

MESSRELIAN LAW INC.

Harout Messrelian (SB# 272020)

hm@messrelianlaw.com

Maralle Messrelian, Of Counsel (SB#316974)

maralle@messrelianlaw.com

500 N. Central Ave., Suite 840

Glendale, California 91203

Telephone: (818) 484-6531

Facsimile: (818) 956-1983

Attorneys for Plaintiff,

ALFREDO BETANCOURT, and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN MATEO

(UNLIMITED JURISDICTION)

ALFREDO BETANCOURT, on behalf of
himself, all others similarly situated, and
the general public, and as an “aggrieved
employee” on behalf of other “aggrieved
employees” under the Labor Code Private
Attorneys General Act of 2004,

Plaintiff(s),

vs.

L3 TECHNOLOGIES, INC.; and DOES 1
to 25, inclusive,

Defendant(s).

Case No.: 23-CIV-05704

**DECLARATION OF HAROUT
MESSRELIAN IN SUPPORT OF
PLAINTIFF’S UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF
STIPULATION AND SETTLEMENT OF
CLASS ACTION AND PAGA CLAIMS**

Action filed: December 1, 2023

Hearing Date: November 22, 2024

Hearing Time: 2:00 p.m.

Hearing Dept: 24, Hon. Jeffrey R.
Finigan

**DECLARATION OF HAROUT MESSRELIAN IN SUPPORT OF PLAINTIFF'S
UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF STIPULATION AND
SETTLEMENT OF CLASS ACTION AND PAGA CLAIMS**

I, HAROUT MESSRELIAN, declare as follows:

1. I am an attorney duly licensed to practice law in the State of California and am an attorney of record for Plaintiff Alfredo Betancourt ("Plaintiff") in his lawsuit against Defendant L3 Technologies, Inc. ("Defendant"). Plaintiff and Defendant are collectively referred to as the "Parties".

2. Except as otherwise indicated, I have personal knowledge of all matters set forth herein and, if called as a witness, could and would competently testify thereto under oath.

3. The Stipulation and Settlement of Class Action and PAGA Claims (the "Settlement") is attached hereto as **Exhibit 1**.

Factual and Procedural Background

4. Defendant first employed Plaintiff on or around November 28, 2016 to work as a paint finisher at the L3 facility located at 130 Constitution Drive in Menlo Park, California. Plaintiff's job titles have included Industrial Paint Spec I and Industrial Paint Spec III. Plaintiff was classified as an hourly, non-exempt employee and earned approximately \$33.00 per hour. Plaintiff continuously worked for Defendant from the time of his hire until on or around August 12, 2021, when his employment with Defendant ended.

5. On January 31, 2022 and June 3, 2024 Plaintiff notified Defendant and the California Labor and Workforce Development Agency ("LWDA"), pursuant to the California Private Attorneys General Act of 2004, California Labor Code sections 2698, et seq. ("PAGA"), of alleged Labor Code violations committed by Defendant. A true and correct copy of the letters to the LWDA dated January 31, 2022 and June 3, 2024 are attached hereto as **Exhibit 2**.

6. On December 1, 2023, Plaintiff filed a Class Action Complaint in the San Mateo Superior Court, Case No, 23-CIV-05704 against Defendant on behalf of himself and others similarly situated, alleging causes of action on a class-wide basis for (1) Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198); (2) Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198); (3) Failure to Pay Minimum Wages (Lab. Code §§ 1194, 1197, and 1198); (4) Failure to Pay Overtime Wages (Lab. Code §§ 510, 1194, and 1198); (5) Failure

1 to Indemnify (Lab. Code §§ 1198 and 2802); (6) Wage Statement Penalties (Lab. Code §
2 226);(7) Waiting Time Penalties (Lab. Code §§ 201-203); (8) Failure to Pay Wages Owed
3 Every Pay Period (Lab. Code § 204); (9) Unfair Competition (Bus. & Prof. Code §§ 17200, et
4 seq.); and (10) Penalties Under the Private Attorneys General Act (“PAGA”) (Lab. Code §§
5 2698, et seq.). A true and correct copy of the complaint is attached hereto as **Exhibit 3**. On
6 January 29, 2024, Defendant filed its Answer to Plaintiff’s complaint. A true and correct copy
of Defendants Answer to Plaintiff’s complaint is attached hereto as **Exhibit 4**.

7 7. The parties met and conferred and agreed that it may be in their mutual interests
8 to discuss Plaintiff’s allegations informally, rather than through litigation, and engaged in good
9 faith arms’ length settlement discussions over the course of an entire year and agreed to the
10 material terms of the Settlement in March 2024. In order to implement the proposed Settlement,
11 the parties agreed to file a First Amended Complaint, which was filed on July 9, 2024. A true
12 and correct copy of the First Amended Complaint is attached hereto as **Exhibit 5**.

13 8. In advance of the settlement negotiations, and before agreeing to the terms of the
14 Settlement, the Parties engaged in informal discovery. Through informal discovery, Defendant
15 produced its employee handbook, copies of Defendant’s relevant company written policies,
16 time-keeping records, and time and payroll data for a random sample of putative class members
17 specifically selected by Plaintiff’s counsel. Now that the Parties have finalized the long-form
Settlement, Plaintiff submits it to this Court for preliminary approval.

18 9. Defendant denies any liability or wrongdoing of any kind whatsoever associated
19 with the lawsuit. It is the desire of the parties to fully, finally, and forever compromise, and
20 discharge all claims known or unknown related to those alleged in Plaintiff’s lawsuit.

21 ***Ascertainable and Numerous Class***

22 10. A class is ascertainable when it may be readily identified without unreasonable
23 expense or time by reference to official records. Here, Plaintiff maintains that the above-
24 defined Class is ascertainable because its members may be identified by reference to
25 Defendant’s records and Defendant has agreed to share the relevant information from its
records to facilitate the settlement process. Therefore, the Settlement Class is ascertainable.

26 11. The Settlement Class has sufficiently numerous members to render joinder
27 impractical. No set number is required as a matter of law to maintain a class action. The
28 California Supreme Court has upheld a class of as few as 10 individuals. Defendant estimates

1 that there are approximately 1,194 Class Members. Plaintiff maintains that it would be
2 impractical and economically inefficient to require each Settlement Class Member to separately
3 maintain an individual action or be joined as a named plaintiff in this action. In light of these
4 considerations, the Settlement Class' membership is sufficiently numerous.

Predominant Common Questions

5 12. A question of law or fact is common to the members of a class if it may be
6 resolved through common proof. In this case, there are many predominant common questions.
7 Plaintiff asserts all class members were subject to the same or similar operations and
8 employment policies, practices, and procedures. The claims arise from Defendant's alleged
9 uniform policy of failing to properly account for all time worked and failing to, among other
10 things, properly pay minimum and overtime wages, provide off-duty meal and rest periods,
11 indemnify Class Members for business expenses, timely pay wages during employment and
12 upon separation of employment, and provide compliant wage statements, all of which Plaintiff
13 claims constitute unfair business practices and give rise to PAGA penalties. Plaintiff asserts
14 that common questions include, but are not limited to: (1) Whether Defendant failed to pay all
15 wages earned to Class Members for all hours worked at the correct rates of pay; (2) Whether
16 Defendants failed to include all non-discretionary pay/bonuses into the regular rate of pay; (3)
17 Whether Defendant failed to provide the Class with all meal and rest periods in compliance
18 with California law; (4) Whether Defendant failed to pay the Class one additional hour of pay
19 on workdays they failed to provide the class with one or more meal or rest periods in
20 compliance with California law; (5) Whether Defendant failed to indemnify the Class for all
21 necessary business expenditures incurred during the discharge of their duties; (6) Whether
22 Defendant failed to provide the Class with paid sick leave; (7) Whether Defendant knowingly
23 and intentionally failed to provide the Class with accurate and complete itemized wage
24 statements; (8) Whether Defendant failed to provide the Class Members with all wages earned
25 every pay period during employment; (9) Whether Defendant willfully failed to provide the
26 Class with timely final wages; (10) Whether Defendants failed to provide the Class Members
27 with suitable seating; and (11) Whether Defendant engaged in unfair competition within the
28 meaning of Business and Professions Code section 17200, *et seq.*, with respect to the class.
Therefore, common questions predominate.

///

Typicality

13. Plaintiff contends that his claims are typical for the purposes of certifying the Settlement Class. Plaintiff, like absent Class Members was subject to the same relevant policies and procedures governing his compensation, hours of work, and meal and rest periods. Because Plaintiff contends that he was subject to the same general course of conduct as absent Class Members, resolving the common questions as they apply to Plaintiff will determine Defendant's *prima facie* liability to all the Class Members. Moreover, Plaintiff's claims could potentially be subject to the same primary affirmative defenses as those of absent Class Members. Accordingly, Plaintiff's claims are typical of the Class.

Adequacy

14. The adequacy requirement is met where the plaintiff is represented by counsel qualified to conduct the litigation and the plaintiff's interest in the litigation is not antagonistic to the class' interests. In other words, where the plaintiff has adequate counsel, the plaintiff may represent the entire class absent any disabling conflicts of interest that might hinder the plaintiff's ability to represent the class.

15. To the best of my knowledge, neither Plaintiff nor I have any conflicts of interest with the absent Settlement Class Members. Plaintiff contends that he is an adequate class representative. Plaintiff and the Class Members have strong and co-extensive interests in this litigation because they all worked for Defendant during the relevant time period, allegedly suffered the same alleged injuries from the same alleged course of conduct, and there is no evidence of any conflict of interest between Plaintiff and the Class Members. Moreover, Plaintiff has demonstrated his commitment to the Settlement Class by, among other things, retaining experienced counsel, providing counsel with documents and extensively speaking with them to assist in identifying the claims asserted in this case, and exposing himself to the risk of attorneys' fees and costs awards against him if this lawsuit had been unsuccessful. Thus, Plaintiff is adequate to serve as Settlement Class Representative.

Background of Class Counsel

16. I am experienced in handling employment law matters and specifically wage and hour representative and individual actions. My qualifications are as follows: I received my JD from Loyola Law School in 2010. I started my own law firm in 2011 – the Law Offices of Harout Messrelian. Since 2016, I have been the founder and principal attorney at Messrelian

1 Law, Inc. Since 2011, I have filed and handled over 275 civil actions and/or claims involving
2 representative actions under the Private Attorneys General Act (“PAGA”) and/or wage and
3 hour claims on behalf of my clients and have been appointed Class Counsel in three class
4 action cases – Zohrab Mekhitarian v. Triple Play Motors dba Bob Smith Toyota, Los Angeles
5 Superior Court Case No. 19STCV22411 (ADR Services, Inc., Case Number 20-2668-RWT),
6 Carina Camberos, on behalf of herself and others similarly situated, v. Great American
7 Chicken Corp, Inc., Los Angeles Superior Court Case No. 21STCV32015, and Robert Garcia,
8 on behalf of himself and others similarly situated v. HD Supply Management Inc., San
9 Bernardino Superior Court Case No. CIVSB2028067. I have a practice that encompasses cases
10 in the Los Angeles Superior Courts, the Orange County Superior Courts, the Riverside County
11 Superior Courts, the San Bernardino County Superior Courts, the Alameda County Superior
12 Courts, Santa Clara County Superior Courts, San Mateo County Superior Courts, and the
13 Monterey County Superior Courts.

14 ***Class Action Treatment Is Superior***

15 17. A class action is also superior to other means adjudicating the issues in this
16 action. The predominance of common legal and factual questions shows that this Court could
17 fairly adjudicate the claims of Class Members through a single class action. In view of the
18 theoretical alternatives that proposed class members could potentially utilize –individual civil
19 lawsuits or wage claims through the Division of Labor Standards Enforcement (where there
20 would be relatively little money at stake, but the claims would be time-consuming to litigate)—
a class action is plainly superior. Thus, this consideration supports conditional class action
treatment for purposes of this Settlement only.

21 ***The Settlement is Presumptively Fair***

22 18. The class settlement here satisfies all of the *Kullar* factors. The Settlement
23 resulted from thorough, arms’ length, negotiations between experienced counsel with the
24 assistance of a respected mediator after sufficient discovery was exchanged to assess the
25 relative strengths and weaknesses of their respective cases and Defendant’s estimated exposure.
26 Both defense counsel and I are particularly experienced in employment law and wage and hour
27 class actions. We are experienced and qualified to evaluate the class claims, the viability of the
28 defenses, and the risks and benefits of settlement versus trial on a fully informed basis. I have
negotiated many wage and hour class settlements, including many involving the same issues

presented here. Counsel on both sides share the view that the Settlement is a fair and reasonable settlement in light of the complexities of the case and uncertainties of class certification and litigation, and a fair result for the Class Members.

Exposure & Risk Analysis

19. The Parties reached the Settlement through arm's-length negotiations. The Parties conducted sufficient investigation and discovery to allow Counsel and the Court to act intelligently. I considered various sources of information in the lead-up to and during the negotiations that enabled Plaintiff to achieve the Settlement at issue.

- Defendant produced and I reviewed Plaintiff's payroll records.
- My office requested that Defendant produce any and all policies on "off the clock" work, meal and rest periods, sick leave, and reimbursement of expenses in effect during the relevant time period. Defendant provided the requested policies.
- My office requested that Defendant provide the total number of employees, paychecks, and the pay cycles during the relevant period. Defendant provided the answers to each of these questions.
- My office requested sample time and payroll records for the relevant time period. Defendant produced time and pay records for a 5% sample that I randomly selected from a list provided by the defense.
- My office then retained a professional data analyst, James Toney, to examine the records and determine if there was any pay discrepancy in timesheet hours versus paid hours, meal violations, and if there was any rounding/time shaving issues. Plaintiff is prepared to provide the Court with the data analysis for *in camera* inspection upon its request.
- I analyzed the state of caselaw on meal and rest break claims, claims for off-the-clock work, claims for unreimbursed expenses, and claims for not providing sick leave.

20. Based on the information and data available from Defendant for the relevant time period and with the aid of the data analyst, I prepared "damages" estimates to determine Defendant's maximum exposure in connection with the settlement negotiations. I calculated the maximum potential damages (exclusive of penalties and interest) for meal period violations of \$1,377,990, rest period violations of \$4,445,481, unreimbursed expenses violations of \$277,982, and minimum wage violations of \$4,802,911; maximum damages for

derivative claims of \$1,237,000 for wage statement penalties and \$964,176 for waiting time penalties; and \$5,526,350 in potential civil penalties under the PAGA. The estimates are in essence “home run” projections that do not factor in any of the risks involved in litigating this Action and are not in line with reality, especially when considering Defendant’s policies and its position on the issues. A detailed explanation of Plaintiff’s valuation is set forth below.

A. Meal Break Violations

Plaintiff alleges that Defendant failed to provide Plaintiff and Settlement Class Members lawful meal breaks. Expert analysis of the sample time and payroll records revealed a 36.5% violation rate. Accordingly, Plaintiff calculates the maximum potential damages for meal break violations as follows:

$$\begin{array}{r} 101,788 \text{ (Class Shift Count = 120,459 workweeks x 5 days =602,295 workdays x} \\ 16.9\% \text{ (Shifts > 5 hours in sample)} \\ \times \quad 36.5\% \text{ (violate rate in sample)} \\ \underline{\times \quad \$37.09 \text{ (average hourly rate)}} \\ \$1,377,990 \end{array}$$

B. Rest Break Violations

Plaintiff also contends that Defendant failed to authorize and permit lawful rest breaks. Based on information provided by Plaintiff, Plaintiff estimates a 20% violation rate. Plaintiff calculates the maximum potential damages for rest break violations as follows:

$$\begin{array}{r} 599,283 \text{ (Class Shift Count = 120,459 workweeks x 5 days =602,295 workdays x} \\ 99.4\% \text{ (Shifts > 3.5 hours in sample)} \\ \times \quad 20\% \text{ (violation rate)} \\ \underline{\times \quad \$37.09 \text{ (average hourly rate)}} \\ \$4,445,481 \end{array}$$

There are risks to Plaintiff’s rest period claim. Employers are not required to record rest periods and such periods are paid. Thus, unlike unpaid meal periods where there are often records showing whether an employee clocked out or not, there is no such evidence to prove a missed rest period or that the employer refused to authorize and permit one. Managing such

claims at trial has become exceedingly difficult. Plaintiff will depend on sample witness testimony and surveys to prove the claims. While a victory with such evidence is certainly possible, relevant caselaw makes such claims risky from a trial management and due process perspective.

C. Off-the-Clock Work

Plaintiff contends that Defendant violated minimum and overtime wages by requiring employees to work off-the-clock. Plaintiff calculates the maximum potential damages due to off-the-clock work as follows:

$$\begin{array}{r} 120,459 \text{ workweeks} \\ \times 1.075 \text{ hours (average unpaid hours per week based on 15 min OTC per} \\ \text{shift; 4.3 shifts per week in sample)} \\ \hline \times \$37.09 \text{ (average hourly rate)} \\ \hline \$4,802,911 \end{array}$$

D. Failure to Reimburse Business Expenses

Plaintiff alleges that Defendant required him and the others to use their personal cell phones in the course of performing their duties. Plaintiff calculates the maximum potential damages for unreimbursed expenses as follows:

Based on a \$50 estimated monthly phone bill and an estimate of 20% estimate of phone use for work per week:

$$\begin{array}{r} \$ 2.31 \text{ work phone use per week} \\ \times 120,459 \text{ workweeks affected} \\ \hline \$277,982 \end{array}$$

E. Failure to Timely Pay Wages Upon Termination

Plaintiff alleges that Defendant failed to pay employees premium wages for meal and rest period violations and failed to pay all wages owed. As a result, discharged and quitting employees were not paid in full as required by the Labor Code. Plaintiff calculates the maximum value of this claim as follows:

106 (There were 106 Aggrieved Employees whose employment ended within the PAGA period (as of the cut-off from when data was collected))

1 x \$37.90 (average hourly rate)

2 x 8.00 (average hours per day)

3 x 30 days

4 \$964,176

5 F. Failure to Furnish Accurate Itemized Wage Statements

6 Plaintiff alleges that because Defendant required employees to work off the clock, Class

7 Members' hours worked and wages earned were not accurately listed on the wage statements.

8 Plaintiff calculates the maximum value of this claim as follows:

9 12,610 (total number of paychecks issued during 226 period)

10 x \$100 (statutory penalty/paycheck)

11 - 24,000 (\$50/1st paycheck/480 Aggrieved employees during 226 period)

12 \$1,237,000

13 G. Civil Penalties Under PAGA

14 Under Labor Code § 2699, Defendant is subject to a civil penalty in the amount of

15 \$100 for each aggrieved employee per pay period for the initial violation, and \$200 for each

16 subsequent violation for each aggrieved employee for each pay period. During initial

17 settlement discussions, Defendant represented that there were approximately 12,610 total pay

18 periods for the Aggrieved Employees during the PAGA Period through . Applying the same

19 violation rates to the total pay periods, Plaintiff calculates the maximum value of the PAGA

20 claim as follows:

21 Violation	Lab.Code secs.	Civil Penalty	Paychecks	Totals
22 Unpaid minimum wage violations civil penalties	1194/1197/1197.1	\$ 100.00	12,610	\$ 1,261,000
23 Unprovided meal period violations civil penalties	512/558	\$ 50.00	4,603	\$ 230,150
24 Unprovided rest period violations civil penalties	1198/2699	\$ 100.00	2,522	\$ 252,200
25 Faulty wage statement violations civil penalties	226/1198/2699	\$ 100.00	12,610	\$ 1,261,000
26 Untimely wages violations civil penalties	201-204/210	\$ 100.00	12,610	\$ 1,261,000
27 Unreimbursed expense violations civil penalties	1198/2802/2699	\$ 100.00	12,610	\$ 1,261,000
28 Total Civil Penalties				\$ 5,526,350

26 As mentioned above, this estimate does not reflect the realities of this case and did not

27 take into account any of the risks discussed above and assumed a violation for every single pay

28 period. As such, the Parties discounted potential civil penalties for multiple reasons. For one,

1 Plaintiff's PAGA claims are predicated on the wage underpayment, meal, rest, business
2 expense reimbursement, and wage statement violations described below, and thus subject to the
3 same disputes and defenses. Plaintiff's counsel also assessed multiple penalties for the same
4 pay period for the same alleged violations of different Labor Code provisions and derivative
5 violations. The parties are not aware of any California state courts awarding plaintiffs multiple
6 PAGA penalties for the same violation for the same pay period under different Labor Code
7 provisions. This may be because the PAGA does not provide for what many employers
8 characterize as claim splitting and not merely stacking. Additionally, PAGA states a court has
9 discretion to award a lesser amount than the maximum penalty. Lab. Code § 2699(e)(2);
10 *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1135 (reducing
11 PAGA award). Furthermore, recent reforms to the PAGA statute that took effect on June 27,
12 2024 include strict limitations on the ability to "stack" PAGA penalties.

13 21. The Settlement obviates the significant risk that this Court may deny
14 certification of some or all of Plaintiff's claims. Even if Plaintiff obtained certification of some
15 or all of the claims, continued litigation would be expensive, involving a trial and possible
16 appeals, and would substantially delay and reduce any recovery by the Class Members. While
17 Plaintiff is confident in the merits of his case, a legitimate controversy exists as to each cause of
18 action. To illustrate this consideration, below is brief summary of some of Defendant's
19 arguments, all of which Plaintiff disputes, but nevertheless acknowledges as potential threats to
20 the Settlement Class' claims.

- 21 • Defendant argues that the decision in *Brinker v. Superior Court*, 53 Cal. 4th 1004
22 (2012) weakened Plaintiffs' claims, on liability, value, and class certifiability as to the
23 meal and rest period claims. So long as an employer provides employees with a
24 "reasonable opportunity" to take a duty-free meal period, it has no further duty to
25 "police meal breaks and ensure no work thereafter is performed." *Id.* at 1040-41.
26 Instead, a plaintiff must show the employer impeded, discouraged, or prohibited the
27 employee from taking a proper break, or otherwise failed to release the employee of all
28 control. *Id.* "Thus, the crucial issue with regard to the meal break claim is the reason
that a particular employee may have failed to take a meal break." *Washington v. Joe's
Crab Shack* (N.D. Cal. 2010) 271 F.R.D. 629, 641. Defendant contends that because it
has written meal and rest break policies that comply with California law, individualized

1 proof will be needed to establish liability on Plaintiff's meal period claims, thus
2 significantly threatening Plaintiff's ability to certify a class as to the meal period claim.
3 Defendant further contends that the alleged violation rate based on facially non-
4 compliant meal periods reflected in the time keeping records for the sample varies
5 widely across facilities, suggesting that meal break habits varied between different
6 groups and further supporting that individualized proof will be needed to establish
7 liability on Plaintiff's meal period claims. Defendant argues that Settlement Class
8 Members will testify that they were plainly advised by their supervisors, and fully
9 understood, that they were authorized to take meal periods within each five-hour period
10 worked and, in fact, took such breaks. Moreover, Defendant's timekeeping data cannot
11 show why a meal break does not appear in the time records. For example, a meal period
may have been authorized and taken, but simply not punched in and out.

- 12 • Defendant contends that there is no common proof for Plaintiff's claim that he was
13 required to work off-the clock ("OTC"). In fact, Defendant argues, time records do not
14 provide common proof because, by definition, they do not show such time. Defendant
15 argues that one would have to examine, and cross-examine for credibility, each
16 individual's separate claims of supposed OTC work. Further, Defendant argues, each
17 Class Member would need to overcome this credibility hurdle in the face of his/her
18 own time records, which show no OTC work and further would have to prove that
19 his/her individual manager knowingly suffered or permitted the work. Additionally,
20 Defendant has policies that required employees accurately record their time spent
21 working, so any each individual would have to further explain why they violated that
policy and submitted false time records.
- 22 • Defendant contends that L3 Technologies, Inc. facilities in CA, from a
23 timekeeping/recordkeeping perspective, operate on a facility-by-facility basis (in other
24 words, not all business units/facilities have the same timekeeping, recordkeeping
25 system). Defendant contends that this fact will be a significant hurdle to class
26 certification as it would tend to prove that individualized assessments would
predominate over common questions.
- 27 • Defendant contends that Plaintiff cannot recover wage statement penalties based upon
28 the failure to pay Labor Code section 226.7 premium wages for meal and rest period

1 violations. The recent *Naranjo* decision confirms that employers are entitled to assert
2 legitimate defenses that any potential violations are not willful (thus, negating the
3 “knowing and intentional” finding under § 226, precluding imposition of wage
4 statement penalties for omission of premium pay). *See Naranjo v. Spectrum Security*
5 *Services, Inc.*, 2023 DJDAR 1620 (Cal. Ct. App. March 1, 2023).

- 6 • There is a risk that the Court may consider Plaintiff’s claims as to Defendant’s alleged
7 failure to indemnify for business expenses to be individual in nature and unfit for class
8 wide resolution. Defendant disputes Plaintiff’s claim that he and/or Class Members
9 were required to use their cell phones for work, and therefore disputes that employees
10 were owed reimbursement for cell phone use. Defendant also contends that it had
11 compliant business reimbursement policies, and did not require employees to incur any
12 business expenses it would not compensate them for.

12 22. As noted above, Defendant contests liability, as well as the propriety of
13 certification, and is prepared to vigorously oppose certification and to defend against
14 Plaintiff’s claims if the Action is not settled. Given the potential damages, as well as the
15 substantial risks to recovery discussed herein, including the uncertainties in achieving class
16 certification, Plaintiff’s counsel had to dramatically discount the value of the claims during
17 settlement negotiations. Plaintiff’s counsel estimates a 50 percent likelihood of obtaining and
18 maintaining certification of all of Plaintiff’s claims, which reduces the value of these claims
19 from approximately \$18,631,970 to approximately \$9,315,985. Defendant, however, asserts
20 that there are significantly lower prospects of certification. Plaintiff’s counsel further estimates
21 that there is a 50 percent chance that Plaintiff will prevail at trial on his claims, further
22 reducing the value of the claims to approximately \$4,657,992. Defendant contends that
23 Plaintiff’s prospects of success at trial are much lower. If this case advanced to trial and Class
24 Counsel succeeded on all of Plaintiff’s claims, attorney’s fees and costs may have significantly
25 reduced the recovery awarded to the Class. Furthermore, there is always a risk that a trial of
26 this magnitude could become unmanageable. A settlement of \$1,815,000 (approximately 9.74%
27 of the maximum exposure and 38.96% of the potential recovery) is a great result and a
28 proportion sanctioned by existing case law. *See In re Cendant Corp., Derivative Action Litig.*,
232 F. Supp. 2d 327 (D. N.J. 2002) (approving settlement that only provided a 2% recovery
based on the estimated liability exposure).

1 23. While Plaintiff believes the evidence gathered through Plaintiff's discovery
2 supports the merits of the claims asserted in this lawsuit, Plaintiff recognizes that continued
3 litigation presents significant risks that support a downward departure from Defendant's
4 estimated liability exposure. In view of the risks, the Settlement reflects Class Counsel's
5 estimate of the total amount of damages, monetary penalties or other relief that the class could
6 reasonably expect to be awarded at trial, taking into account the likelihood of prevailing and
7 other attendant risks. It also represents a fair, adequate, and reasonable compromise amount for
8 these claims and warrants preliminary approval. *See Laguna v. Coverall N. Am., Inc.*, Case No.
12-55479 (9th Cir. June 3, 2014) 2014 WL 2465049, * 3.

9 ***Allocation of the PAGA Payment***

10 24. The settlement of PAGA penalties in the sum of \$200,000, of which 75%
11 (\$150,000) will be paid to the LWDA and 25% (\$50,000) will be distributed to the Class, is
12 reasonable and appropriate under the circumstances. The Parties negotiated a good faith
13 amount for PAGA penalties to be paid to the LWDA and to the Settlement Class. Where, as
14 here, the parties reach a substantial settlement providing employees with monetary
15 compensation for underlying Labor Code violations, many of PAGA's underlying policy
16 objectives are satisfied. Accordingly, there exists a substantial likelihood that the Court would
17 exercise its discretion and reduce the amount awarded for PAGA penalties even if Plaintiff
18 proved successful at trial. Additionally, PAGA's shorter statute of limitations justifies a limited
19 allocation when compared to the amount allocated for Labor Code violations. Here, the
20 \$200,000 PAGA Settlement Amount is well within the range approved by California courts and
21 therefore should be approved. *See Nordstrom Comm. Cases* (2010) 186 Cal.App.4th 576, 589
(finding no abuse of discretion in the trial court's approval of a release that included PAGA
22 claims, but allocated \$0 to PAGA penalties).

23 ***Attorneys' Fees and Costs***

24 25. I intend to request Class Counsel Attorneys' Fees of \$605,000 (one-third of the
25 GSA) and Class Counsel's litigation costs incurred in prosecuting this Action, which I currently
26 estimate to be approximately \$2,720.70 and will be no more than \$5,000.00 at the conclusion
27 of matters related to the Settlement. In view of my efforts and risks in pursuing this case these
28 amounts are well within the range of reasonableness and thus warrant this Court's preliminary
approval. In addition, based on my experience in wage and hour class action matters, fee

1 awards of approximately one-third of the settlement fund are routinely approved as reasonable.
2 I have been awarded attorneys' fees equaling approximately one-third of the fund in several
3 recent wage and hour class actions.

4 26. The amount of fees and costs requested are commensurate with (1) the risk
5 Class Counsel took in bringing the case, (2) the extensive time, effort and expense dedicated to
6 the case, (3) the skill and determination Class Counsel has shown, (4) the results Class
7 Counsel achieved, (5) the value of the Settlement Class Counsel achieved for the class, and (6)
8 the other cases Class Counsel turned down to devote time to this matter. Class Counsel also
9 met and conferred with Defendant's counsel on numerous occasions, reviewed and analyzed
10 hundreds of pages of data and documents provided by Defendant, researched applicable law,
11 prepared estimates of "damages" for purposes of settlement discussions, and engaged in a full
12 day of mediation, among other tasks.

13 27. Class Counsel have borne all the risks and costs of litigation and will receive no
14 compensation until recovery is obtained. Class Counsel are well-experienced in wage-and-
15 hour class action litigation and used that experience to obtain a fair result for the Class.
16 Considering the amount of the attorney fees requested, the work performed, and the risks
17 incurred, the requested fees and costs are reasonable and should be awarded.

18 ***Class Representative Enhancement Payment***

19 28. The Settlement provides that Plaintiff may seek a Class Representative
20 Enhancement Payment of \$2,000.00. This amount is entirely reasonable given Plaintiff's efforts
21 in this Action and the risks he undertook on behalf of Class Members. Here, Plaintiff has
22 devoted many hours advancing the interests of the Settlement Class. Plaintiff has done this by,
23 among other things, retaining experienced counsel, providing them with information about his
24 work history with Defendant and Defendant's policies and practices with respect to the wage
25 and hour claims at issue, and being actively involved in the settlement process to ensure a fair
26 result for the Settlement Class as a whole. In doing this, Plaintiff has been exposed to
27 significant risks, including the risk of an order to pay Defendant's attorneys' fees and costs if
28 this action had been unsuccessful (*See* Labor Code §§ 218.5-218.6). The efforts and risks that
Plaintiff undertook on behalf of the Settlement Class shows that the proposed Class
Representative Enhancement Payment is fair, adequate, and reasonable, and thus warrant
preliminary approval. *See also* Declaration of Alfredo Betancourt.

Individual Settlement Payments

29. The Individual Class Settlement Payments will be paid to each Class Member based on the number of Qualifying Workweeks a Class Member worked during the Class Period. In addition, all Aggrieved Employees shall receive a pro rata share of the portion of the PAGA Payment allocated to Aggrieved Employees based on their Qualifying Pay Periods during the PAGA Period. Settlement, ¶ 3.06 (g)(h). Because this method compensates Class Members based on the extent of their potential injuries, in that Class Members who worked for Defendant longer would have been subject to more alleged violations, it is fair, adequate, and reasonable.

Notice By First Class U.S. Mail Only (No Email)

30. The Settlement requires distribution of the Notice by First Class U.S. mail only. Settlement, ¶ 3.03. Although there are current employee Class Members, it is uncertain whether Defendant's records of their contact information include email addresses and Class Members, most of whom perform all of their work away from a desk in a manufacturing facility, are not in a position to check their emails. As such, notice by mail alone is fair, adequate, and reasonable. The Class Notice (attached as Exhibit A to the Settlement) provides Class Members with all pertinent information that they need to fully evaluate their options and exercise their rights under the Settlement. Specifically, it clearly and concisely explains, among other things: (1) what the Settlement is about; (2) who is a Settlement Class Member; (3) how Class Counsel will be paid; (4) how to submit an exclusion request not to be bound by the Settlement; (5) how to object to the Settlement; (6) how the Settlement will be allocated; (7) how payments to Class Members will be calculated; (8) how the disputes will be resolved; and (9) the estimated Individual Settlement Payment for each Class Member. Additionally, the Notice will include the number of Workweeks a Class Member had during the Class Period and the number of PAGA Periods a PAGA Member had during the PAGA Period. Accordingly, the Class Notice should be approved because it describes the Settlement with sufficient clarity and specificity to explain to Class Members what this action is about, their rights under the Settlement, and how to exercise those rights. As such, the parties' proposed Class Notice fully complies with California Rules of Court 3.766(d) and 3.769(f) and will allow Class Members to make informed responses to the proposed settlement.

///

Settlement Administration Duties

31. The duties of the Settlement Administrator are spelled out in ¶¶ rr and 3.04 of the Settlement and in the bid provided by CPT Group, Inc., a true and correct copy of which is attached hereto as **Exhibit 7**. See also Declaration of Julie Green.

Settlement Administration Costs

32. With regard to the settlement administration costs provision (Settlement sections rr and 3.06(c)), it is reasonable. Before agreeing to CPT Group, Inc., the Parties sought and reviewed bids from other reputable third-party administrators:

A. Apex Class Action Administration= \$16,995;

B. CPT Group, Inc. = \$17,500; and

C. Phoenix Class Action Administration Solutions = \$16,000

A true and correct copy of the bid from Apex Class Action Administration is attached hereto as **Exhibit 6**. A true and correct copy of the bid from CPT Group, Inc. is attached hereto as **Exhibit 7**. A true and correct copy of the bid from Phoenix Class Action Administration Solutions is attached hereto as **Exhibit 8**. The bid provided by CPT Group Inc. was comparable. Thus, settlement administration costs provision should be given preliminary approval.

Uncashed Checks

33. Participating Class Members shall have one hundred and eighty (180) days from the date of the check's issuance to cash their Individual Settlement Payment checks. The Participating Class Members shall mean all Class Members who do not submit timely and valid Requests for Exclusion. After the expiration of the 180-day period, the Settlement Administrator will transfer any proceeds represented by Individual Settlement Payment checks remaining un-cashed to the California State Controller Unclaimed Property Fund in the name of the Class Member. Settlement, section 3.06(i).

///

///

///

///

///

///

Notice of Settlement to the LWDA

34. Pursuant to Labor Code § 2699(1)(2), Plaintiff submitted a copy of the Settlement with the Labor and Workforce Development Agency (“LWDA”) at the same time Plaintiff’s Motion is being filed with the Court. A true and correct copy of Plaintiff’s submission with the LWDA and a confirmation email is attached hereto as **Exhibit 9**.

I declare under the penalty of perjury of the laws of the State of California that the foregoing is true and correct to the best of my knowledge.

Executed on Saturday, October 26, 2024 at Glendale, California.



HAROUT MESSRELIAN,
Declarant