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16 and the Certified Class/Subclasses

17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

18 **IN AND FOR THE COUNTY OF SANTA CLARA**

19 RONALD BALANAG and JAVIER
20 GRACIANO, on behalf of themselves and all
21 others similarly situated, and on behalf of the
22 general public;

23 Plaintiffs,

24 v.

25 LAPTALO ENTERPRISES, INC., dba JL
26 PRECISION, a California corporation;
27 MICHAEL LAPTALO, an individual; and
28 DOES 1 through 50, inclusive,

Defendants.

Case No. 16CV292680

CLASS ACTION

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR AN ORDER:**

- (1) **GRANTING PRELIMINARY
APPROVAL TO CLASS ACTION
SETTLEMENT;**
- (2) **GRANTING CONDITIONAL
CERTIFICATION OF THE
SETTLEMENT CLASS;**
- (3) **APPOINTING CLASS COUNSEL,
CLASS REPRESENTATIVES AND
SETTLEMENT ADMINISTRATOR;
AND,**
- (4) **APPROVING THE NOTICE OF
PROPOSED CLASS ACTION
SETTLEMENT AND FINAL
APPROVAL HEARING DATE**

Date: June 19, 2020

Time: 10:00 a.m.

Dept: 1

Judge: Hon. Brian C. Walsh

TABLE OF CONTENTS

INTRODUCTION.....	1
I. PROCEDURAL HISTORY AND SETTLEMENT NEGOTIATIONS.....	2
II. SUMMARY OF SETTLEMENT	3
A. THE SETTLEMENT CLASS	4
B. THE SETTLEMENT TERMS.....	4
2. THE RELEASE.....	7
3. PROPOSED SCHEDULE AND SEQUENCE OF EVENTS.....	7
III. CLASS ACTION SETTLEMENT APPROVAL PROCEDURE.....	8
IV. PLAINTIFFS’ SUBSTANTIVE CLAIMS AND THEORIES OF LIABILITY	9
A. FAILURE TO PAY ALL WAGES OWED.....	9
B. MEAL AND REST BREAK VIOLATIONS	10
C. ACCURATE WAGE STATEMENT PENALTIES.....	10
D. WAITING TIME PENALTIES.....	11
E. PREJUDGMENT INTEREST ON WAGES.....	11
F. PAGA PENALTIES.....	12
V. PROVISIONAL CLASS CERTIFICATION IS APPROPRIATE	12
A. CLASS CERTIFICATION IS APPROPRIATE UNDER CCP SECTION 382	13
1. THE PROPOSED CLASS IS ASCERTAINABLE AND SUFFICIENTLY NUMEROUS	14
2. COMMON ISSUES OF LAW AND FACT PREDOMINATE.....	14
3. PLAINTIFFS’ CLAIMS ARE TYPICAL OF THE CLAIMS OF THE CLASS	15
4. THE CLASS WILL BE ADEQUATELY REPRESENTED BY PLAINTIFFS AND CLASS COUNSEL.....	16
5. A CLASS ACTION IS THE SUPERIOR METHOD OF ADJUDICATION.....	16
VI. PRELIMINARY APPROVAL OF THE SETTLEMENT IS APPROPRIATE	17
A. THE SETTLEMENT SHOULD BE PRESUMED FAIR.....	17
B. THE SETTLEMENT IS WITHIN THE RANGE OF REASONABLENESS.....	18
C. THE CLASS-WIDE RELEASE IS APPROPRIATELY LIMITED	19
D. PLAINTIFFS' ATTORNEYS’ FEES AND COSTS ARE REASONABLE	19
E. NAMED PLAINTIFFS SEEKS REASONABLE ENHANCEMENT AWARDS.....	21
VII. THE CLASS NOTICE PROGRAM IS CONSTITUTIONALLY SOUND.....	22
VIII. SCHEDULING A FINAL APPROVAL HEARING IS APPROPRIATE.....	23
IX. CONCLUSION.....	23

TABLE OF AUTHORITIES

Cases

7-Eleven Owners for Fair Franchising v. Southland Corp.

(2000) 85 Cal.App.4th 1135..... 17

Alberto v. GMRJ Inc.

(E.D.Cal. 2008) 252 F.R.D. 652..... 18

Amchem Products, Inc. v. Windsor

(1997) 521 U.S. 591 13

Aubry v. Goldhor

(1988) 201 Cal.App.3d 399..... 11

B.W.I. Custom Kitchen v. Owens-Illinois, Inc.

(1987) 191 Cal.App.3d 1341 15

Barnhill v. Saunders

(1981) 125 Cal. App. 3d 1 11

Bell v. Farmers Ins. Exchange

(2004) 115 Cal.App.4th 715..... 21

Blum v. Stenson

(1984) 465 U.S. 886 20

Boggs v. Divested Atomic Corp.

(S.D. Ohio 1991) 141 F.R.D. 58 16

Brinker Restaurant Corp. v. Superior Court

(2012) 53 Cal.4th 1004..... 14, 15

Bufl v. Dollar Financial Group, Inc.

(2008) 162 Cal.App.4th 1193..... 15

Cellphone Termination Fee Cases

(2010) 186 Cal. App. 4th 1380..... 21

City of Riverside v. Rivera

(1986) 477 U.S. 561 19

City of San Diego v. Haas

(2012) 207 Cal. App. 4th 472..... 15

City of San Jose v. Superior Court

(1974) 12 Cal.3d 447..... 14

1	<i>Clark v. American Residential Services LLC</i>	
2	(2009) 175 Cal.App.4th 785.....	21
3	<i>Classen v. Weller</i>	
4	(1983) 145 Cal.App.3d 27.....	15
5	<i>County of Suffolk v. Long Island Lighting Co.</i>	
6	(E.D.N.Y. 1989) 710 F.Supp. 1422.....	13
7	<i>Daniels v. Centennial Group, Inc.</i>	
8	(1993) 16 Cal.App.4th 467.....	15
9	<i>Dunk v. Ford Motor Co.</i>	
10	(1996) 48 Cal.App.4th 1794.....	8, 17
11	<i>Earley v. Superior Court</i>	
12	(2000) 79 Cal.App.4th 1420.....	20
13	<i>Espinoza v. Classic Pizza</i>	
14	(2003) 114 Cal. App. 4th 968.....	11
15	<i>Fireside Bank v. Superior Court</i>	
16	(2007) 40 Cal.4th 1069.....	14
17	<i>Gentry v. Superior Court</i>	
18	(2007) 42 Cal.4th 443.....	16
19	<i>Ghazaryan v. Diva Limousine, Ltd.</i>	
20	(2008) 9 Cal.App.4th 1524.....	15
21	<i>Hanlon v. Chrysler Corp.</i>	
22	(9th Cir. 1998) 150 F.3d 1011.....	18
23	<i>Hicks v. Kaufman & Broad Home Corp.</i>	
24	(2001) 89 Cal.App.4th 908.....	15
25	<i>Jaimez v. Daiohs USA, Inc.</i>	
26	(2010) 181 Cal.App.4th 1286.....	15
27	<i>Kullar v. Foot Locker Retail, Inc.</i>	
28	(2008) 168 Cal. App. 4th 116.....	18
	<i>La Sala v. American Savings & Loan Assn.</i>	
	(1971) 5 Cal.3d 864.....	13
	<i>Linder v. Thrifty Oil Co.</i>	
	(2000) 23 Cal.4th 429.....	14

1	<i>Mamika v. Barca</i>	
2	(1998) 68 Cal. App. 4th 487.....	11
3	<i>McGhee v. Bank of Am.</i>	
4	(1976) 60 Cal.App.3d 442.....	16
5	<i>Officers for Justice v. Civ. Serv. Comm'n of SF</i>	
6	(9th Cir. 1982) 688 F.2d 615.....	18
7	<i>Olso v. Cory</i> (1983)	
8	35 Cal.3d 390	11
9	<i>Richmond v. Dart Industries, Inc.</i>	
10	(1981) 29 Cal.3d 462.....	16
11	<i>Rose v. City of Hayward</i>	
12	(1981) 126 Cal.App.3d 926.....	14
13	<i>Sav-on Drug Stores, Inc. v. Superior Court</i>	
14	(2004) 34 Cal.4th 319.....	15, 16
15	<i>Serrano v. Priest</i>	
16	(1977) 20 Cal.3d 35.....	20
17	<i>Trotsky v. Los Angeles Fed. Sav. & Loan Assn.</i>	
18	(1975) 48 Cal.App.3d 134.....	19
19	<i>Van Vranken v. Ad. Richfield Co.</i>	
20	(N.D. Cal. 1995) 901 F.Supp. 294	21
21	<i>Vasquez v. Superior Court</i>	
22	(1971) 4 Cal. 3d 800.....	13
23	<i>Wershba v. Apple Computer, Inc.</i>	
24	(2001) 91 Cal.App.4th 224.....	8, 17
25	Statutes	
26	Cal. Civ. Code § 1781	8, 22
27	Cal. Civ. Code § 3289(b)	11
28	Cal. Code Civ. Proc. § 340(a)	12
	Cal. Code Civ. Proc. § 382.....	12, 14
	Cal. Lab. Code § 203.....	11
	Cal. Lab. Code § 218.6.....	11
	Cal. Lab. Code § 2698.....	12
	Cal. Lab. Code § 2699(a)	12

1	Cal. Lab. Code § 2699(f).....	12
2	Cal. Lab. Code § 2699(g).....	12
3	Cal. Lab. Code § 2699(i).....	12
4	Rules	
5	Cal. R. Ct., Rule 3.769	8, 9, 22
6	Treatises	
7	4 <i>Newberg on Class Actions</i> § 11:22	9
8	4 <i>Newberg on Class Actions</i> § 11:25	9
9	5 James Wm. Moore, <i>et al.</i> ,	
10	<i>Moore's Federal Practice</i> , § 23.85(3) (3d ed. 1997) 23.353	18
11	<i>Manual for Complex Litigation, Fourth</i> , § 21.63.....	9
12		
13		
14		
15		
16		
17		
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19		
20		
21		
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23		
24		
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INTRODUCTION

Representative Plaintiffs Ronald Balanag and Javier Graciano (“Plaintiffs”), by and through the instant unopposed Motion, request this Court enter an Order:

1. Preliminarily approving the Parties’ Joint Stipulation Regarding Class Action Settlement and Release (the “Settlement”);¹
2. Granting Conditional Certification of the settlement Class;
3. Appointing Class Counsel, Class Representative and Settlement Administrator;
4. Scheduling a Final Approval Hearing; and,
5. Approving the Notice of Proposed Class Action Settlement and Final Approval Hearing Date.

Plaintiffs represent a certified class of non-exempt machinists, machine operators, welders, shipping clerks, and painters (“Workers”) who worked for Laptalo Enterprises, Inc., doing business as “JL Precision” or “JL Precision Sheet Metal”, (“JL Precision”) at its factory on Zanker Road in San Jose, California from March 14, 2012 through November 28, 2017 (“Class Period”).

In their Complaint, Plaintiffs allege JL Precision failed to properly compensate Workers for all hours worked, provide timely meal or rest periods, pay all due wages on separation of employment, provide accurate itemized wage statements, and that JL Precision committed unfair business practices under California law. Plaintiff Graciano further alleges defendant Michael Laptalo is personally liable for some of the conduct alleged therein to the extent allowable by law.

Through this lawsuit, Plaintiffs sought damages for unpaid wages (including overtime), meal and rest period violations, and derivative penalties including inaccurate wage statement penalties, late payment penalties, and penalties under the Private Attorneys General Act (“PAGA”). Plaintiffs also sought associated interest, attorneys’ fees and costs.

This Court certified a class and four subclasses of Workers on November 28, 2017. This Court granted Plaintiffs’ motion to summarily adjudicate their meal and rest period claims by Order dated April 3, 2019. Plaintiffs’ other claims remain at issue.

¹ See **Exhibit “1”** [Joint Stipulation Regarding Class Action Settlement and Release](the “Settlement”). All numerical exhibits cited herein are attached to the accompanying Declaration of Kevin R. Allen in Support of the instant Motion (“Allen Decl.”). All alphanumeric exhibits cited herein are attached to the Settlement.

1 The present settlement provides for a **non-reversionary** payment of Six Hundred Thousand
2 Dollars (\$600,000.00) that will be used to pay settlement awards to the approximately 148 class
3 members, attorney's fees and costs, settlement administration costs, a service award to the named
4 plaintiffs, and to pay the Labor and Workforce Development Agency under PAGA. Defendants JL
5 Precision and Michael Laptalo ("Defendants") are jointly and severally liable for this payment. In
6 exchange for this settlement payment, Defendants will be provided a limited release of the causes
7 of action asserted in the Complaint or that could have been asserted based on the stated predicate
8 allegations contained therein. Plaintiffs will further release all of their individual claims against
9 Defendants to the extent allowed by law.

10 Viewed in relation to the risks and uncertainty Plaintiffs would have prevailed on the
11 remainder of their claims, the proposed Settlement falls well within the range of reasonableness
12 and is worthy of preliminary approval and conditional class certification.

13 **I. PROCEDURAL HISTORY AND SETTLEMENT NEGOTIATIONS²**

14 On March 24, 2016, Plaintiff Ronald Balanag filed a Complaint in the Santa Clara County
15 Superior Court which was assigned Case No. 16CV292680. On June 9, 2017, the Court granted
16 Plaintiff Balanag's request for leave to amend the Complaint to include a second class
17 representative, Plaintiff Javier Graciano. The Complaint alleged the following claims on behalf of
18 Plaintiffs and the then-putative Workers class:

- 19 1. Failure to Pay Wages Owed (Including Overtime Pay) (Labor Code Secs. 510,
20 1194, 1197, 1198, California Wage Orders, San Jose Municipal Code);
- 21 2. Failure to Provide Meal and Rest Periods or Pay Meal and Rest Period Premiums
22 (Labor Code Secs. 226.7, 512, California Wage Orders);
- 23 3. Failure to Pay Wages on Separation of Employment (Labor Code Secs. 203, 2926,
24 2927);
- 25 4. Failure to Provide Accurate Itemized Wage Statements (Labor Code Sec. 226);
- 26 5. Unfair Business Practices (Business and Professions Code Sec. 17200, *et seq.*);
- 27 and

28

² See Allen Decl., ¶¶ 3-7.

1 6. Civil Penalties Under Private Attorneys General Act (Labor Code Sec. 2698, *et*
2 *seq.*).

3 On or about April 29, 2016, defendant JL Precision filed an Answer generally denying the
4 entirety of the allegations of the Complaint.

5 This Court certified a class and four subclasses of Workers on November 28, 2017. This
6 Court granted Plaintiffs' motion to summarily adjudicate their meal and rest period claims by
7 Order dated April 3, 2019.

8 After extensive written discovery, depositions, and the outcome of Plaintiffs' class
9 certification and summary adjudication motions, the Parties agreed to attempt to resolve this
10 Action through mediation. The Parties ultimately attended two mediation sessions seven months
11 apart. Both mediation sessions involved extensive informal data exchange related to class size,
12 average pay rates, and works worked by Workers during the Class Period.

13 The first mediation session was held on June 18, 2018 with the Honorable Kevin J. Murphy
14 of ADR Services. Prior to mediation, the Parties provided Judge Murphy with mediation briefs
15 summarizing the evidence, state of applicable law, and providing comprehensive class-wide
16 damages analysis. The all-day session resulted in continued settlement discussions which led to a
17 second mediation session.

18 The second mediation session was held on January 23, 2019 before Cynthia Remmers of
19 Remmers Global mediation services. The Parties again supplied the mediator with extensive
20 mediation briefs containing summaries of evidence, law, and analysis of damages. Defendant's
21 financial condition was a factor in the negotiations so, at Plaintiffs' request, Defendants provided
22 copies of financial reports, tax returns, and additional information relevant to its finances. The
23 Parties continued the all-day session through both direct communications and those involving Ms.
24 Remmers over the next year, ultimately resulting in the Joint Stipulation Regarding Class Action
25 Settlement and Release attached to the Allen Decl. as **Exhibit "1"**.

26 **II. SUMMARY OF SETTLEMENT**
27

28 The proposed Settlement is within the range of reasonableness and in the best interest of the

1 class members in light of all facts and circumstances, including the risk of significant delay and
2 Defendants' substantive and procedural defenses.

3 **A. THE SETTLEMENT CLASS**

4 The Settlement proposes conditional certification of the following Settlement Class:³

5 *All individuals who have been employed by defendant LAPTALO ENTERPRISES, INC. as*
6 *non-exempt machinists, machine operators, welders, shipping clerks, or painters at*
7 *defendant's factory on Zanker Road in San Jose, California during the Class Period,*
8 *excluding individuals who have executed a release of the claims in this action.*⁴

9 There are approximately 148 Settlement Class Members.⁵ In order to protect the value of
10 the Settlement, Plaintiffs' counsel negotiated a provision whereby if the class size Class List
11 representation by five-percent or more (5%+) then Plaintiffs' counsel may void the entire
12 agreement. *Settlement*, ¶3.19.

13 **B. THE SETTLEMENT TERMS**

14 The proposed settlement provides Defendants shall be joint and severally liable to pay
15 \$600,000 (referred to as the "Maximum Settlement Amount") to compensate Plaintiffs and
16 Settlement Class Members. *See Settlement*, ¶¶1.16, 2.7, 3.8. **The Settlement Amount is non-**
17 **reversionary and none of it will be returned to the Defendant under any circumstances.**
18 *Id.*, ¶2.7, 3.12. Class Members stand to receive, on average, \$2,175 each. Allen Decl., ¶ 12.

19 Due to Defendant's financial condition, as evidence at mediation and in post mediation data
20 exchanges,⁶ Defendants are being permitted to fund the Maximum Settlement Amount over
21 twenty-three months. *Settlement*, ¶3.8. There will be an initial \$100,000 installment payment, due
22 within 30 days of the Settlement's effective date, followed by twenty-two payments of
23 approximately \$22,727 each. *Id.*

24 All distributions from the Maximum Settlement Amount will be paid in two checks, with
25

26 ³ This is identical to the class certified by the Court on November 28, 2017 except that "customer service
27 representatives" and "administrative assistants" were subsequently removed from the class definition pursuant to an
28 April 3, 2019 stipulation of the Parties. *See Stipulation and Order Concerning Motion for Summary Adjudication and*
Class Certification Issues (Signed April 3, 2019).

⁴ *Settlement*, ¶2.1. The Class Period is defined as March 14, 2012 to November 27, 2017, inclusive, *Id.* ¶1.6.

⁵ Allen Decl., ¶ 9, *Id.*, *Settlement* ¶1.32 Exhibit B Class List.

⁶ Allen Decl., ¶ 10.

1 the first half of the payment issued within fourteen days of receipt of the tenth installment
2 (reflecting payment of \$304,543) and the second half of the payment issued within fourteen days of
3 the final installment. *See e.g. Settlement*, ¶¶ 3.9, 3.10, 3.13, 3.15, 3.16.

4 The settlement fund will be used to pay a modest incentive award to each of the named
5 Plaintiffs for their extensive service to the Class (up to \$10,000 each); Plaintiffs’ attorneys’ fees
6 (up to 35% of the Maximum Settlement Amount, i.e., \$210,000) and actual litigation costs subject
7 to Court determination and approval; a PAGA payment to the California Labor and Workforce
8 Development Agency (75% of \$12,000, i.e., \$9,000); and actual administration expenses to
9 Settlement Administrator CPT Group, Inc. (\$17,500 flat fee).⁷ *Settlement*, ¶¶ 1.3, 1.4 1.7, 1.20,
10 1.30, 1.31⁸. The amount remaining from the Maximum Settlement Amount after paying for these
11 items, referred to as the Net Settlement Amount, will be distributed in its entirety to participating
12 Settlement Class Members. *Id.*, ¶¶ 1.17, 1.30, 3.8.1, 3.9, 3.10, 3.13, 3.15, 3.16.

13 Each Settlement Class Member’s Individual Settlement Payment amount will be calculated
14 *pro rata* based upon each Settlement Class Members’ individual number of Workweeks⁹ worked
15 during the Class Period relative to the Workweeks worked by all participating Settlement Class
16 Members. *Settlement*, ¶ 3.10.1.

17 Class Members do not need to submit a claim form or do anything else in order to receive
18 their settlement checks (referred to collectively as an “Individual Settlement Payment”).
19 *Settlement*, ¶¶ 1.15, 3.4. Rather, Class Members who do not wish to receive settlement checks and
20 wish to retain their claims may submit a Request for Exclusion. *See Settlement*, ¶¶ 1.27, 3.1, 3.5,
21 3.10.4, 3.10.5, 3.40.

22 Inevitably, some Settlement Class Members will not cash their Individual Settlement
23 Payment checks. Checks not cashed within 180 days of mailing will be voided. The funds from

24 ⁷ In the Settlement, claims administration costs were erroneously estimated at \$16,000. *See Settlement*, § 1.30.
25 This lower figure was based on administering a prior version of the settlement. Allen Decl., ¶ 16.

26 ⁸ The Maximum Settlement Amount shall be used to pay employee-side payroll taxes but Defendants are
27 responsible for paying employer’s payroll taxes in addition to and outside of the settlement. *Settlement*, ¶¶ 2.7, 3.2,
28 3.81.

⁹ “Workweeks” is “calculated, for purposes of this Settlement, by taking the number of days between each
Class Member’s first day of employment within the Class Period and their last day of employment within the Class
Period, and dividing it by seven. Any break in employment greater than 30 days shall be subtracted from a Class
Member’s calculated Workweeks.” *See Settlement*, § 1.34.

1 voided checks will be reissued to the same Settlement Class Member when the second round of
2 Individual Settlement Payment check are sent out. *Settlement*, ¶3.10.1. If the funds from uncashed
3 checks in this second round of payments is less than \$30,000, the funds shall be paid to a Court-
4 approved nonprofit organization as *cy pres*, proposed to be the Katharine & George Alexander
5 Community Law Center (“KGACLC”). *Settlement*, ¶3.12.1. If the total funds from uncashed
6 checks exceeds \$30,000, the Settlement Administrator shall make a third distribution to Settlement
7 Class Members who cashed at least one of the previous Individual Settlement Payment check in a
8 *pro rata* amount based on that individual’s Workweeks during the Class Period relative to the total
9 Workweeks worked by other Settlement Class Members who cashed at least one Individual
10 Settlement Payment check. Any checks uncashed 180 days from the third distribution shall be
11 voided and the funds shall be turned over to the Court-approved *cy pres*. *Settlement*, ¶3.12.3.

12 The Parties propose as *cy pres* the Katharine & George Alexander Community Law Center.
13 Allen Decl. ¶ 15. The organization is a non-profit and fulfills the requirements of Code of Civil
14 Procedure Section 384.¹⁰ See **Exhibit “3”** [Description of the services offered by KGACLC].
15 Plaintiffs and their counsel have no current relationships with Community Law Center. *Id.*

16 For tax purposes, 20% of each Settlement Class Member’s settlement payment shall be
17 treated as wages (and reported on a W-2 Form) and 80% shall be treated as expense
18 reimbursement, penalties and interest (reported on a 1099-MISC Form). *Settlement*, ¶¶ 3.2, 3.9.
19 The Settlement Administrator shall deduct employee side payroll taxes from the portion of the
20 settlement check allocated to wages. *Id.* No withholding shall be made for Employer’s payroll
21 taxes as these are to be paid by Defendant in addition to and outside of the Settlement. See
22 *Settlement*, ¶¶ 2.7, 3.2.

23 The settlement provides that the Court shall retain jurisdiction over the matter following
24 final approval to enforce the settlement terms. *Settlement*, ¶¶ 3.22, 3.35.

25
26
27 ¹⁰ See Code of Civil Procedure Section 384 [Requiring funds from uncashed checks to be paid as *cy pres* to
28 “nonprofit organizations or foundations to support projects that will benefit the class or similarly situated persons, or
that promote the law consistent with the objectives and purposes of the underlying cause of action, to child advocacy
programs, or to nonprofit organizations providing civil legal services to the indigent.”].

1 **C. THE RELEASE**

2 The Settlement provides Defendant with a limited and narrow release of claims from
3 Settlement Class Members. All Class Members who do not opt out will release causes of action
4 that were plead in the operative Complaint or that “could have been set forth, given the stated
5 predicate allegations in the Complaint.” Settlement, ¶¶ 1.25 [Definition of “Released Claims”]; 3.1
6 [Release of Released Claims by Settlement Class Members]. The named Plaintiffs are required to
7 provide a broader General Release of all known and unknown claims with an express waiver Civil
8 Code Section 1542. *Id.*, ¶ 3.14 [“Additional Release of Class Representative”].

9 **D. PROPOSED SCHEDULE AND SEQUENCE OF EVENTS**¹¹

10 The Settlement provides for a comprehensive notice program to ensure Class Members are
11 informed of the proposed terms of settlement and allowed the opportunity to opt out or object to
12 the settlement. The Settlement provides for CPT Group, Inc. to be appointed as the Settlement
13 Administrator for this settlement. Settlement, ¶ 1.31.¹²

14 Upon receipt of the Preliminary Approval Order, the Parties will provide CPT Group, Inc.
15 with a version of the Class List (Exhibit B) that contains the Class Member names, contact
16 information, as well as the total Workweeks worked by that Class Member during the Class Period
17 (referred to as the “Database”). *Settlement*, ¶ 3.3.2. The Settlement Administrator will use the
18 National Change of Address (NCOA) database and skip traces to update Class Member addresses
19 and ensure notices have the best chance of reaching each Class Member. *Settlement*, ¶ 3.3.3.

20 Within twenty (20) days of the Preliminary Approval Order, the Settlement Administrator
21 will send each member, via First Class United States Mail, the Notice of Pendency of Class Action,
22 Proposed Class Action Settlement and Hearing Date for Final Court Approval of Settlement
23 (“Class Notice”).¹³ *Settlement*, ¶ 3.3.3. The Class Notice was drafted in plain English so as to
24 clearly explain the recipients’ options, how their settlement payment will be calculated, as well as
25

26 ¹¹ A chart reflecting the dates for performance of events under the Settlement is included in Allen Decl. See
27 Allen Decl., ¶ 30.

28 ¹² CPT Group, Inc. has ample experience administering class action settlements similar to this one. See **Exhibit**
“2”. Class Counsel has used them on many prior cases and finds them to be honest, suitable and trustworthy. Allen
Decl., ¶ 16..

¹³ The proposed class notice is attached to the Settlement as **Exhibit “A.”**

1 what claims they are giving up if they do not opt-out. The Class Notice informs Class Members
2 how they can dispute the information which is being used to calculate their individual settlement
3 awards. *Settlement*, Exhibit “A” [Class Notice].

4 Class members will have 30 days to request exclusion or object in writing. *Settlement*, ¶
5 1.28 [defining “Response Deadline”]. The Settlement and Notice provide in bold that a Class
6 Member or their representative may appear at the final approval hearing even if they do not file an
7 objection. *Settlement*, ¶ 3.6, **Exhibit “A”** at p. 9 (“Any Class Member, or person purporting to
8 object on behalf of any Class Member, may be received or considered by the Court at the Final
9 Approval Hearing, regardless of whether a written notice of objection is filed or delivered to the
10 Parties.”).

11 If any Class Notice is returned as undeliverable prior to the Response Deadline, the
12 Settlement Administrator will promptly mail to any forwarding address affixed to the envelope.
13 *Settlement*, ¶ 3.3.4.

14 **III. CLASS ACTION SETTLEMENT APPROVAL PROCEDURE**

15 A class action may not be dismissed, compromised or settled without Court approval. Civil
16 Code section 1781(f); California Rules of Court [hereinafter C.R.C.] Rule 3.769(a). This
17 requirement is intended to prevent fraud, collusion, and/or unfairness to the class. *Dunk v. Ford*
18 *Motor Co.* (1996) 48 Cal.App.4th 1794, 1800-01. The decision to approve or reject a proposed
19 settlement is committed to the Court’s sound discretion. Therefore, judicial review is “limited to a
20 determination whether the record shows ‘a clear abuse of discretion.’” *Wershba v. Apple*
21 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35. In general, courts have discretion to determine
22 whether a settlement is within the range of reasonableness, whether notice to the class is adequate,
23 whether class certification is proper, and whether the attorney fee award is proper. *Id.*, *see also*,
24 *Dunk, supra*, 48 Cal.App.4th at 1802. “Commonly accepted procedure calls for (1) preliminary
25 approval of the proposed settlement at an informal hearing, (2) notice to class members of the
26 proposed settlement and of their rights with respect thereto, and (3) a formal hearing on the
27 fairness of the proposed settlement, where class members voice their support for or objection to the
28 settlement, also known as a final approval hearing or “final fairness” hearing.” *Manual for*

1 *Complex Litigation, Fourth*, § 21.63, 447, 447-50 (4th ed. 2004) [hereinafter MCL].

2 With this Motion, Plaintiffs request the Court take the first step in the approval process and
3 grant preliminary approval of the proposed Settlement. A preliminary evaluation of the proposed
4 Settlement aims to determine whether it is within the “range of reasonableness,” and whether
5 sending the Class Notice containing Settlement terms and scheduling a formal fairness hearing
6 would be worthwhile. 4 *Newberg on Class Actions* § 11:25.

7 Plaintiffs further request the Court provisionally certify the proposed Settlement Class.
8 Provisional class certification is appropriate at the preliminary approval stage where the proposed
9 settlement class meets certification requirements but has not previously been certified by the Court.
10 4 *Newberg* § 11:22. In this case, the Court has previously certified the Settlement Class but the
11 Parties have stipulated to the exclusion of “customer representative” and “administrative assistant”
12 Workers. *Settlement*, ¶ 2.1.

13 If this Court grants preliminary approval of the Settlement and conditionally certifies the
14 class, “its order must include the time, date, and place of the final approval hearing; the notice to
15 be given to the class; and any other matters deemed necessary for the proper conduct of a
16 settlement hearing.” C.R.C. Rule 3.769(e). The Proposed Order accompanying this Motion
17 considers these requirements and includes the requisite language.

18 **IV. PLAINTIFFS’ SUBSTANTIVE CLAIMS AND THEORIES OF LIABILITY**

19 Plaintiffs allege Defendants’ common wage and hour policies, including meal and rest
20 period policies, gave rise to unpaid wages and meal and rest break premiums, inaccurate wage
21 statements, and various penalties under the Labor Code.

22 **A. FAILURE TO PAY ALL WAGES OWED**

23 Labor Code section 1194(a), in pertinent part, provides: “Notwithstanding any agreement to
24 work for a lesser wage, any employee receiving less than the legal minimum wage or the legal
25 overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid
26 balance of the full amount of this minimum wage or overtime compensation, including interest
27 thereon, reasonable attorney’s fees, and costs of suit.”

28 Labor Code Section 510, in pertinent part, provides: “Any work in excess of eight hours in

one workday and any work in excess of 40 hours in any one workweek [...] shall be compensated at the rate of no less than one and one-half times the regular rate of pay for any employee[.]”

Plaintiffs allege Defendants failed to compensate Workers all hours worked, including overtime premiums, due to Defendants’ policy of rounding punch times in their favor. Plaintiffs allege the rounding policy resulted in a loss of regular wages and, on occasion overtime wages, for that rounded time.

B. MEAL AND REST BREAK VIOLATIONS

Plaintiffs contend that during the Class Period Defendants’ break schedule – and particularly its practice of combining the meal period with the afternoon rest break - failed to provide Workers with all of the meal and rest periods they were entitled to under California law.

Employers must relieve non-exempt employees of all duty during a 30-minute meal period for each work-day of at least five hours, and must provide the employee a second meal period for each work-day of 10 hours or more. Labor Code Section 512. “If an employer fails to provide an employee a meal period ... the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal ... period is not provided.” Labor Code Section 226.7. Plaintiffs allege Defendants did not provide timely off-duty meal periods and failed to pay Class Members an additional hour pay as required by law.

“Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.” California Code of Regulations, Title 8 Section 11050, section 12(A). “If an employer fails to provide an employee a ... rest period ... the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the ... rest period is not provided.” Labor Code Section 226.7. Plaintiffs allege Defendants did not provide legally complaint rest periods due to a policy of combining rest periods and failing to pay Class Members an additional pay as required by law.

C. INACCURATE WAGE STATEMENT PENALTIES

Plaintiffs contend Defendants failed to provide accurate wage statements which itemized

1 the correct rates of pay, gross wages earned, hours worked, net wages earned, or the appropriate
2 deductions, as required under Labor Code Section 226. Each violation renders an employer liable
3 for the greater of actual damages or \$50 for the initial pay period in which the violation occurred,
4 and \$100 per employee for each subsequent violation, up to \$4,000 per employee.

5 **D. WAITING TIME PENALTIES**

6 Labor Code Section 203 provides that any severed employee who is not timely paid for
7 their earned wages upon termination is entitled to “waiting time” penalties. Bad faith and/or intent
8 to defraud the employee of wages is not required in order for waiting time penalties to be assessed.
9 *Barnhill v. Saunders* (1981) 125 Cal.App.3d 1. Instead, an employer’s violation of this law is
10 “willful” if “the employer intentionally failed or refused to perform an act which was required to
11 be done.” *Id.* at 7. Penalty wages accrue based on the employee’s daily wage for each day that they
12 are due for a maximum of 30 working days, including on non-workdays. *Mamika v. Barca* (1998)
13 68 Cal. App. 4th 487, 493. Under *Aubry v. Goldhor* (1988) 201 Cal.App.3d 399, waiting time
14 penalties should be imposed for failure to pay overtime compensation.

15 Plaintiffs contend Defendants failed to pay Class Members all wages owed in a timely
16 manner at the conclusion of their employment. As a result, Plaintiffs allege Defendants are liable
17 for waiting time penalties.

18 **E. PREJUDGMENT INTEREST ON WAGES**

19 Labor Code Section 218.6 provides for an award of interest on all due and unpaid wages at
20 the interest rate specified in Civil Code section 3289(b). Civil Code section 3289(b) was amended,
21 effective January 1, 2001, to mandate a 10 percent rate of interest. Said interest accrues on a pay-
22 period basis and is computed from the date on which the wage comes due. *See Olso v. Cory* (1983)
23 35 Cal.3d 390, 402; *Espinoza v. Classic Pizza* (2003) 114 Cal. App. 4th 968, 975. Under *Espinoza*,
24 interest accrues from the day the wages were due. Therefore, prejudgment interest is computed
25 from the date on which each wage payment was due, but not fully paid, following each pay period
26 during the Class Period.

1 **F. PAGA PENALTIES**

2 The Private Attorneys General Act of 2004 (the “PAGA”), Labor Code Section 2698, *et*
3 *seq.*, provides employees with a private right of action against an employer in order to collect
4 penalties on behalf of the state’s Labor and Workforce Development Agency (“LWDA”). PAGA
5 requires 75% of any penalties collected be paid to the LWDA, with the remaining 25% distributed
6 to the aggrieved employees. Labor Code section 2699(i). PAGA provides for attorneys’ fees and
7 costs to the employee who successfully brings the suit. *See Id.*, section 2699(g). PAGA claims,
8 however, are subject to a one-year statute of limitations. Code of Civil Procedure section 340(a).
9 PAGA penalties are calculated differently depending on the predicate violation. If the Labor Code
10 provision underlying the PAGA claim already provides for a civil penalty then an employee can
11 seek to collect that penalty on behalf of other aggrieved employees. *See Id.*, section 2699(a).
12 Where the underlying Labor Code section does not already provide a civil penalty, the PAGA
13 penalty is equal to one-hundred dollars per employee per pay period for the initial violation and
14 two-hundred dollars for each employee per pay period for each subsequent violation. *See id.*
15 section 2699(f)(1)-(2).

16 Plaintiffs allege Defendant is liable for PAGA penalties to Class Members for the causes of
17 action alleged in the operative Complaint including unpaid wages and failure to provide proper
18 meal and rest periods. *Id.*¹⁴

19 **V. PROVISIONAL CLASS CERTIFICATION IS APPROPRIATE**

20 Plaintiffs seek provisional certification of the proposed Class pursuant to California Code
21 of Civil Procedure Section 382. The proposed Class is consistent with the Court’s Order certifying
22 the Worker class except the Parties have stipulated to exclude “administrative assistant” and
23 “customer service representative” Workers. *Settlement*, ¶ 2.1. Plaintiffs’ substantive claims arise
24 from Defendants’ failure to comply with multiple provisions of the Labor Code and the applicable
25 IWC Wage Order. *See Complaint, generally*. Defendants have agreed not to oppose provisional
26 class certification for settlement purposes only. *See Settlement*, ¶¶ 2.1, 3.3.

27
28 ¹⁴ Plaintiffs also alleged a claim for unfair business practices in violation of Business & Professions Code
Section 17200, *et seq.*, arising from the specific factual allegations of the Complaint.

1 The Settlement proposes conditional certification of the following Class for purposes of
2 settlement:

3 *All individuals who have been employed by defendant LAPTALO ENTERPRISES, INC. as*
4 *non-exempt machinists, machine operators, welders, shipping clerks, or painters at defendant's*
5 *factory on Zanker Road in San Jose, California during the Class Period, excluding individuals who*
6 *have executed a release of the claims in this action.*¹⁵

7 As reflected below, the proposed settlement class meets the requirements for provisional
8 class certification.

9 **A. CLASS CERTIFICATION IS APPROPRIATE UNDER CCP**
10 **SECTION 382**

11 “As a general rule, California courts are not bound by the federal rules of procedure but
12 may look to them and to the federal cases interpreting them for guidance or where California
13 precedent is lacking.” *Wershba*, 91 Cal.App.4th at 239-40. Thus, California trial courts may adopt
14 federal procedures and standards to the extent that California law is silent on matters relating to
15 provisional class certification and settlement approval. *Vasquez v. Superior Court* (1971) 4 Cal.3d
16 800, 820-21; *see also La Sala v. American Savings & Loan Assn.* (1971) 5 Cal.3d 864, 872
17 (internal citations omitted) (“trial courts, in the absence of controlling California authority, utilize
18 the class action procedures of the federal rules”). When the class has not been certified prior to the
19 settlement agreement – as here – parties may stipulate that a class be conditionally (or
20 “provisionally”) certified for settlement purposes only. *County of Suffolk v. Long Island Lighting*
21 *Co.* (E.D.N.Y. 1989) 710 F.Supp. 1422, 1425 (“The proposed settlement may also include a
22 provision that conditions settlement of the suit on certification by the court of a class for settlement
23 purposes.”); *see also Hernandez v. Vitamin Shoppe Industries Inc.* (2009) 174 Cal.App.4th 1441,
24 1457 (“The Court unquestionably [has] the authority to conditionally certify a class for settlement
25 purposes.”).

26 Courts apply the traditional certification prerequisites to determine whether it grants
27 conditional certification. *See Amchem Products, Inc. v. Windsor* (1997) 521 U.S. 591, 620. Class
28

¹⁵ *Settlement*, ¶ 2.1. The Class Period is defined as March 14, 2012 to November 28, 2017, inclusive. *Id.*, 1.6.

actions are appropriate whenever “the question [in a case] 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” *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021 (internal citations omitted). The provisional class must be ascertainable and sufficiently numerous, have a well-defined community of interest, and substantial benefits must result from certification, making proceeding as a class superior to the alternatives. *Id.* (citing Cal. Code Civ. Proc. § 382; *Fireside Bank v. Superior Court* (2007) 40 Cal.4th 1069, 1089; *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435; *City of San Jose v. Superior Court* (1974) 12 Cal.3d 447, 459). “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.’” *Brinker*, 53 Cal.4th. at 1021.

Thus, provisional class certification is appropriate where: (1) the proposed class is numerous yet ascertainable; (2) common issues of law or fact predominate; (3) the claims of the proposed class representative(s) are typical of the class; (4) the proposed class representative(s) will adequately represent the class; and (5) the class action mechanism is the superior means of resolving the litigation.

1. The Proposed Class is Ascertainable and Sufficiently Numerous

There are approximately 148 persons in the proposed Class. Allen Decl., ¶ 9. This satisfies the numerosity requirement. *See Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934. The class is ascertainable as Defendants has identified its members by reference to records kept in the ordinary course of business.

2. Common Issues of Law and Fact Predominate

“The predominance requirement presents an ‘ultimate question’ of whether ‘the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants.’” *Brinker*, 53 Cal.4th at 1021. “The answer hinges on ‘whether the theory of recovery advanced by the proponents of certification [sic] is, as an analytical matter,

likely to prove amenable to class treatment.” *Brinker*, 53 Cal. 4th at 1021 (citing *Sav-on Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 327).

A court must examine the complaint’s allegations and supporting declarations...and consider whether the legal and factual issues they present are such that their resolution in a single class proceeding is both desirable and feasible ... “[I]f the defendant's liability can be determined by facts common to all members of the class, a class will be certified even if the members must individually prove their damages.”

Brinker, 53 Cal.4th at 1021-22 (citing *Hicks* 89 Cal.App.4th at 916).

Plaintiffs have alleged Defendants applied certain uniform policies to members of the proposed Class in violation of wage and hour laws. (For the purposes of this motion, Defendants do not dispute the existence of common issues of fact and law.) The primary question in the case, whether Workers were properly compensated for their work, is a common one applicable to all Class Members. Plaintiffs also contend Defendants had uniform formal policies and procedures pertaining to the calculation and payment of wages, scheduling, meal and rest periods, the issuance of wage statements, and final pay at termination.

These types of wage and hour claims are “of the sort routinely, and properly, found suitable for class treatment.” *Brinker*, 53 Cal.4th at 1033. *See, e.g., Jaimez v. Daihatsu USA, Inc.* (2010) 181 Cal.App.4th 1286, 1299-1305; *Ghazaryan v. Diva Limousine, Ltd.* (2008) 9 Cal. App.4th 1524, 1533-38; *Bufile v. Dollar Financial Group, Inc.* (2008) 162 Cal.App.4th 1193, 1205–08.

3. Plaintiffs’ Claims are Typical of the Claims of the Class

A class representative’s claims need only be “significantly similar” to other members, not “identical.” *See B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1247; *Daniels v. Centennial Group, Inc.* (1993) 16 Cal.App.4th 467, 473. A “typical” claim arises from the same events, practices, or courses of conduct that give rise to the claims of other class members, and is based on the same legal theories. *Classen v. Weller* (1983) 145 Cal.App.3d 27, 46; *see also City of San Diego v. Haas* (2012) 207 Cal. App. 4th 472, 501 (“Typicality is present when the named class representative's interest in the action is significantly similar to that of the other class members.”).

Here, Plaintiffs’ claims are based on the same allegedly violative policies, procedures and conduct by Defendants, i.e., failure to pay all wages owed including overtime and meal and rest

1 period premiums. Because Plaintiffs' claims are based on the same conduct, they share the same
2 legal theories as proposed Settlement Class Members and seek the same types of damages for
3 unpaid wages, meal and rest period premium pay, inaccurate wage statement penalties, waiting
4 time penalties, and penalties under PAGA.

5 **4. The Class Will be Adequately Represented by Plaintiffs and Class Counsel**

6 To be "adequate," Class Representatives must have counsel "qualified to conduct the
7 proposed litigation" and no disabling conflict of interest. *McGhee v. Bank of Am.* (1976) 60
8 Cal.App.3d 442, 450. This case meets both requirements. "[O]nly a conflict that goes to the very
9 subject matter of the litigation will defeat a party's claims of representative status." *Richmond v.*
10 *Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470. In this case, Plaintiffs' claims present no such
11 conflict and they, and their counsel, are experienced in wage and hour class action litigation and
12 able and willing to prosecute this case and protect the interests of the class.¹⁶

13 **5. A Class Action is the Superior Method of Adjudication**

14 Class actions play an important role in enforcing California's wage and hour laws.¹⁷ "It
15 would be neither efficient nor fair to anyone, including Defendants, to force multiple trials to hear
16 the same evidence and decide the same issues." *Sav-on* 34 Cal.4th at 340 (citing *Boggs v. Divested*
17 *Atomic Corp.* (S.D. Ohio 1991) 141 F.R.D. 58, 67. Class certification is a superior means of
18 adjudicating employment claims where "[d]oing so would further judicial economy by avoiding
19 repetitious suits, would unify what would otherwise be a series of small claims so as to enhance the
20 class members' access to redress, and would put to rest any current employee concerns about
21 retaliation." *Jaimez v. Daiohs USA, Inc.* (2010) 181 Cal. App. 4th 1286, 1308. Here, the only
22 available enforcement alternative to a class action would be potentially dozens of trials, each
23 covering the same factual grounds and legal issues. As such, class-wide adjudication (which, in
24 light of this Settlement, will provide prompt and significant relief) is the superior means by which
25 to effectively redress these claims.

26
27
28 ¹⁶ See Allen Decl., ¶ 19; Declaration of Daniel A. Menendez ("Menendez Decl."), ¶¶ 3-6.

¹⁷ See *Gentry v. Superior Court* (2007) 42 Cal.4th 443 [summarizing the policy considerations favoring class action usage].

1 **VI. PRELIMINARY APPROVAL OF THE SETTLEMENT IS APPROPRIATE**

2 **A. THE SETTLEMENT SHOULD BE PRESUMED FAIR**

3
4 At final approval, the Court will be permitted to presume that the Settlement is fair where
5 (1) the settlement is reached through arm's-length bargaining, (2) investigation and discovery are
6 sufficient to allow counsel and the Court to act intelligently, (3) counsel is experienced in similar
7 litigation, and (4) the percentage of objectors is small. *Dunk*, 48 Cal.App.4th at 1802; *see also*
8 *Wershba* 91 Cal.App.4th at 245.

9 This settlement is clearly a product of arms' length negotiations (*i.e.*, the first factor). The
10 parties spent months preparing before attending two very contentious full-day mediation sessions
11 with two different mediators over the course of nearly two years. Allen Decl., ¶¶ 6. The Parties
12 then spent nearly a year after the second mediation session working with Mediator Remmers
13 towards a settlement and vetting Defendant's claims of financial hardship, and then several months
14 negotiating the terms of the their proposed Settlement agreement. *Id.*

15 Plaintiffs conducted sufficient investigation (*i.e.*, the second factor). Through both informal
16 and formal written discovery processes, numerous depositions, site inspections, and independent
17 investigation over nearly four (4) years, Plaintiffs' counsel obtained evidence necessary to evaluate
18 Defendants' employment practices, reviewed employment policies and procedures, reviewed time
19 sheets, and analyzed class metrics concerning class size, hours/shifts worked during the Class
20 Period, and hourly rates of pay. Allen Decl., ¶ 7. The extent of the informal discovery and
21 independent investigation permits the Court to find that all parties were sufficiently informed. *See*
22 *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1150; *see*
23 *also Dunk* 48 Cal.App.4th at 1802.

24 This case also satisfies the third factor of the presumption of fairness as Class Counsel has
25 significant experience in the prosecution of wage and hour class actions. Allen Decl., ¶¶ 31-34.
26 This experience allowed Class Counsel to tailor their informal discovery and investigation properly
27 and to accurately assess Defendant's exposure.

28 The fourth factor (*i.e.*, number of objectors and opt-outs) can only be addressed after the

1 Class Notice has been sent out and each class member is afforded the opportunity to request
2 exclusion or file an objection. However, the three factors that are possible to review at this time
3 strongly suggest that the Settlement meets the presumption of fairness. Thus, the record before this
4 Court affords ample grounds upon which to conclude that the legal presumption of fairness will
5 apply to the Settlement.

6 **B. THE SETTLEMENT IS WITHIN THE RANGE OF**
7 **REASONABLENESS**

8 In determining whether the Settlement is within the “range of reasonableness” the Court
9 must consider several factors including: (1) the strengths of plaintiff’s case, (2) the risks, expenses,
10 complexity, and likely duration of further litigation, (3) the risk of maintaining class action status
11 throughout trial, (4) the Settlement amount, (5) the extent of completed discovery, (6) the stage of
12 the proceedings, (7) counsel’s experience and views of the Settlement, and (8) the reaction of the
13 class members to the Settlement. *Alberto v. GMRJ Inc.* (E.D.Cal. 2008) 252 F.R.D. 652, 664-65
14 (quoting *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026); *see also* 5 James Wm.
15 Moore, *et al.*, *Moore’s Federal Practice*, § 23.85(3) (3d ed. 1997) 23.353-4. “It is the settlement
16 taken as a whole, rather than the individual component parts, that must be examined for overall
17 fairness.” *Hanlon*, 150 F.3d at 1026 (citing *Officers for Justice v. Civ. Serv. Comm’n of SF* (9th Cir.
18 1982) 688 F.2d 615, 682).

19 “[T]he court bears the ultimate responsibility to ensure the reasonableness of the settlement
20 terms. Although many factors must be considered in making this determination, and the court is
21 not required to decide the ultimate merits of the class members’ claims before approving a
22 proposed settlement, an informed evaluation cannot be made without an understanding of the
23 amount that is in controversy and the realistic range of outcomes of the litigation.” *Kullar v. Foot*
24 *Locker Retail, Inc.* (2008) 168 Cal. App. 4th 116, 120.

25 Class counsel has satisfied the so called “*Kullar* standard” through providing the Court with
26 a detailed evaluation of the realistic ranges of outcomes in this lawsuit. Allen Decl., ¶¶ 21-29.
27 Class Counsel weighed the ranges of recovery against the risks associated with not settling the
28 case, including the distinct possibility that a judgment would make Defendant JL Precision

insolvent (even prior to the current COVID-19 related economic crisis).

When weighed against these risks, the Settlement's ability to secure a sizeable guaranteed money payment to Class Members for a limited release of wage and hour claims strongly supports approval. *Id.* Based on the totality of the circumstances, Class Counsel believes that the settlement is a fair, adequate, and reasonable resolution of Plaintiffs' claims on behalf of the Settlement Class. Allen Decl., ¶ 20; Menendez Decl., ¶ 9.

C. THE CLASS-WIDE RELEASE IS APPROPRIATELY LIMITED

The released claims share a reasonable nexus with the alleged violations in both substance and time. "Any attempt to include in a class settlement terms which are outside the scope of the operative complaint should be closely scrutinized by the trial court to determine if the plaintiff genuinely contests those issues and adequately represents the class." *Trotsky v. Los Angeles Fed. Sav. & Loan Assn.* (1975) 48 Cal.App.3d 134, 148.

Here, the class-wide release is anchored in the operative complaint and narrowly tailored in scope, both in terms of the governed claims and time period. It only releases wage and hour causes of action that were plead in the Complaint or that "could have been set forth, given the stated predicated allegations in the Complaint." *See* Settlement, ¶¶ 1.25, 3.1.

D. PLAINTIFFS' ATTORNEYS' FEES AND COSTS ARE REASONABLE

This Court has discretion to approve an appropriate fee award. Moreover, public policy promotes approval of reasonable fee requests since "[t]he function of an award of attorney's fees is to encourage the bringing of meritorious ... claims which might otherwise be abandoned because of the financial imperatives surrounding the hiring of competent counsel." *City of Riverside v. Rivera* (1986) 477 U.S. 561, 578 (internal quotation marks and citations omitted). In this Settlement, Defendant agreed to pay Class Counsel reasonable attorneys' fees in the amount of up to 35% of the Maximum Settlement Amount for work performed for the class. Settlement, ¶ 1.3.

The California Supreme Court has affirmed the propriety of awarding class counsel fees as a percent of a settlement fund the firm creates for the benefit of the class. *Lafitte v. Robert Half*

1 *International, Inc.* (2016) 1 Cal. 5th 480, 573: “[T]he court may determine the amount of a
2 reasonable fee by choosing an appropriate percentage of the fund created. The recognized
3 advantages of the percentage method-including relative ease of calculation, alignment of incentives
4 between counsel and the class, a better approximation of market conditions in a contingency case,
5 and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily
6 prolonging the litigation.” *Id.*

7 *Lafitte* is just one of the more recent in a long line of judicial authority supporting the use of
8 the “common fund” method of determining fees. The common fund doctrine refers to the trial
9 courts’ equitable power to award attorneys’ fees and costs when a litigant proceeding in a
10 representative capacity secures a substantial benefit for a group. *See also Serrano v. Priest* (1977)
11 20 Cal.3d 35, 38; *Earley v. Superior Court* (2000) 79 Cal.App.4th 1420, 1435-36. The U.S.
12 Supreme Court has specifically endorsed using a percentage of the fund method in paradigmatic
13 common fund cases such as this one. *Blum v. Stenson* (1984) 465 U.S. 886, 900 n.16 (“ . . . under
14 the “common fund doctrine,” . . . a reasonable (attorneys’) fee is based on a percentage of the fund
15 bestowed on the class . . .”). Similarly, the California Supreme Court previously upheld the
16 propriety of employing the “common fund” doctrine to class actions where representative plaintiffs
17 have secured a monetary settlement or judgment for the class. *Serrano* 20 Cal.3d at 35-40. Many
18 California trial courts have awarded attorneys’ fees calculated as a percentage of a common fund in
19 an amount equal to the 35% sought here.¹⁸

20 The Court is not requested to approve the fee award until final approval, when it has the
21 benefit of seeing how the class responds to the requested amount and additional briefing and
22 evidence on the subject. At final approval, Class Counsel believes the Court will find that the

23
24 ¹⁸ See, e.g., *Cristman v. Good Guys, Inc.* (San Diego Super.Ct. 2007) Case No. GIS 21939 (33 1/3% fee award
25 plus costs); *BCI Overtime Cases*, (San Bernardino Super.Ct. 2007) J.C.C.P.4280 (33 1/3% fee award plus costs);
26 *Menchyk v. Beverages & More, Inc.* (Alameda County Super.Ct. 2006) Case No. RU 05196918 (33 1/3% fee award
27 plus costs); *O’Hara, et al v. Factory 2-UStores, Inc.* (Alameda County Super. Ct. 2002) No. 834123-5 (33 1/3% fee
28 award plus costs); *Davis v. The Money Store, Inc.* (Sacramento Super. Ct. 2000) No. 99AS01716; *In re Milk Antitrust
Litigation* (L.A. Super.Ct. 1998) Civ. Case No. BC070061 (33 1/3% award); *In re Facsimile Paper Antitrust Litigation*
(San Francisco Super.Ct. 1997) Civ. Case Nos. 963598, 964899; (33 1/3% fee award plus costs); *In re Liquid Carbon
Dioxide Cases* (San Diego Super.Ct. 1996) J.C.C.P. 3012 (33 1/3% award plus costs); *In re California Indirect-
Purchaser Plasticware Antitrust Litigation* (San Francisco Super.Ct. 1995) Civ. Case Nos. 961814, 963201, and
963590 (33 1/3% fee award plus costs); *Abzug v. Kerkorian* (L.A. Super.Ct., Nov. 1990) CA-000981 (45% fee award
plus costs); *Haitz v. Meyer, et al.* (Alameda Super.Ct., Aug. 20, 1990) No. 572968-3 (45% fee award).

1 requested amount is warranted in light of the results obtained for the class as well as the amount of
2 work performed by class counsel, the costs invested, the size of the settlement, as well as the future
3 commitment of time Class Counsel will be required to invest to ensure that the Settlement terms
4 are fulfilled and that Class Members have their questions about the settlement answered in a timely
5 manner.

6 The Settlement also provides for Plaintiffs' counsel's reimbursement for actual costs
7 expensed in this litigation in an amount determined by the Court. Settlement, ¶ 1.4. Class Counsel
8 will provide evidence to support its requested costs prior to Final Approval.

9 **E. NAMED PLAINTIFFS SEEKS REASONABLE**
10 **ENHANCEMENT AWARDS**

11 The Settlement also provides for modest enhancement awards to the representative
12 plaintiffs of up to \$10,000 each. Settlement, ¶¶ 1.7, 3,13. Enhancement awards, or service
13 payments, to representative plaintiffs in class action settlements compensate them for their "efforts
14 in bringing the lawsuit." *Bell v. Farmers Ins. Exchange* (2004) 115 Cal.App.4th 715, 726. "Since
15 without a named plaintiff there can be no class action, such compensation as may be necessary to
16 induce him to participate in the suit." *Clark v. American Residential Services LLC* (2009) 175
17 Cal.App.4th 785, 804. "[T]he rationale for making enhancement or incentive awards to named
18 plaintiffs is that they should be compensated for the expense or risk they have incurred in
19 conferring a benefit on other members of the class." *Id.* at 806. "An incentive award is appropriate
20 'if it is necessary to induce an individual to participate in the suit.'" *Cellphone Termination Fee*
Cases (2010) 186 Cal. App. 4th 1380, 1394 quoting, *Clark, supra* at 804.

21 "Criteria courts may consider in determining whether to make an incentive award include:
22 (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the
23 notoriety and personal difficulties encountered by the class representative; (3) the amount of time
24 and effort spent by the class representative; (4) the duration of the litigation and; (5) the personal
25 benefit (or lack thereof) enjoyed by the class representative as a result of the litigation." *Id.*
26 quoting, *Van Vranken v. Ad. Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299.

27 Class counsel will provide detailed declarations from the class representatives addressing
28 the above elements at Final Approval. For purposes of preliminary approval, Class Counsel notes

1 the individual requested enhancement awards are less than 2% of the Maximum Settlement
2 Amount. The class representatives are also providing Defendants with a broader general release of
3 all known and unknown claims. *Settlement*, ¶ 3.14. Class Counsel believes that such factors help
4 support the requested enhancement award. Allen Decl., ¶ 17.

5 **VII. THE CLASS NOTICE PROGRAM IS CONSTITUTIONALLY SOUND**

6 The Court may fashion an appropriate notice program. *See* Civil Code Section 1781; *Cartt*
7 *v. Superior Court* (1975) 50 Cal.App.3d 960, 970-74; Civil Code Section 1781. At a minimum, the
8 notice should inform the class members of the date for the Final Approval Hearing, explain the
9 proposed settlement, and outline procedures for filing a written objection and/or making a personal
10 appearance at the hearing. C.R.C. Rule 3.769(f).

11 The proposed Class Notice (which is attached to the Settlement as **Exhibit “A”**) provides
12 information on the meaning and nature of the Settlement, the key terms and provisions of the
13 Settlement, the manner in which payments to class members will be calculated, Plaintiffs’
14 counsel’s application for reimbursement of costs and attorneys’ fees, the Representative Plaintiffs’
15 incentive awards, the date, time and place of the final approval/fairness hearing, the procedures and
16 deadlines for requesting exclusion from and/or objecting to the Settlement, and counsel’s contact
17 information.

18 In addition, with a class of approximately 148 persons, it is likely that some Class Members
19 may be difficult to locate. Accordingly, the Settlement Administrator will diligently apply standard
20 methods (e.g., NCOA search, skip trace techniques) to determine class members’ current
21 addresses. *Settlement*, ¶ 3.3.3.

22 Prior to the Final Approval Hearing, Plaintiffs will file a motion for final approval of the
23 Settlement and the proposed amounts of attorneys’ fees and costs and Representative Plaintiffs’
24 enhancement awards. Class Counsel also will file a declaration from the Settlement Administrator
25 showing its efforts to mail the Class Notice Package, process class members’ claims (including the
26 resolution of any disputes raised by class members regarding the number of qualifying hours listed
27 thereon), and objections and requests for exclusion (if any) – before the Final Approval Hearing.

1 **VIII. SCHEDULING A FINAL APPROVAL HEARING IS APPROPRIATE**

2 The final step in the settlement approval process is a Final Fairness Hearing, at which the
3 Court may hear all evidence and arguments necessary to evaluate the Settlement. Proponents of the
4 Settlement may explain the terms and conditions of the Settlement and offer argument in support
5 of or in opposition to the Settlement. Plaintiffs request this Court set a date for a Final Approval
6 Hearing at a time convenient for the Court and consistent with the class notice provisions in the
7 Settlement.¹⁹

8 **IX. CONCLUSION**

9 For all of the foregoing reasons, Plaintiffs respectfully request this Court enter an order
10 granting Plaintiffs' unopposed motion for preliminary approval of the Settlement, conditionally
11 certifying the proposed Settlement Class, appointing Class Counsel and Plaintiffs as the Class
12 Representatives and CPT Group, Inc. as Settlement Administrator, approving the Class Notice and
13 setting a date for the Final Approval Hearing.

14 Dated: May 28, 2020

ALLEN ATTORNEY GROUP

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16 By: Kevin Allen
17 KEVIN R. ALLEN, Esq.
18 Attorneys for Representative Plaintiffs and the
19 Plaintiff Class
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28 ¹⁹ Plaintiffs' counsel estimates that the earliest the Final Approval Hearing could take place is approximately 90 days after preliminary approval. See Chart entitled "Dates of Performance Under Settlement."