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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO, CENTRAL DIVISION**

MARIA SANZ *et al.*

Plaintiffs,

v.

STERLING JEWELERS, INC. *et al.*

Defendants.

Lead Case No.: 37-2022-00015148-CU-OE-CTL
Consolidated With: 37-2022-00017578-CU-OE-CTL

Assigned to the Hon. Gregory W. Pollack- Dept. 71

CLASS ACTION

**PLAINTIFFS' MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT OF
MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT**

[Notice of Motion and Motion, Declarations of
Ferraro, Hewgill and Travis, Proposed Order, and
Proof of Service filed concurrently herewith]

Date: June 30, 2023
Time: 9:30 a.m.

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I. INTRODUCTION

Plaintiffs Maria Sanz, Amy McCormack, Helena Phillips, Celeste Giron, Spencer Maki, Jules Santos, and Diane White, individually and on behalf of all others similarly situated (“Plaintiffs”), seek preliminary approval of a \$2,000,000 non-reversionary wage and hour class and representative action settlement on behalf of approximately 3,800 non-exempt California employees employed by one or more of the Defendants (Defendants Sterling Jewelers Inc. (“Sterling”), Signet Jewelers Limited (“Signet”) and Zale Delaware, Inc. (“Zale”) (collectively “Defendants”)) who worked during the class period of March 4, 2018 through March 1, 2023, excluding all workweeks covered by the prior class action settlements involving one or more of the Defendants during the Class Period, including the following: *Hudson v. Sterling Jewelers Inc., et al.*, Case No. 2:17-cv-09301-DSF-JEM (United States District Court for the Central District of California); *Carolina Leos v. Zale Delaware, Inc.*, Case No. 21STV00447 (LA Superior Court); *Shawntasha Rhoden v. Zale Delaware, Inc.*, Case No. 20STCV11561 (LA Superior Court).

The Settlement includes requests for payment of attorneys’ fees of up to 33.33% of the gross settlement, litigation costs not to exceed \$35,000, class representative service awards of \$5,000 for each class representative, a PAGA payment of \$50,000, with 75% (\$37,500) going to the LWDA and 25% (\$12,500) going to the employees, and third-party settlement administration costs currently estimated at \$25,750. This results in an entirely non-reversionary net settlement amount of \$1,187,650 to be disbursed to participating class members who will receive payment unless they opt out.

Plaintiffs very respectfully request the Court (i) preliminarily approve the proposed class action settlement; (ii) preliminarily approve the payment to the Labor and Workforce Development Agency (“LWDA”); (iii) conditionally certify the class for settlement purposes only; (iv) appoint Maria Sanz, Amy McCormack, Helena Phillips, Celeste Giron, Spencer Maki, Jules Santos, and Diane White as the class representatives and Justin Hewgill of Hewgill Cobb & Lockard, APC; Ben Travis of Ben Travis Law, APC; and Nicholas J. Ferraro and Lauren N. Vega of Ferraro Vega Employment Lawyers, Inc. as class counsel; (v) approve distribution of the class notice materials and authorize the notice procedure; (vi) authorize CPT Group, Inc. to serve as the settlement administrator (“Administrator”); and (vii) set a final approval hearing on or after October 13, 2023.

II. BACKGROUND

A. The Parties

Defendants Zale and Sterling operate retail jewelry stores in California under several banners including Zales, Jared and Kay. Defendant Signet is the parent company of Zale and Sterling. Plaintiffs are current and former non-exempt retail employees of one or more of the Defendants in California. Declaration of Nicholas J. Ferraro (“Ferraro Decl.”), ¶ 2.

B. The Class

The Class includes all individuals currently or formerly employed by Defendants in California as hourly, non-exempt employees during the Class Period. The Class Period is defined as the period from March 4, 2018 through March 1, 2023, excluding all workweeks covered by the prior class action settlements involving one or more of the Defendants, including the following: *Hudson v. Sterling Jewelers Inc., et al.*, Case No. 2:17-cv-09301-DSF-JEM (United States District Court for the Central District of California); *Carolina Leos v. Zale Delaware, Inc.*, Case No. 21STV00447 (LA Superior Court); *Shawntasha Rhoden v. Zale Delaware, Inc.*, Case No. 20STCV11561 (LA Superior Court). See Ferraro Decl., Exhibit 1 (Class Action Settlement Agreement) (hereinafter, “Settlement”), ¶¶ 1.4, 1.11. As of March 1, 2023, there were an estimated 3,800 class members who worked an estimated 180,000 workweeks. Settlement, ¶¶ 1.8, 1.38.

C. Summary of the Dispute

Plaintiffs allege that Defendants: (1) failed to pay vacation pay, sick pay, overtime pay, meal period premiums and rest break premiums at the correct legal rate; (2) failed to pay all minimum, regular rate and overtime wages for off-the-clock or other uncompensated work; (3) failed to provide compliant meal periods in violation of Labor Code §§226.7 and 512; (4) failed to provide rest compliant periods in violation of Labor Code §226.7; (5) failed to reimburse for required business expenses; (6) failed to provide accurate wage statements in violation of Labor Code §226; (7) failed to timely pay wages when due at termination in violation of Labor Code §§201 and 202; (8) untimely paid wages in violation of Labor Code §§ 204 and 204b; and (9) violated the Unfair Competition Law (“UCL”) pursuant to Business & Professions Code §17200, et seq. See First Amended Class and Representative Action Complaint, ROA #73. Defendants denied all the allegations. Ferraro Decl. ¶ 4.

1 Plaintiffs also seek to recover under the Private Attorneys General Act of 2004 as codified in Labor
2 Code §§ 2698, *et seq.* (“PAGA”) civil penalties, including but not limited to penalties under California
3 Labor Code §§ 2699, 203, 210, 248.5, 558, 1197.1 and the applicable IWC Wage Order, from
4 Defendants for the alleged violations of California Labor Code §§ 200, 201, 202, 203, 204, 210, 226,
5 226.3, 226.7, 227.3, 246, 248.5, 510, 512, 558, 1174, 1174.5, 1175, 1182.12, 1194, 1194.2, 1197, 1197.1,
6 1198, 2751, and 2802. *See* First Amended Class and Representative Action Complaint, ROA #73.
7 Defendants denied all the allegations. Ferraro Decl. ¶ 4. Defendants dispute the allegations, dispute
8 that the claims are appropriate for class/representative actions, and dispute that Signet is a properly
9 named employer.

10 **D. Summary of the Investigation and Litigation**

11 In December 2021, Plaintiff McCormack sought legal advice and counsel regarding
12 employment issues perceived as affecting her and her coworkers. As part of that process, Plaintiff
13 McCormack, through counsel, sent Sterling statutory records requests under Labor Code §§ 226, 432,
14 and 1198.5 to obtain her employment, payroll, and personnel files.

15 Similarly, Plaintiff Sanz sought legal advice and counsel regarding employment issues, in
16 November 2021. Plaintiffs Helena Phillips, Celeste Giron, Spencer Maki, Jules Santos, and Diane
17 White, each reached out to counsel regarding perceived unpaid wages in early 2022. Declaration of
18 Justin Hewgill (“Hewgill Decl.”) ¶¶ 2, 5.

19 Plaintiffs and counsel conducted thorough investigations regarding the putative claims, which
20 included speaking to witnesses, reviewing policies and employment records, accessing publicly
21 available information about Defendants, searching the LWDA website, Pacer, and state court dockets
22 for related cases, assessing the impact of any arbitration or other limiting agreement at issues, and
23 conducting legal and factual research and analysis regarding the claims. Ferraro Decl. ¶ 5; Hewgill
24 Decl. ¶¶ 2, 6.

25 On February 15, 2022, Plaintiff Sanz electronically filed a Notice of Labor Code Violations with
26 the LWDA and sent a certified copy to Sterling Jewelers, Inc. as well as several other named Defendant
27 business entities. Hewgill Decl. ¶3. Ms. Sanz filed a Representative Action under the Private Attorneys
28 General Act, on April 22, 2022. Hewgill Decl. ¶4.

1 On March 1, 2022, Plaintiff McCormack electronically filed a Notice of Labor Code Violations
2 with the LWDA and sent it by certified mail to Sterling Jewelers, Inc. Ferraro Decl. ¶ 6. Ms.
3 McCormack filed a Representative Action Complaint under the Private Attorneys General Act on May
4 9, 2022. (“PAGA”). Ferraro Decl. ¶ 7. The PAGA matters were consolidated in this Court on June 9,
5 2022. Ferraro Decl. ¶ 7.

6 On March 4, 2022, Plaintiff McCormack filed a Class Action Complaint, alleging causes of
7 action on behalf of the class for (1) failure to pay all minimum wages, (2) failure to pay all overtime
8 wages, (3) meal period violations, (4) rest period violations, (5) untimely payment of wages, (6) wage
9 statement violations, (7) underpaid sick leave, (8) underpaid Covid-19 supplemental sick leave, (9)
10 waiting time penalties, (10) failure to reimburse business expenses, (11) violations of the unfair
11 competition law. This action was removed to the United States District for the Southern District of
12 California on April 15, 2022. Ferraro Decl. ¶ 7.

13 Thereafter, Plaintiffs, Helena Phillips, Celeste Giron, Spencer Maki, Jules Santos, and Diane
14 White filed their Class Action in the United States District for the Southern District of California
15 alleging similar claims, on August 18, 2022. Hewgill Decl. ¶7.

16 The Class Actions were consolidated, with a Consolidated Complaint filed on November 1,
17 2022. Ferraro Decl. ¶ 7. After the Consolidated Complaint was filed, Sterling filed a Partial Motion to
18 Dismiss, and Plaintiffs opposed that motion. This motion was still pending when a settlement was
19 reached at mediation. Ferraro Decl. ¶ 7. As part of the settlement, the Class Action pending in Federal
20 Court was dismissed and an amended complaint was filed in this Court which included all the plaintiffs
21 and claims from the federal action. Ferraro Decl. ¶ 11.

22 **E. Overview of the Mediation and Expert Analysis**

23 The parties set a mediation date for February 6, 2023 with Steve Rottman, an experienced and
24 respected mediator of wage and hour class actions. Ferraro Decl. ¶ 7.

25 As a condition of mediation, Plaintiffs requested (and received) all relevant employment and
26 payroll policies and procedures for the class period, along with wage statements, pay data, and time
27 entry records for 30% of the class of approximately 3,800 individuals for the four-year class period.
28 Plaintiffs also received additional documents relating to their employment; their complete personnel

1 files, time, and pay data; additional documents provided by Defendants that they argued supported their
2 defenses; and data points regarding total employees, total weeks worked, total pay periods, and rates of
3 pay (among other information) for individuals in the class (subject to a four-year statute of limitation)
4 and the PAGA group of aggrieved employees (subject to a one-year statute of limitation). To allow for
5 a full review and analysis of the data and documents, Plaintiffs requested the data and documents no
6 later than approximately 30 days before the scheduled mediation date. Ferraro Decl. ¶ 8.

7 Based on the data and documents, proposed class counsel retained an expert economist to do a
8 damage analysis, assessing factors based on assumptions of violation rates, statistical breakdowns of
9 alleged violations on the face of the records by year (i.e., late, or short meal periods and “regular rate”
10 issues), and damage models. Proposed class counsel, with the expert, generated liability exposure
11 reports that were then used to help determine the employee wages and penalties at issue in the litigation.
12 Ferraro Decl. ¶ 9.

13 **F. Arms-Length Negotiation and Private Mediation**

14 The Mediation was held on February 6, 2023 with Steve Rottman. The parties contested key
15 issues, worked through the mediator to understand respective risks and strengths, before ultimately
16 agreeing upon principal settlement terms. Negotiations were always adversarial but professional. The
17 agreement was then memorialized in an MOU. Ferraro Decl. ¶ 10. The parties worked diligently to
18 negotiate and finalize the remaining settlement terms in the fully executed Settlement, which is attached
19 to the Ferraro declaration as Exhibit 1.

20 **G. Overview of the Settlement Terms**

21 The parties agreed, subject to court approval, that Defendants will pay the non-reversionary
22 “Gross Settlement Amount” (“GSA”) of \$2,000,000.00, which includes: (a) a request for attorneys’ fees
23 up to 33.33% of the GSA to compensate proposed class counsel for all work performed and remaining
24 to be performed securing court approval of the Settlement; (b) reimbursement of litigation costs up to
25 \$35,000 for verified costs actually incurred; (c) service awards to Plaintiffs for serving as class
26 representatives, in the amount of \$5,000 each, as an additional payment for Plaintiffs’ initiative, risks
27 incurred, and work associated with service as the lead plaintiffs; (d) a PAGA payment to the LWDA in
28 the amount of \$37,500 (75% of the \$50,000 allotted to the PAGA Payment); and (e) settlement

administration costs up to \$25,750. Ferraro Decl., ¶14.

The Settlement is entirely non-reversionary, meaning no amount of money will revert to Defendants. Settlement, ¶2.1. The Administrator will pay the amount of the participating class members' portion of normal payroll withholding taxes out of each person's individual class settlement check (i.e., their share of the Settlement). The Administrator shall also pay Defendants' portion of payroll taxes to the appropriate local, state, and federal taxing authorities (which amounts will be paid for by Defendants separately). Settlement ¶3.4. The "Net Settlement Amount" ("NSA") will be distributed to class members on a pro-rata basis based on workweeks, estimated as follows (*see* Ferraro Decl. ¶ 14):

Gross Settlement Amount	\$2,000,000
Attorneys' Fees (33.33%) (minus)	\$666,600 (approx.)
Litigation Costs (minus)	\$35,000 (max.)
Service Awards (minus)	\$5,000 x 7 class reps. (\$35K)
PAGA Payment (minus)	\$50,000
Settlement Admin. Costs (minus)	\$25,750
Net Settlement Amount	\$1,187,650 (approx.)

The NSA will be distributed through individual checks mailed to class members who do not affirmatively exclude themselves from the class in response to the class notice by the Response Deadline. Settlement, ¶3.3.1. The individual settlement checks for each respective class member are calculated by dividing each respective individual's weeks worked for Defendants in the class period by the total weeks worked by all class members during the class period, resulting in their individual class settlement share. Settlement, ¶2.2.5. A similar allocation method will apply to the aggrieved employees who worked during the PAGA period for the employee portion of the \$50,000 PAGA payment. Settlement ¶2.2.4.

Class members averaged approximately 47.37 weeks of paid work with Defendants (180,000 workweeks / 3,800 class members) during the class period. On a workweek basis, the workweek valuation is \$11.11 (gross) per week worked by a participating class member and \$6.60 (net) after accounting for costs, fees, administration expenses, and other deductions from the GSA. If a class member works the average amount of workweeks—and does not opt-out of the Settlement, he or she will automatically receive an estimated \$526 on a gross basis and approximately \$313 (net) after

accounting for all deductions like attorneys' fees, costs, and administration expenses, without the need to submit a claim form. Ferraro Decl. ¶ 15.

The Settlement itself provides a safeguard against depreciation of the Settlement via the Escalation Clause, which operates to increase the GSA in the event the total workweeks unexpectedly exceed the workweek thresholds negotiated at mediation or in the alternative Defendants shall have the option to shorten the Class Period to a date that would account for no more than 198,000 workweeks. Settlement, ¶7. Class members do not need to submit a claim form to receive payment. *See* Settlement, ¶2.1.

Settlement payments are characterized as 40% wages, which will be reported on Form W-2, with withholdings, and 60% as penalties reported on Form 1099 based on the respective assessment and apportionment of W2 wages and civil and statutory penalties. Settlement, ¶2.2.6.

Any proceeds from checks that remain uncashed by class members after the check cashing deadline will be provided to the State of California's Unclaimed Property Division in the name of the participating class member for him or her to later claim, in accordance with state laws and procedures. Settlement, ¶3.3.3; *see also* FAQ, State of California's Unclaimed Property Division, *available at* https://www.sco.ca.gov/upd_faq.html.

H. Settlement Administration and Notice Procedures

The parties selected CPT Group, Inc. to administer the Settlement. Settlement ¶1.2. Upon receipt of the class data (i.e., names, mailing addresses, and other appropriate identifying information of class members), the Administrator will notify proposed class counsel that the list has been received and state the number of class members and workweeks in the data provided by Defendants. Pursuant to the timelines set forth in the Settlement, the Administrator will send the Notice of Class Action Settlement in substantially the same form as attached as **Attachment A** to the Settlement, including the Request for Exclusion form attached as **Attachment B** to the Settlement. Before mailing the class notice packet, the Administrator shall update class member addresses using a National Change of Address database. Not later than three (3) business days after the Administrator's receipt of any class notice returned as undelivered, the Administrator will re-mail the class notice using the forwarding address provided by USPS. If USPS does not provide a forwarding address, the Administrator will conduct a

skip trace to find a correct address and re-mail it to the most current address obtained. Settlement, ¶6.4.3.

The proposed class notice advises the class of their right to, and the manner and timing to: (1) participate in the Settlement without submitting a claim; (2) dispute the workweeks used to calculate the basis of their respective individual share of the Settlement; (3) object to the Settlement; (4) appear at the final approval hearing, and (4) opt-out of the Settlement. The class notice also informs each class member of the estimated amount of their individual payment, the release to be given, and date of the final approval hearing, and other salient details about the Settlement, including how to find out more information. *See* Ferraro Decl., Ex. 1-A (Class Notice).

I. The Released Claims

Class Members who do not opt of the Settlement shall, upon final approval, agree to the following release for the respective Class Period (*see* Settlement, ¶4.2):

All Participating Class Members release Released Parties from any and all claims, damages, and penalties alleged in the Operative Complaint and arising out of the facts in the Operative Complaint during the Class Period, including, without limitation, claims for: (1) failure to pay all minimum wages; (2) failure to pay all overtime wages; (3) meal period violations and meal period premium violations; (4) rest break violations and rest break premium violations; (5) untimely payment of wages; (6) wage statement violations; (7) failure to provide/fully provide paid sick leave; (8) failure to pay out vacation pay at the correct rate; (9) waiting time penalties; (10) failure to timely pay wages during employment; (11) failure to reimburse business expenses; and (12) violations of the unfair competition law (the “Released Class Claims”). Participating Class Members **do not** release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers’ compensation, or claims based on facts outside of the Operative Complaint or outside the Class Period.

Named Plaintiffs and the State of California shall, upon final approval, release the following for the PAGA Members during the PAGA Period (*see* Settlement ¶4.3):

Named Plaintiffs and the State of California release Defendants and are forever barred from pursuing claims under the PAGA alleged in the Operative Complaint during the PAGA Period and arising out of the facts in the Operative Complaint during the PAGA Period, including, without limitation penalties predicated on the underlying alleged violations for: (1) failure to pay all minimum wages; (2) failure to pay all overtime wages; (3) meal period violations and meal period premium violations; (4) rest break violations and rest break premium violations; (5) untimely payment of wages; (6) wage statement and recordkeeping violations; (7) failure to provide/fully provide paid sick

1 leave; (8) failure to pay out vacation pay at the correct rate; (9) waiting time penalties;
2 (10) failure to reimburse business expenses; (11) failure to timely pay wages during
3 employment.

4 **III. LEGAL ARGUMENT**

5 “Before final approval, the court must conduct an inquiry into the fairness of the proposed
6 settlement.” California Rules of Court, rule 3.769. At preliminary approval, a court “limits its inquiry
7 to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or
8 overreaching by, or collusion between, the negotiating parties.” *In re Microsoft I-V Cases*, 135 Cal.
9 App. 4th 706, 723 (2006). Furthermore, conditional class certification for settlement purposes is
10 appropriate where there is an ascertainable and sufficiently numerous class, with a well-defined
11 community of interest, and class litigation would be superior to alternate means of adjudicating the
12 action. *Brinker Restaurant Corp. v. Superior Court*, 53 Cal. 4th 1004, 1021 (2012). Here, Plaintiffs ask
13 the Court to preliminarily approve the class action settlement as fair and reasonable, and conditionally
14 certify the class.

15 **A. The Settlement Meets the Standards for Preliminary Approval**

16 In deciding whether to grant preliminary approval of a proposed class action settlement, the
17 Court must find a proposed settlement is “fair, reasonable and adequate[.]” California Rules of Court,
18 rule 3.769; *see also Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996). “[T]here is a strong
19 judicial policy that favors settlements ... ‘it must not be overlooked that voluntary conciliation and
20 settlement are the preferred means of dispute resolution ... [t]his is especially true in complex class
21 action litigation.’” *Syncor v. Cardinal Health, Inc.*, 516 F. 3d 1095, 1101 (9th Cir. 2008) (internal
22 citations omitted). There is a presumption of fairness where, as here, the proposed class action
23 settlement was negotiated at arms’-length after informed investigation and analysis by counsel
24 experienced in similar litigation with the assistance of an experienced mediator. *See, e.g., Kullar v.*
25 *Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008)

26 **1. Serious, Informed, Non-Collusive Negotiations Led to Settlement**

27 The parties participated in a full day of mediation with Steve Rottman, a respected and
28 experienced wage and hour class action mediator. Mr. Rottman assisted the parties in reaching proposed

class action settlement terms. The mediation occurred after counsel received all documents and data necessary to evaluate the merits of the claims and defenses. Proposed class counsel retained an expert who assisted with the settlement discussions and negotiations at mediation. Ferraro Decl. ¶¶ 7-10.

2. The Settlement is the Result of Thorough Investigation and Discovery

Plaintiffs' counsel investigated all claims and defenses before filing the operative complaints and settling the case. Plaintiffs issued discovery and, when the parties agreed to mediation, Plaintiffs requested, and Defendants produced, information about the putative class, employee policies and memoranda, information about Defendants' timekeeping and payroll practices, time records and wage statements, as well as other documents and data that Plaintiffs would have relied upon to certify the class and prepare for trial, including a 30% sampling of employee payroll records. Ferraro Decl. ¶8.

From this investigation, Plaintiffs obtained data and documents to allow liability to be assessed and potential class-wide damages to be calculated by the retained expert economist. Ferraro Decl. ¶ 9. Investigation and informal discovery gave the parties a clear understanding of their strengths and weaknesses before negotiations commenced. *See Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal. App. 4th 399, 410 (2010) (approving class settlement where "considerable information [exists] from which to assess the strength of the class claims" and litigation risks).

3. Counsel are Experienced in Similar Litigation

Proposed class counsel have significant experience in prosecuting and defending wage and hour employment class actions. *See* Ferraro Decl., Hewgill Decl., and Declaration of Ben Travis ("Travis Decl."). Counsel were able to compare settlement of class claims with the risks of further litigation, including trial and appeals. Defense counsel are skilled employment lawyers, with significant class action experience, from the respected law firm of Vorys, Sater, Seymour and Pease LLP. Defense counsel defended their clients vigorously throughout the case. Plaintiffs' counsel believe that the settlement is fair, reasonable, and in the best interest of the class in light of the monetary recovery, difficulties of this litigation, differences among class members, risks of certification/decertification, summary adjudication, along with the delay of recovery and uncertainty of appeals. Ferraro Decl. ¶¶ 16-19.

1 **4. The Settlement is a Fair and Reasonable Compromise of the Claims**

2 To make a fairness determination at the preliminary approval stage, courts should consider
3 several relevant factors, including “the strength of Plaintiff’s case, the risk, expense, complexity and
4 likely duration of further litigation, the risk of maintaining class action status through trial, the amount
5 offered in settlement, the extent of discovery completed and the stage of the proceedings, [and] the
6 experience and views of counsel[.]” *Dunk*, 48 Cal. App. 4th at 1801. The Court’s inquiry “must be
7 limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of
8 fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken
9 as a whole, is fair, reasonable and adequate to all concerned.” *Id.*

10 **i. The Strength of Plaintiffs’ Case**

11 Although Plaintiffs steadfastly maintain the alleged claims are meritorious, Plaintiffs
12 acknowledge substantial risks and uncertainties in proceeding with litigation. Defendants presented
13 multiple defenses to Plaintiffs’ claims. These defenses were supported by the sampling and in the
14 records. Furthermore, Defendants maintained lawful written policies that would have made
15 certification difficult. The strength of Plaintiffs’ case is further discussed in **Paragraph 21 of the**
16 **Ferraro Decl.**, which sets forth the claim-by-claim damage analysis and respective settlement in
17 accordance with *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 129 (2008).

18 **ii. Risk, Expense, Complexity and Duration of Further Litigation**

19 The parties made a significant exchange of documents, data, records, and information in advance
20 of mediation. However, the parties still had significant discovery to complete in formal litigation had
21 the matter not settled. This would have required an expenditure of substantial time and resources by
22 both parties over the course of the next several years. Plaintiffs would have continued to advance their
23 case through written discovery, third party witness investigations, and depositions, whereas Defendants
24 would have prepared motions for summary judgment on legal issues. Even if Plaintiffs certified all
25 claims and avoided summary judgment on certain legal issues, the parties would incur considerably
26 more attorneys’ fees and costs through additional motions, trial, and possible appeal. Instead, this
27 settlement avoids those risks and the accompanying expenses on the parties, the court, and the putative
28 class members. Ferraro Decl. ¶ 18.

1 **iii. Amount Offered in Settlement**

2 “[T]o ensure that the recovery represents a reasonable compromise, given the magnitude and
3 apparent merit of the claims being released, discounted by the risks and expenses of attempting to
4 establish and collect on those claims by pursuing the litigation,” a summary of Plaintiffs’ exposure
5 analysis is set forth in the Ferraro Decl. ¶ 21. *See Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th
6 116, 129 (2008); *see also Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal. App. 4th 399,
7 409 (2010) (noting, the plaintiff on preliminary approval must offer a record allowing “an understanding
8 of the amount that is in controversy and the realistic range of outcomes of the litigation.”). As detailed
9 in the supporting declaration, Defendants have made a significant settlement payment that will
10 adequately and fairly compensate Class Members for their alleged respective damages.

11 **iv. The Experience and Views of Counsel**

12 “Parties represented by counsel are better positioned than courts to produce a settlement that
13 fairly reflects each party’s expected outcome in litigation.” *In re Pacific Enterprises Securities Litig.*,
14 47 F.3d 373, 378 (9th Cir. 1995). Here, competent and experienced counsel who have extensive
15 experience both prosecuting and defending wage and hour class actions, and who have been appointed
16 as class counsel in numerous cases alleging similar claims, represent Plaintiffs. *See* Ferraro Decl. ¶¶
17 16-19, Hewgill Decl., Travis Decl. Proposed class counsel conducted a thorough and detailed review
18 of Defendants’ policies, timekeeping, and payroll records and assessed Defendants’ liability exposure
19 with the assistance of a retained damages expert. The settlement was reached with the assistance of an
20 experienced and respected wage and hour class action mediator. Ferraro Decl. ¶¶ 7-11. This factor
21 strongly supports preliminary approval of the proposed class action settlement.

22 **5. The Preliminary Approval Standard is Met**

23 The Court can grant preliminary approval of a proposed class action settlement and direct notice
24 be given to the class if the settlement: (1) falls within the range of possible approval, (2) appears to be
25 the product of serious, informed negotiations; and (3) has no obvious defects. *See Manual for Complex*
26 *Litig.*, § 30.41 (3rd Ed. 1995); *Newberg on Class Actions*, § 11:24-25 (4th Ed. 2013). Here, Plaintiffs
27 and counsel gave serious consideration to all facts and arguments and concluded the Settlement is fair
28 and reasonable. The GSA represents nearly 54% of the estimated reasonable value of class claims. (\$2

million/\$3.76 million), and is within the “ballpark” of reasonableness. Ferraro Decl. ¶ 21. The Settlement was reached after extensive preparation and investigation, and finally agreed upon at mediation. The Settlement provides monetary relief to the class and the amounts proposed for attorneys’ fees, costs, service award, and PAGA penalties are all reasonable and appropriate based on the facts of the case. Because the Settlement is devoid of obvious deficiencies, the Court may preliminarily approve the Settlement.

B. The Court Should Preliminarily Approve the PAGA Payment

“PAGA penalties are paid 75% to the California Labor and Workforce Development Agency and 25% to aggrieved employees. Thus, in wage and hour class action cases that settle, [] very little of the total settlement is paid to PAGA penalties in order to maximize payments to class members.” *Magadia v. Wal-Mart Assocs.*, 384 F. Supp. 3d 1058, 1101 (2019).

“[T]he amount of the common settlement fund reserved for PAGA penalties [is adequate], as courts frequently approve settlements in wage and hour class action and PAGA actions that minimize the total amount of the settlement that is paid to PAGA penalties in order to maximize payments to class members.” *Mejia v. Walgreen Co.*, 2020 U.S. Dist. LEXIS 220685, *26 (E.D. Cal. Mar. 24, 2021) (citations omitted); *see also Alcala v. Meyer Logistics, Inc.*, 2019 LEXIS 166879, *26 (C.D. Cal. June 17, 2019) (collecting cases in which PAGA penalties within the zero to two percent of the gross settlement were approved by courts). Indeed, a trial court has authority to completely reduce penalties, as long as not to “zero.” *Thurman v. Bayshore Transit Management, Inc.*, 203 Cal. App. 4th 1112, 1135 (2012) (reducing penalties by 30%). Plaintiffs believed reasonable exposure was no more than 7% of maximum exposure and possibly less. *See Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504, 517 (2018) (Plaintiff requested “nearly \$70 million in penalties,” trial court’s \$150,000 award upheld on appeal).

Using initial violation rates, maximum PAGA penalties were estimated at \$43 million, adjusted to 7 percent, for six underlying violations: Sec. 1194 (unpaid wages) (\$100); Sec. 226.7 (meal) (\$100); Sec. 226.7 (rest) (\$100); Sec. 226 (wage statements) (\$100); and Sec. 204 (untimely wage payment) - \$528,500 (\$100) Reimbursements under Labor Code section 2802. Ferraro Decl. ¶ 21. Initial violation rates are used, based on the defense argument “courts have held that employers are not subject to

heightened penalties for subsequent violations unless and until a court or commissioner notifies the employer that it is in violation of the Labor Code.” *Vieyara-Flores v. Sika Corp.*, 2019 U.S. Dist. LEXIS 98081, *13 (C.D. Cal. 2019).

The \$50,000 PAGA allocation is well within the range approved by California courts. *See Alcala v. Meyer Logistics, Inc.*, 2019 LEXIS 166879, *26 (C.D. Cal. June 17, 2019) (PAGA penalties representing 1.25% of gross settlement reasonable, as it “falls within the zero to two percent range for PAGA claims approved by courts.”); *Magadia, supra.* at 1101 (citing *Ceja-Corona v. CVS Pharm., Inc.*, 2015 U.S. Dist. LEXIS 5118 (E.D. Cal. Jan. 14, 2015) (\$10,000 PAGA penalties in settlement of \$900,000), as adopted, 2015 U.S. Dist. LEXIS 25730 (E.D. Cal. Mar. 3, 2015).

Lastly, proposed class counsel served the Settlement on the LWDA before filing the motion for approval, therefore satisfying that requirement as set forth in Labor Code § 2699(k)(2). Ferraro Decl. ¶ 12, Exhibit 2 (Notice to the LWDA of Proposed PAGA Settlement).

C. The Court Should Conditionally Certify the Settlement Class

Class certification is appropriate where (1) the class is ascertainable and sufficiently numerous; (2) common questions of law and fact predominate over individual issues such that class certification is most efficient; (3) the plaintiff’s claims are typical of those of absent class members; and (4) the plaintiffs and their counsel will fairly and adequately represent the class. Code Civ. Proc. § 382; *Brinker Restaurant Corp. v. Superior Court*, 53 Cal. 4th 1004, 1021 (2012).

1. The Proposed Class is Ascertainable and Numerous

A class is ascertainable where the members “may be readily identified without unreasonable expense or time by reference to official [or business] records.” *See Sevidal v. Target Corp.*, 189 Cal. App. 4th 905, 916 (2010). Here, the proposed class has been and is capable of being ascertained from Defendants’ records for purposes of settlement. There are an estimated 3,800 putative class members working a total of 180,000 workweeks. Ferraro Decl., ¶ 15. Numerosity is therefore satisfied.

2. Common Questions of Law and Fact Predominate

The focus for certification is not the merits of the case, but rather whether “common or individual” questions are likely to arise in the action. *Sav-On Drug Store, Inc. v. Superior Court*, 34 Cal. 4th 319, 327 (2004). Commonality is met if plaintiff’s and class members’ claims “depend upon

1 a common contention . . . capable of class-wide resolution—which means that determination of its truth
2 or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.”
3 *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). Here, Plaintiffs’ claims concern the
4 application of employment policies and payroll procedures, issues commonly deemed proper for
5 purposes of class certification in the context of settlement and capable of being resolved together rather
6 than through a series of individual cases concerning the same or similar employee experiences. *See*,
7 *e.g.*, *Benton v. Telecom Network Specialists, Inc.*, 220 Cal. App. 4th 701, 726 (2013) (reversing denial
8 of certification of meal and rest period claims); *Faulkinbury v. Boyd & Associates, Inc.* 216 Cal. App.
9 4th 220, 240 (2013) (certifying regular rate claim).

10 **3. Plaintiffs’ Claims are Typical**

11 Typicality is satisfied where class representatives have claims typical of those of the other class
12 members. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.*, 191 Cal. App. 3d 1341, 1347 (1987). Here,
13 Plaintiffs’ claims are typical of those of other class members for purposes of settlement as they were
14 employed by Defendants as non-exempt employees in California. Plaintiffs allege they were aggrieved
15 by the same challenged policies that resulted in alleged losses to the class. Plaintiffs’ employment
16 claims are typical of those of other class members for purposes of settlement.

17 **4. Plaintiffs and Counsel Will Fairly and Adequately Represent the Class**

18 The adequacy requirement examines conflicts of interest between the named parties and the
19 classes they seek to represent. *Capital People First v. State Dept. of Dev. Serv.*, 155 Cal. App. 4th 676,
20 697 (2007). Neither Plaintiffs nor proposed class counsel have any conflict with the class. Plaintiffs
21 elected to file class actions as opposed to individual lawsuits or administrative claims out of a sense of
22 initiative and responsibility to current and former coworkers. Ferraro Decl., ¶ 19. The maximum
23 \$5,000 service payment allocated to each Plaintiff out of a \$2,000,000 total settlement is not
24 disproportionate that it renders Plaintiffs inadequate. Plaintiffs will provide further justification for the
25 service awards at the final approval stage.

26 Adequacy is satisfied for purposes of certification. Plaintiffs respectfully ask that the Court
27 appoint Justin Hewgill of Hewgill Cobb & Lockard, APC, Ben Travis of Ben Travis Law, APC, and
28 Nicholas J. Ferraro and Lauren N. Vega of Ferraro Vega Employment Lawyers, Inc. as class counsel,

1 and Plaintiffs Maria Sanz, Amy McCormack, Helena Phillips, Celeste Giron, Spencer Maki, Jules
2 Santos, and Diane White as the class representatives.

3 **D. The Court Should Order Distribution of the Class Notice Materials**

4 To satisfy due process, notice to class members must be ‘the best practicable, reasonably
5 calculated, under all the circumstances, to apprise interested parties of the pendency of the action and
6 afford them an opportunity to present their objections.’” *Duran v. Obesity Research Institute, LLC*,
7 1 Cal. App. 5th 635, 647 (2016). Here, the class notice and associated notice procedure addressed
8 herein satisfies California Rules of Court, rule 3.766(d) as the most reliable and cost-effective method
9 of notifying class members of the Settlement. Class members are afforded information about the case,
10 the key terms of Settlement, the deadline to opt-out or object, the recovery formula, and their estimated
11 individual settlement share, the final approval hearing, advises class members they will be bound by
12 the Settlement if they do not affirmatively opt out. The class notice further advises the class of the final
13 fairness hearing and provides the contact information for all counsel of record and the Administrator.

14 Furthermore, the class notice (and the Settlement itself) contains customary and standard terms
15 for a wage and hour class action, warranting approval.

16 **IV. CONCLUSION**

17 Plaintiffs request that the Settlement be preliminarily approved, the class notice be approved
18 and ordered for distribution to the class, CPT Group, Inc. be appointed Administrator, Justin Hewgill
19 of Hewgill Cobb & Lockard, APC, Ben Travis of Ben Travis Law, APC, and Nicholas J. Ferraro and
20 Lauren N. Vega of Ferraro Vega Employment Lawyers, Inc. be appointed as class counsel, Plaintiffs
21 Maria Sanz, Amy McCormack, Helena Phillips, Celeste Giron, Spencer Maki, Jules Santos, and Diane
22 White be appointed as class representatives, and a final approval hearing date be set on or after **October**
23 **13, 2023**, at which time Plaintiffs will file a motion for final approval of class action settlement,
24 including a request for attorneys’ fees, service award, and appropriate costs.

Respectfully submitted,

Dated: May 25, 2023.

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