected to the same unlawful practices. Plaintiffs allege in this Action that Defendants maintained several policies and practices that resulted in uniform and consistent violations of California's wage and hour laws. These violations, which Defendants deny, fall into several broad categories as follows:

Failure to Provide Rest Breaks: Plaintiffs allege that they and other Class Members did not receive all of their rest breaks as required by the Labor Code by requiring only one twenty-minute break instead of two ten-minute breaks.

Failure to Provide Meal Breaks: Plaintiffs allege that they and other Class

Members did not receive all of their meal break as required by the Labor Code as Defendants required them to take less than 30-minutes or to work through the meal period.

Failure to Pay Wages: Throughout the relevant time period, Defendants failed to provide compliant meal and rest periods which resulted in off-the-clock work. As a result, Defendants failed to pay for all wages including the proper overtime rate and minimum wage for time worked off the clock.

Derivative Penalties: In addition to the principal claims advanced by Plaintiff on behalf of the class, the operative Complaint seeks recovery for derivative waiting time penalties, wage statement penalties, PAGA penalties, and penalties for failure to maintain business records and unlawful deduction of wages.

Plaintiffs also assert that Defendants' recordkeeping practices with respect to Plaintiffs and the Class Members were substantially the same during the Class Period. Thus, Plaintiffs maintains that the outcome of this litigation would be determined by Defendants' uniform operations and employment policies, practices, and procedures that applied across its non-exempt employees within the State of California during the Class Period. Accordingly, the Court should certify the Class for settlement purposes only.

VII. ALLOCATION FOR ATTORNEYS' FEES AND COSTS

Class Counsel's application for attorneys' fees in light of the facts and circumstances surrounding this lawsuit is well within the range of reasonableness. The proposed Settlement establishes a Gross Settlement Fund of $756,465.00 and provides for Class Counsel to apply to the Court for an award of attorneys' fees in an amount of up to thirty-five percent of the Gross Settlement Fund ($264,762.75) plus reimbursement of litigation costs and expenses up to forty thousand dollars ($40,000.00). The attorneys' fees requested are commensurate with (1) the risk the Class Counsel took in bringing and litigating this case, (2) the time, effort, and expense dedicated to the case, (3) the skill and determination Class Counsel has shown, (4) the results Class Counsel has achieved throughout the litigation, (5) the value of the Settlement that Class Counsel has achieved for the Settlement Class, and (6) the other cases Class Counsel had to turn down in order to devote their time and efforts to this matter. The proposed Class Notice provides the Class Members with information about the amount allocated toward attorneys' fees and litigation costs and expenses, and that an attorneys' fee award will be sought, as provided for by the Settlement.

Trial courts have "wide latitude" in assessing the value of attorneys' fees and their decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v. Beneficial Cal., Inc.* 82 Cal.App.4th 19, 41 (2000). Indeed, it is long settled that the "experienced trial judge is the best judge of the value of professional services rendered in his court." *Ketchum v. Moses* 24 Cal. 4th 1122, 1132 (2001). California law provides that attorney fee awards should be equivalent to fees paid in the legal marketplace to compensate for the result achieved and risk incurred. *Laffitte v. Robert Half Int'l, Inc.* 1 Cal.5th 480, 503 (2016) (citing *Lealao*, *supra*, 82 Cal.App.4th at p. 48-49). In *Lealao*, the court held that when an action leads to a recovery that can be "monetized" with a reasonable degree of certainty, the trial court should "ensure that the fee awarded is within the range of fees freely negotiated in the legal marketplace in comparable litigation." *Leolao, supra,* 82 Cal.App.4th at p. 50.

The propriety of calculating and awarding attorneys' fees as a percentage of a monetary fund that has, by litigation, been preserved or recovered for the benefit of others, has recently been confirmed by the California Supreme Court. *Laffitte*, *supra*, 1 Cal.5th 480 at pp. 486 & 506. The California Supreme Court has taken the position that "[t]rial courts have discretion to conduct a lodestar cross-check on a percentage fee," "they also retain the discretion to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a requested percentage fee[,]" and "[t]he percentage of fund method survives in California." *Id*. (internal quotation marks omitted).

Historically, courts have awarded fees as high as fifty percent (50%) of the common fund, depending on the circumstances of the case. *Newberg,* § 14.03; *see also In re Ampicillin Antitrust Litig.* 526 F.Supp.494 (D.D.C. 1981) (awarding attorneys' fees in the amount of 45% of the $7.3 million settlement fund); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* 480 F.Supp. 1195 (S.D.N.Y. 1979) (awarding approximately 53% of the settlement fund as attorney fees). California Courts routinely approves class action attorneys' fee awards "averag[ing] around one-third of the recovery." *Chavez v. Netflix, Inc.* 162 Cal.App.4th 43, 66 n.11 (2008) (lower court found 20 to 40 percent range of contingency fee in marketplace was appropriate in class actions); see also *Estrada v. Dr. Pepper/Seven-Up*, Los Angeles County Superior Court Case No. BC262247 (May 2005) (wage and hour); *Moore v. IKEA*, Los Angeles Superior Court Case No. BC263646 (Sept. 2006) (wage and hour).

Class Counsel has litigated this case aggressively since its inception and has conducted significant investigation and analysis of the facts and issues. The ongoing work has been extensive, demanding, and ultimately successful in achieving a substantial settlement resolution. Class Counsel conducted informal discovery[1] and investigation into the facts of the case. Class Counsel engaged in multiple interviews and strategy sessions with Plaintiffs, met and conferred with defense counsel, reviewed, and analyzed all data and documents provided by Defendants and prepared a valuation/damages model for settlement negotiations, among other tasks.

Class Counsel is well-experienced in wage-and-hour class action litigation and used that experience to obtain a great result for the Class. Class Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained. Class Counsel will provide extensive evidence as to the time worked, litigation efforts, and further argument at the time of filing Plaintiffs' motion for final approval of the proposed Settlement and the requests for an award of attorneys' fees and reimbursement of litigation costs and expenses, enhancement awards, and the settlement administration fees to be heard at the Final Approval Hearing. The fees and costs provided for by the Settlement are reasonable, considering the amounts at issue, the work performed, the risks incurred, and the results achieved, and as such, should be awarded.

VIII. THE PROPOSED NOTICE IS ADEQUATE

California statutory and case law vests the Court with broad discretion in fashioning appropriate class notice. *See* Code Civ. Proc. § 1781; *Cartt v. Superior Court* 50 Cal.App.3d 960, 973-74 (1975). A class notice is adequate if it "present[s] a fair recital of the subject matter and

[1] Although discovery in this matter was on an informal basis, the breadth of information obtained through informal efforts actually exceeded the amount normally produced in pre-certification discovery as Defendants turned over spreadsheets of timekeeping and payroll data for a representative sample set of class members.

proposed terms" of the Settlement. *Mendoza v. United States* 623 F.2d 1338, 1351 (9th Cir. 1980) (quoting *Marshall v. Holiday Magic* (9th Cir. 1977) 550 F.2d 1173, 1177).

The proposed Notice provides information on, among other things, the meaning and nature of the proposed Class; the terms and provisions of the proposed Settlement; the relief that the proposed Settlement will provide to the Settlement Class Members; the allocations for an award of attorneys' fees, reimbursement of litigation costs and expenses, service enhancement award, the PAGA payment, and settlement administration fees; and the date, time, and place of the Final Approval Hearing. The proposed Notice also set forth the procedures and deadlines for submitting a Request for Exclusion to the Settlement Administrator and filing a written objection with the Court and serving it upon counsel for the parties. The proposed Notice will be mailed to the Class Members at the addresses that Defendants will provide to the Settlement Administrator. *See* Exhibit A to the Settlement Stipulation.

The notice procedure provided by the proposed Settlement fulfills the requirement of neutrality in class notices. "Sufficient information about the case should be provided to enable class members to make an informed decision about their participation." *Manual for Complex Litigation* (4th ed. 2004) § 21.311. Here, the proposed Notice recognizes that the Court has not yet granted final approval and states the parties' respective positions with respect to the Settlement. The proposed Notice also apprises the Class Members of, *inter alia*, how to object to the proposed Settlement, how to request exclusion from the proposed Settlement, how Class Members' Settlement Awards are calculated, what their estimated monetary recovery will be, and how to dispute the information provided on the Class Notice.

The Notice complies with the standards of fairness, completeness, and neutrality. Fed. R. Civ. P. 23 (c)(2) & (e); *Newberg*, §§ 8.21, 8.39; *Manual*, §§ 21.311, 21.312; see *Cartt*, *supra*, 50 Cal.App.3d at p. 960 ("The essentials of due process of law in class suits would appear to be afforded by fair representation in the assertion of claims of class members against the opposing parties in any lawsuit, and notice of the pending suit."). The proposed notice procedure satisfies all due process requirements and is consistent with notice procedures approved by numerous state and federal courts. Accordingly, the Court should approve the proposed Notice.

IX. APPOINTMENT OF CPT GROUP AS THE SETTLEMENT ADMINISTRATOR

The Parties have selected CPT Group as the Settlement Administrator to administer the proposed Settlement. The parties estimate that the proposed Class is comprised of two hundred eighty-three (283) individuals.

The Settlement Administrator will mail the Notice to each Class Member by regular First-Class U.S. Mail and re-mail any returned Notices after conducting a skip-trace if no forwarding address is provided. *See* Settlement Stipulation at ¶¶44-46. The Settlement Administrator will receive, review, and process Requests for Exclusion, and any written disputes and supporting documentation as to the validity of the information regarding the number of workweeks. *See* Settlement Stipulation at ¶47. The Settlement Administrator will maintain the Gross Settlement Fund and handle inquiries regarding the proposed Settlement; calculate the Class Members' estimated Settlement Awards; withhold applicable employment and payroll taxes; transmit the payments provided by the Settlement; provide necessary declarations; and perform other usual and customary duties for administering a class action settlement. *See* Settlement Stipulation at ¶¶36,,

Under the Settlement Agreement, the settlement administration fees, in an amount of up to $15,000.00 shall be paid out of the Gross Settlement Fund to the Settlement Administrator. *See* the Settlement Agreement at ¶4 and ¶36. Accordingly, the Court is respectfully requested to appoint CPT Group as the Settlement Administrator and direct the mailing of the Notice Packet, as well as the distribution of any cure letters and a reminder postcard to Class Members, in the manner outlined and based on the proposed deadlines as forth in the Settlement Agreement.

X. PROPOSED DEADLINES FOR THE NOTICE AND SETTLEMENT ADMINISTRATION PROCESS

At this preliminary approval stage, Plaintiffs also seek approval of the proposed deadlines for the notice process as forth in the Settlement Agreement. *Newberg*, at § 11.26. The notice process entails mailing of the Notice Packet, in the form approved by the Court, to all known and reasonably ascertainable Class Members based on Defendants' records. The Settlement Administrator will perform an address search using the National Change of Address Database to update the Class Data with more current addresses for the Class Members, if any.

Within twenty-one (21) calendar days of the Court's Preliminary Approval order, Defendants will provide the Settlement Administrator with a list of the last known addresses, social security numbers or taxpayer IDs, and dates of employment for each Class Member in a Covered Position during the Settlement Period. *See* the Settlement Agreement at ¶7. Within ten (10) calendar days of receipt of the class data, the Settlement Administrator will mail the Notice Packet to all Class Members via First-Class U.S. Mail. *See* the Settlement Agreement at ¶44.

Class Members will have forty-five (45) calendar days from the date of mailing of the Notice to return Requests for Exclusion and written objections. *See* the Settlement Agreement at ¶31. If any Notice is returned to the Settlement Administrator as undeliverable, the Settlement Administrator will promptly perform a single re-mailing of the Notice to a forwarding address, if available, or to any newly identified address obtained by way of skip-tracing. *See* the Settlement Agreement at ¶45.

Defendants shall receive the Gross Settlement Fund within twenty-one (21) calendar days of the date upon which the Court grants final approval of the Settlement Stipulation. *See* the Settlement Agreement at ¶33. Within five (5) calendars days following receipt of the Settlement funds from Defendant, the Settlement Administrator shall issue payment to (1) Participating Class Members and PAGA Group Members; (2) Plaintiffs; (3) Class Counsel; and (4) State of California portion of the PAGA Settlement. *See* the Settlement Agreement at ¶52. Also, within the same 5-day period, the Settlement Administrator shall deduct its Administrative Costs from the Settlement Amount.. *Id*.

Settlement class members shall have one hundred and eighty (180) days from the date their Individual Settlement Payment checks are dated to cash their checks. *See* the Settlement Agreement at ¶53. If the check remains uncashed after 180 days, the amount of such Individual Settlement Payment shall be transferred to the California State Controller's Office Unclaimed Property Fund, under the unclaimed property laws in the name of the Class Member. *Id*.

XI. APPOINTMENT OF CLASS REPRESENTATIVES AND APPROVAL OF THE ENHANCEMENT AWARDS

Plaintiffs respectfully request that the Court appoint them as the Class Representatives and approve enhancement awards in the amount of up to $30,000.00 or $10,000.00 to each named plaintiff as provided for by the Settlement. It is within the Court's discretion to award payment to the Class Representative for their efforts and work. *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299 (approving $50,000 participation award to a single class representative). The factors that courts may consider in determining whether to make an incentive award include: (1) the risk to the class representatives in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representatives; (3) the amount of time and effort spent by the class representatives; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representatives as a result of the litigation. *Id*.

The enhancement awards provided for by the Settlement is fair and appropriate. Plaintiffs have spent considerable time and effort to produce relevant documents and past employment records, and to provide the facts and evidence necessary to prove the allegations. Plaintiffs were available whenever Class Counsel needed them and actively tried to obtain information that would benefit the Class. Accordingly, it is appropriate and just for Plaintiffs to receive a reasonable enhancement award as an incentive payment, in addition to their Settlement Awards, for their services on behalf of the Class.

XII. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully requests that the Court grant preliminary approval of the proposed Settlement; certify the proposed Class for settlement purposes; appoint and designate the Barkhordarian Law Firm, PLC and the Wilshire Law Firm PLC as Class Counsel; appoint and designate Plaintiff Joel Zelaya, Plaintiff Demetrio Montes, and Plaintiff Pedro Negrete as the Class Representatives; appoint CPT Group as the Settlement Administrator; preliminarily approve the allocations for attorneys' fees and reimbursement of litigation costs and expenses to Class Counsel, enhancement award to Plaintiffs, the PAGA payment, settlement administration fees; approve the proposed Notice Packet; direct the Settlement Administrator to undertake the notice and settlement administration process in conformity with the deadlines provided by the Settlement Agreement; and schedule a Settlement Fairness Final Approval Hearing.

Respectfully Submitted,

DATED: August 11, 2023

BARKHORDARIAN LAW FIRM, PLC

By: /s/Heather K Cox

Gregory P. Wong
Heather K. Cox
Attorneys for Plaintiffs Joel Zelaya and Demetrio Montes, on behalf of themselves and all others similarly situated