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of himself and others similarly situated
7
8

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF MERCED**
11

12 JOEL MEZA, on behalf of himself and others
similarly situated,

13
14 Plaintiff,

15 v.

16 E AND J WOOD FINISH; and DOES 1 through
100, inclusive,

17
18 Defendants.
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Case No. 23CV-00583

Assigned for all purposes to:
Hon. Brian McCabe, Dept. 8

CLASS ACTION

**NOTICE OF MOTION AND
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
AND REPRESENTATIVE ACTION
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES**

[Declarations of Anthony J. Orshansky and
Joel Meza and Proposed Order submitted
concurrently herewith]

Preliminary Approval Hearing

Date: October 12, 2023
Time: 8:15 a.m.
Dept. 8

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

2 PLEASE TAKE NOTICE that on October 12, 2023 at 8:15 a.m., or as soon thereafter as the
3 matter may be heard before the Honorable Brian McCabe in Department 8 of the above-entitled
4 court located at 627 West 21st Street, Merced, California 95340, Plaintiff Joel Meza (“Plaintiff”),
5 individually and on behalf of all others similarly situated, will and hereby does move this Court
6 pursuant to Code of Civil Procedure section 382 and California Rules of Court, rule 3.769,
7 subdivision (c), for an order:

- 8 1. Preliminarily certifying the Class for purposes of settlement;
- 9 2. Preliminarily approving Plaintiff Joel Meza as Class Representative for purposes of
10 settlement;
- 11 3. Preliminarily appointing CounselOne, PC as Class Counsel for purposes of
12 settlement;
- 13 4. Preliminarily approving the settlement as fair, adequate, and reasonable based upon
14 the terms set forth in the Stipulation of Class and Representative Action Settlement (“Settlement”
15 or “Settlement Agreement”), including payment by defendant E and J Wood Finish (“Defendant”)
16 of the non-reversionary Gross Settlement Amount of \$200,000 for a putative class of approximately
17 109 current and former non-exempt employees who are or were employed by Defendant in
18 California from June 30, 2018 to May 10, 2023.
- 19 5. Preliminarily approving an award of attorneys’ fees to Class Counsel in an amount
20 up to one-third (*i.e.*, \$66,600) of the Gross Settlement Amount, and reimbursement of actual
21 litigation costs up to \$25,000;
- 22 6. Appointing CPT Group, Inc. as the third-party Settlement Administrator, and
23 approving reimbursement of up to \$12,500 from the Gross Settlement Amount for settlement
24 administration costs;
- 25 7. Approving the proposed Notice of Class Action Settlement and Hearing Date for
26 Final Court Approval (“Class Notice”) and ordering that it be distributed to Class Members; and
- 27 8. Scheduling a hearing to consider whether the Settlement should be finally approved
28 and whether the Court should order distribution of the Individual Settlement Payments, Attorneys’

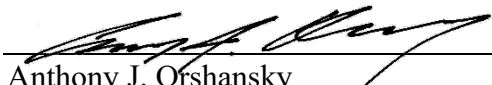
1 Fees and Costs, Administration Costs, Enhancement Payment to Plaintiff, and payment to the
2 California Labor and Workforce Development Agency, as outlined herein.

3 This Motion is based on the attached Memorandum of Points and Authorities, the
4 Declarations of Anthony J. Orshansky and Joel Meza submitted concurrently herewith, along with
5 the exhibits thereto (including the Settlement Agreement and proposed Class Notice), as well as any
6 supplemental filings and exhibits as are required, all evidence and arguments of counsel that may
7 be presented at the hearing, and all additional matters as the Court may consider at the time of
8 hearing. Finally, given the multiplicity of issues addressed in this motion, Plaintiff believes that
9 there is good cause to exceed the page limits set forth in California Rules of Court, and respectfully
10 requests that the Court consider the attached Memorandum of Points and Authorities, which is 32
11 pages in length.

12
13 Dated: September 15, 2023

Respectfully submitted,

14 COUNSELONE, PC

15 By: 

16 Anthony J. Orshansky

17 Justin Kachadoorian

18 Attorneys for Plaintiff, Class Members, and
19 Aggrieved Employees
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TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	STATUS OF THE LITIGATION	2
A.	Procedural History.....	3
B.	Discovery and Investigation.....	4
C.	Mediation and Settlement.....	5
III.	SUMMARY OF SETTLEMENT TERMS	6
A.	The Settlement Provides for Reasonable Monetary Payments	7
B.	Class Representative Enhancement Payment and Attorneys’ Fees and Costs	8
IV.	CERTIFICATION FOR SETTLEMENT PURPOSES IS APPROPRIATE	10
A.	There Is an Ascertainable and Sufficiently Numerous Class	11
B.	There Is a Well-Defined Community of Interest	12
1.	Common Issues of Law and Fact Predominate	12
2.	Plaintiff’s Claims Are Typical of the Claims of the Settlement Class.....	13
3.	Plaintiff and His Counsel Meet the Adequacy Requirements	14
C.	A Class Action Is Superior to a Multiplicity of Litigation.....	14
V.	THE TWO-STEP APPROVAL PROCESS	14
VI.	THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE.....	15
A.	The Settlement Is Entitled to a Presumption of Fairness	16
1.	Negotiations Were at Arm’s Length before a Respected Mediator.....	16
2.	Investigation Was Sufficient to Allow Counsel to Act Intelligently	17
3.	Class Counsel Are Experienced in Similar Litigation	17
B.	The Settlement Is Fair, Reasonable, and Adequate.....	18
1.	The Strength of Plaintiff’s Case.....	18
2.	Risk, Expense, Complexity, and Duration of Further Litigation.....	19

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3. Risk of Maintaining Class Action Status19

4. Amount Offered in Settlement Given Realistic Value of Claims.....20

VII. PROPOSED NOTICE PROVIDES ADEQUATE NOTICE TO THE CLASS30

VIII. SUBMISSION OF SETTLEMENT TO THE LWDA.....31

IX. THE COURT SHOULD SET A FINAL APPROVAL HEARING31

X. CONCLUSION31

TABLE OF AUTHORITIES

Cases

<i>Altamirano v. Shaw Industries, Inc.</i> (N.D.Cal. 2015) 2015 WL 4512372	29
<i>Amaral v. Cintas Corp.</i> (2008) 163 Cal.4th 1157	28
<i>Arias v. Superior Court</i> (2009) 46 Cal.4th 969	28
<i>Augustus v. ABM Security Service, Inc.</i> (2016) 2 Cal.5th 257	24
<i>B.W.I. Custom Kitchens v. Owens-Illinois, Inc.</i> (1987) 191 Cal.App.3d 1341	11, 13
<i>Benton v. Telecom Network Specialists, Inc.</i> (2013) 220 Cal.App.4th 701	13
<i>Bluford v. Safeway, Inc.</i> (2013) 216 Cal.App.4th 864	13
<i>Bowles v. Superior Court</i> (1955) 44 Cal.2d 574	12
<i>Brinker Rest. Corp. v. Sup. Ct.</i> (2012) 53 Cal.4th 1004	21
<i>Brum v. MarketSource, Inc.</i> (E.D.Cal. 2018) 2018 WL 3861558	17
<i>Capital People First v. Department of Developmental Services</i> (2007) 155 Cal.App.4th 676	14
<i>In re Cellphone Fee Termination Cases</i> (2010) 186 Cal.App.4th 1380	9
<i>In re Chicken Antitrust Litigation</i> (N.D.Ga. 1980) 560 F.Supp. 957	16
<i>Class Plaintiffs v. City of Seattle</i> (1992) 955 F.2d 1268	15
<i>Cleveland v. Groceryworks.com, LLC</i> (N.D.Cal. 2016) 200 F.Supp.3d 924	27

1	<i>Clothesrigger, Inc. v. GTE Corp.</i> (1987)	
2	191 Cal.App.3d 605	12
3	<i>Collins v. Rocha</i> (1972)	
4	7 Cal.3d 232	12
5	<i>Daar v. Yellow Cab Company</i> (1967)	
6	67 Cal.2d 695	11
7	<i>Daniels v. Centennial Capital Group</i> (1993)	
8	16 Cal.App.4th 467	11
9	<i>Donohue v. AMN Services, LLC</i> (2021)	
10	11 Cal.5th 58	22
11	<i>Draney v. Westco Chems., Inc.</i> (C.D.Cal. Sep. 29, 2021, No. 2:19-cv-01405-ODW	
12	(AGRx))	
13	2021 U.S. Dist. LEXIS 187250	15
14	<i>Dunk v. Ford Motor Co.</i> (1986)	
15	48 Cal.App.4th 1794	18
16	<i>Duran v. U.S. Bank National Association</i> (2014)	
17	59 Cal.4th 1	24
18	<i>Eisen v. Carlisle and Jacqueline</i> (1974)	
19	417 U.S. 156	30, 31
20	<i>Hebbard v. Colgrove</i> (1972)	
21	28 Cal.App.3d 1017	12
22	<i>Kaminske v. JP Morgan Chase Bank N.A.</i> (C.D.Cal. 2010)	
23	2010 WL 5782995	17
24	<i>Kullar v. Foot Locker Retail, Inc.</i> (2008)	
25	168 Cal.App.4th 116	20
26	<i>Laffitte v. Robert Half International, Inc.</i> (2016)	
27	1 Cal.5th 480	10
28	<i>Lazar v. Hertz Corp.</i> (1983)	
	143 Cal.App.3d 128	12
	<i>Linder v. Thrifty Oil Co.</i> (2000)	
	23 Cal.4th 429	11, 12, 15
	<i>Linney v. Cellular Alaska Partnership</i> (9th Cir. 1998)	
	151 F.3d 1234	29

1	<i>Mars Steel Corp. v. Continental Illinois National Bank and Trust Co.</i> (7th Cir. 1987)	
2	834 F.2d 677	16
3	<i>McGhee v. Bank of Bank of America</i> (1976)	
4	60 Cal.App.3d 442	14
5	<i>Miller v. Woods</i> (1983)	
6	148 Cal.App.3d 862	11
7	<i>Naranjo v. Spectrum Security Services, Inc.</i> (2022)	
8	15 Cal.5th 93	26
9	<i>Naranjo v. Spectrum Security Services, Inc.</i> (2023)	
10	88 Cal.App.5th 937	26
11	<i>In Re NASDAQ Market-Makers Antitrust Litigation</i> (S.D.N.Y. 1997)	
12	169 F.R.D. 493	13
13	<i>In Re NASDAQ Market-Makers Antitrust Litigation</i> (S.D.N.Y. 1997)	
14	172 F.R.D. 119	13
15	<i>North County Contractor’s Assn., Inc. v. Touchstone Ins. Services</i> (1994)	
16	27 Cal.App.4th 1085	15
17	<i>O’Connor v. Uber Techs., Inc.</i> (N.D.Cal. 2016)	
18	201 F.Supp.3d 1110	28
19	<i>Priddy v. Edelman</i> (6th Cir. 1989)	
20	883 F.2d 438.....	15, 16
21	<i>Prince v. CLS Transp., Inc.</i> (2004)	
22	118 Cal.App.4th 1320	10
23	<i>Reyes v. Board of Supervisors of San Diego County</i> (1987)	
24	196 Cal.App.3d 1263	11
25	<i>Richard v. Dart Industries, Inc.</i> (1981)	
26	29 Cal.3d 462	10
27	<i>Rodriguez v. West Publ. Corp.</i> (C.D.Cal. August 10, 2007)	
28	2007 U.S. Dist. LEXIS 74767	16
	<i>Rose v. City of Hayward</i> (1981)	
	126 Cal.App.3d 926	11
	<i>Sav-On Drug Stores, Inc. v. Superior Court</i> (2004)	
	34 Cal.4th 319	14

1	<i>See's Candy Shops, Inc. v. Superior Court</i> (2012)	
2	210 Cal.App.4th 889	21
3	<i>Sevidal v. Target Corp.</i> (2010)	
4	189 Cal.App.4th 905	11
5	<i>Stamburgh v. Superior Court</i> (1976)	
6	62 Cal.App.3d 231	15
7	<i>State v. Levi Strauss & Co.</i> (1986)	
8	41 Cal.3d 460	15
9	<i>In re Tableware Antitrust Litig.</i> (N.D.Cal. 2007)	
10	484 F.Supp.2d 1078	15
11	<i>Talavera v. Sun Maid Growers of California</i> (E.D.Cal. 2017)	
12	2017 WL 495635	17
13	<i>Troester v. Starbucks Corp.</i> (2018)	
14	5 Cal.5th 829	21
15	<i>Vasquez v. Superior Court</i> (1971)	
16	4 Cal.3d 800	11, 12
17	<i>Wershba v. Apple Computer, Inc.</i> (2001)	
18	91 Cal.App.4th 224	10, 18, 20
19	<i>Williams v. Superior Court</i> (2017)	
20	3 Cal.5th 531	28
21	Statutes	
22	Bus. & Prof. Code, §§ 17200, <i>et seq.</i>	1
23	Civ. Code, § 382	32
24	Code Civ. Proc., § 340	26
25	Code Civ. Proc., § 384	8
26	Lab. Code, § 201	27
27	Lab. Code, § 202	27
28	Lab. Code, § 203	27
	Lab. Code, § 226, subd. (a)	26
	Lab. Code, § 226, subd. (e)	26

1	Lab. Code, § 226.7	23, 25
2	Lab. Code, § 510	21
3	Lab. Code, § 512	23
4	Lab. Code, § 1174, subd. (d)	27
5	Lab. Code, § 1174, subd. (d)	27
6	Lab. Code, § 1198	21
7	Lab. Code, § 2698	4
8	Lab. Code, § 2699, subd. (i)	28
9	Lab. Code, § 2699, subd. (f)(2)	28
10	Lab. Code, § 2699, subd. (l)	31
11	Lab. Code, § 2802, subd. (a)	25
12	Private Attorneys General Act, Lab. Code, §§ 2698, <i>et seq.</i>	1
13		
14	Rules	
15	Cal. Rules of Court, Rule 3.766, subd. (d)	30
16	Cal. Rules of Court, Rule 3.766, subd. (e)	31
17	Cal. Rules of Court, Rule 3.769	31
18		
19	Other Authorities	
20	4 Conte & Newberg, <i>Newberg on Class Actions</i> (4th Ed. 2002) § 11.25	15
21	4 Conte & Newberg, <i>Newberg on Class Actions</i> (4th Ed. 2002) § 11.41	15
22	4 Conte & Newberg, <i>Newberg on Class Actions</i> (4th Ed. 2002) § 11.47	18
23	4 Conte & Newberg, <i>Newberg on Class Actions</i> (4th Ed. 2002) § 11.51	16
24	4 Conte & Newberg, <i>Newberg on Class Actions</i> (4th Ed. 2002) § 14.6	10
25	LWDA's Comments on Proposed PAGA Settlement, <i>O'Connor v. Uber Techs., Inc.</i>	
26	(N.D.Cal. July 29, 2016) No. 13-CV-03826-EMC, Docket No. 736	29
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Joel Meza (“Plaintiff” or “Class Representative”), on behalf of himself and on
4 behalf of a putative class of current and former hourly, non-exempt employees, seeks preliminary
5 approval of the Stipulation of Class and Representative Action Settlement (“Settlement Agreement”
6 or “Settlement”) entered into with defendant E and J Wood Finish (“Defendant” or “E and J Wood”).
7 The Settlement Agreement between Plaintiff and Defendant (collectively, the “Parties”), if
8 approved, will resolve all claims of Plaintiff and Settlement Class Members in exchange for
9 Defendant’s agreement to pay a gross settlement amount of ***Two Hundred Thousand Dollars***
10 ***(\$200,000) into a non-reversionary common settlement fund*** that will be made available for
11 distribution to Class Members and PAGA Group Members. Based upon information received from
12 Defendant, there are approximately 109 Class Members who worked in non-exempt positions in
13 California during the Class Period.¹

14 This wage and hour class action alleges that Defendant E and J Wood Finish failed to pay
15 employees all minimum wages; failed to pay overtime wages for all hours worked; failed to provide
16 timely and compliant duty-free meal periods and pay premiums owed thereon; failed to provide
17 timely and compliant duty-free rest breaks and pay premiums owed thereon; failed to reimburse for
18 business expenses incurred; failed to provide accurate itemized wage statements; failed to timely
19 pay wages during employment and final wages owed upon separation; failed to maintain accurate
20 itemized wage statements and, based on the foregoing allegations, engaged in unfair business
21 practices in violation of Business and Professions Code sections 17200, *et seq.*, and violated the
22 Private Attorneys General Act of 2004 (Lab. Code, §§ 2698, *et seq.*; “PAGA”). Plaintiff’s lawsuit
23 seeks to recover unpaid wages, premiums for non-compliant meal and rest breaks, reimbursement
24

25 _____
26 ¹ There are approximately 109 Class Members. The “Class” or “Class Members” are defined as
27 hourly, non-exempt employees employed by Defendant E and J Wood Finish within the State of
28 California during the Class Period. (Settlement Agreement ¶ 5.) Further, the “Class Period” is
defined as the period beginning on June 30, 2018 and ending on May 10, 2023. (*Id.* at ¶ 7.) The
Class Period start date is the result of a tolling agreement entered into by the Parties tolling all
applicable statutes of limitations effective June 30, 2022.

1 of business expenses, restitution, damages, liquidated damages, statutory penalties, civil penalties,
2 injunctive and other equitable relief, prejudgment interest, and attorneys' fees and costs.

3 After engaging in a substantial exchange of information and documents, and after a full day
4 mediation with Paul Grossman, Esq. of Paul Hastings LLP, a highly experienced mediator in wage
5 and hour class actions, the Parties agreed to settle Plaintiff's and the Class Members' claims alleged
6 in the action for a non-reversionary sum of Two Hundred Thousand Dollars (\$200,000) ("Gross
7 Settlement Amount"). After deducting Court-approved Attorneys' Fees and Costs to Class Counsel,
8 an Enhancement Payment to the Class Representative, Administration Costs, and penalties
9 recoverable pursuant to the PAGA, the remaining amount is the Net Settlement Amount ("Net
10 Settlement Amount") which will automatically be distributed to Settlement Class Members. The
11 entire Net Settlement Amount must be paid out as this is a non-reversionary settlement.

12 It is also important to note that the Settlement calls for the Gross Settlement Amount to be
13 funded in two (2) separate and equal settlement installment payments. The first installment payment
14 of \$100,000 will be deposited into a qualified settlement fund established by the Settlement
15 Administrator within thirty (30) business days after the Effective Date. The second installment
16 payment of \$100,000 is to be deposited by Defendant within one year (or, twelve months) after the
17 Effective Date. Notwithstanding the two separate installment payments, only a single distribution
18 will occur with the Settlement Administrator distributing payments no later than ten (10) calendar
19 days after full funding of the Gross Settlement Amount by Defendant.

20 The Settlement is fair, reasonable, and adequate, and in the best interests of the Class
21 Members. Consequently, Plaintiff, with the consent of Defendant, hereby moves for an order: (1)
22 conditionally certifying the Class for settlement purposes; (2) granting preliminary approval of the
23 Settlement Agreement; (3) approving the proposed Notice of Class Action Settlement and Hearing
24 Date for Final Court Approval ("Class Notice") to be sent to Class Members; and (4) setting a
25 hearing for final approval of the Settlement.

26 **II. STATUS OF THE LITIGATION**

27 This litigation arises out Plaintiff's allegations that Defendant E and J Wood Finish failed to
28 comply with numerous California wage and hour laws and protections applicable to him and other

1 similarly situated non-exempt employees. Incorporated in January 2018, Defendant E and J Wood
2 Finish is a manufacturer of custom furniture. Plaintiff Joel Meza worked for E and J Wood as a full-
3 time shipping and receiving laborer earning \$17.00 per hour. (*See* Declaration of Joel Meza (“Meza
4 Decl.”), filed concurrently herewith, at ¶¶ 3, 9.)

5 Plaintiff alleges that Defendant understaffed its operations and exerted pressure on
6 employees to complete unreasonable workloads within scheduled hours thereby resulting in off-the-
7 clock work and non-compliant meal and rest breaks. (Meza Decl. ¶ 4.) Specifically, Plaintiff alleges
8 that he was not properly paid all minimum and overtime wages because of uncompensated time
9 arising from time punches subject to inequitable rounding, along with off-the-clock tasks during
10 pre-shift, lunch, and post-shift hours. Plaintiff alleges that he did not receive all legally compliant
11 meal periods, which were occasionally missed, late, short, and/or subject to work-related
12 interruptions. Rest breaks were non-compliant as, in practice, they depended on workflow demand,
13 thus were neither authorized, nor provided. Problematically, Defendant did not pay meal or rest
14 period premiums on each of the days that Plaintiff received such non-compliant meal and rest
15 breaks. Such alleged non-compliance also gives rise to derivative claims for inaccurate wage
16 statements (including failure to maintain certain time and pay records), untimely wages during
17 employ and upon separation, unfair business practices, along with assessments of statutory and civil
18 penalties, liquidated damages, and restitution. (*See* Meza Decl. ¶¶ 4-7.)

19 **A. Procedural History**

20 Plaintiff filed his putative class and representative action complaint against Defendant
21 alleging claims for: (1) failure to pay minimum wages pursuant to Labor Code sections 1182.12,
22 1194, 1194.2, 1197, 1197.1, and Wage Order No. 1-2001; (2) failure to pay overtime pursuant to
23 Labor Code sections 223, 510 and 1198, and Wage Order No. 1-2001; (3) failure to provide meal
24 period premiums in violation of Labor Code sections 226.7, 512, and Wage Order No. 1-2001; (4)
25 failure to provide rest period premiums in violation of Labor Code section 226.7 and Wage Order
26 No. 1-2001; (5) failure to reimburse business expenses in violation of Labor Code sections 2800
27 and 2802; (6) failure to provide accurate itemized wage statements in violation of Labor Code
28 sections 226 and 226.3; (7) failure to pay wages timely during employment and upon termination in

1 violation of Labor Code sections 201-204, and 210; (8) failure to maintain payroll records in
2 violation of Labor Code section 1174(d); (9) violation of Business and Professions Code sections
3 17200, *et seq.*, and (10) violations of the PAGA. (*See* Declaration of Anthony J. Orshansky
4 (“Orshansky Decl.”), filed concurrently herewith, at ¶ 30.)

5 In advance of filing the operative complaint, on June 30, 2022, Plaintiff submitted notice to
6 the California Labor and Workforce Development Agency (“LWDA”) seeking authority to pursue
7 penalties under the PAGA for the above-identified alleged violations of California law. (Orshansky
8 Decl. ¶ 32.) The LWDA did not provide notice of its intent to investigate the alleged violations
9 within 65 calendar days of submission, thereby entitling Plaintiff to commence a representative
10 action under the PAGA. (*Ibid.*) Plaintiff’s tenth cause of action thus asserts a PAGA representative
11 action claim on behalf of Plaintiff and similarly situated aggrieved employees under Labor Code
12 section 2698. (*Ibid.*) Importantly, the Parties entered into a tolling agreement to toll all applicable
13 statutes of limitations effective June 30, 2022. (*Id.* at ¶ 33.)

14 Defendant denies Plaintiff’s allegations of wrongdoing. Defendant does not believe that any
15 liability Class Members or PAGA Group Members exists, or that Class Members or PAGA Group
16 Members are entitled to any recovery. (Settlement Agreement ¶¶ 44, 46.) In settling, Defendant does
17 not admit liability with respect to the alleged claims made by Plaintiff and makes no admission
18 regarding any facts or law related to the lawsuit. (*Id.* at ¶¶ 44, 46; Orshansky Decl. ¶ 34.)

19 **B. Discovery and Investigation**

20 Prior to initiating this lawsuit, counsel for Plaintiff, CounselOne, PC (herein, “Class
21 Counsel”), thoroughly investigated the claims and considered the facts and circumstances
22 underlying the pertinent issues and applicable law. (*See* Orshansky Decl. ¶ 29.) This required
23 thorough discussions and interviews with Plaintiff as well as research into the various legal issues
24 involved in the case. (*Ibid.*) After conducting their initial investigation, Class Counsel determined
25 that the claims were well suited for class action adjudication owing to what appeared to be a
26 common course of conduct affecting a similarly situated group of employees. (*Ibid.*)

27 Notwithstanding that the Parties explored resolution prior to briefing on class certification,
28 Class Counsel conducted a thorough investigation in advance of mediation. Specifically, Class

1 Counsel's informal discovery and investigation yielded information and substantial documentation
2 concerning the claims alleged, such as Defendant's written policies concerning the claims at issue,
3 including Defendant's policies and procedures regarding the payment of wages, the provision of
4 meal and rest breaks, time keeping policies, such as recording hours, issuance of wage statements,
5 and providing all wages at separation. (Settlement Agreement ¶ 40; *see also* Orshansky Decl. ¶ 35.)
6 Defendant also provided composite data for the Class including total number of putative class
7 members; mix of current versus former employees; total number of pay periods; total number of
8 workweeks; and the average hourly rate in effect. (Orshansky Decl. ¶ 36.) Significantly, Defendant
9 produced a random sampling of time and wage records for 19.3% of the putative class members
10 (*i.e.*, 21 out of 109 employees), consisting of records of 1,786 shifts and 332 pay periods. (*Ibid.*)
11 With the assistance of a consultant, Class Counsel analyzed the documents and data produced to
12 determine Defendant's degree of liability and potential amounts due in damages. (*Id.* at ¶ 37.)

13 **C. Mediation and Settlement**

14 Thereafter, on February 9, 2023, the Parties participated in a private mediation where they
15 debated and discussed their respective positions. (Orshansky Decl. ¶ 38.) The Parties' mediation
16 session was facilitated by Paul Grossman, Esq. of Paul Hastings LLP. In addition to over fifty (50)
17 years of legal practice and substantial experience in all areas of employment law, Mr. Grossman is
18 experienced in mediating labor and employment class and PAGA actions with a majority success
19 rate of resolution. (*Ibid.*) During the mediation, the Parties exchanged further information and
20 discussed all aspects of the case, including the risks and delays of litigation and the risk to both
21 Parties for proceeding with a motion for class certification and liability under the claims asserted,
22 along with the potential for PAGA penalties to be asserted. (*Id.* at ¶ 39.) These were contentious
23 issues because of the factual and legal complexity of the case. (*Ibid.*)

24 During that mediation and pursuant to a mediator's proposal, the Parties agreed to resolve
25 the matter and reached the terms of this proposed arm's-length Settlement. (Orshansky Decl. ¶ 40;
26 Settlement Agreement ¶ 41.) Subsequently, the Parties executed a short-form Memorandum of
27 Understanding and, thereafter, the Parties memorialized these terms in the long-form Settlement
28

1 Agreement as set forth in the Stipulation of Class and Representative Action Settlement, dated May
2 31, 2023, attached as **Exhibit “1”** to Orshansky Decl. filed concurrently herewith.

3 Based on the settlement negotiations, which were hard fought and conducted in good faith
4 and at arm’s length between attorneys with substantial experience litigating class and representative
5 actions, the Settlement was the product of a non-collusive settlement process in which the Parties
6 were forced to make significant compromises in the interest of reaching a full and complete
7 settlement of the action. (Orshansky Decl. ¶ 41.) From Class Counsel’s review of the facts, strengths,
8 and weaknesses of the case, the risks and delays posed by further litigation, and Class Counsel’s
9 own prior litigation experience, Class Counsel believe that the recovery made available to Class
10 Members is fair, reasonable, and adequate taking into consideration the amounts received in other
11 wage and hour class and representative actions, the risks inherent in litigation of this genre, and the
12 reasonable tailoring of each Class Members’ claim to the settlement award he or she will receive.
13 (*Id.* at ¶ 42.) Class Counsel believe that the Settlement serves the best interests of Class Members.
14 (*Ibid.*) Accordingly, the Parties have concluded that it is in their best interests to compromise, settle,
15 and accept the terms of the Settlement Agreement. (Settlement Agreement ¶¶ 21, 34, 41-45.)

16 **III. SUMMARY OF SETTLEMENT TERMS**

17 Under the terms of the Settlement, Defendant agrees to pay a non-reversionary amount of
18 Two Hundred Thousand Dollars (\$200,000) to settle the claims asserted in the lawsuit. (*See*
19 Settlement Agreement ¶¶ 17, 48.²) This amount shall be inclusive of all Individual Settlement
20 Payments to all Settlement Class Members (*e.g.*, those who do not opt out of the Settlement), the
21 Enhancement Payment to Plaintiff, Administration Costs to the Settlement Administrator,
22 Attorneys’ Fees and Costs, and the PAGA Payment, but exclusive of employer-side federal and state
23 payroll taxes. The amount available for distribution to Settlement Class Members is determined by
24 deducting the following from the Gross Settlement Amount:

25
26 ² There appears a clerical error in the Settlement Agreement whereby two consecutive paragraphs
27 are designated as Paragraph 48: one entitled “Release of Claims by PAGA Group Members” which
28 is one sentence in length, and the other entitled “Payments under the Settlement” that is substantially
longer with subparagraphs (a) thru (f). For purposes of this Motion, all references herein are to the
“Payments under the Settlement” version except where the designation “¶ 48 (Release of Claims)”
is denoted.

- Up to 33-1/3% of the Gross Settlement Amount in attorneys’ fees (*i.e.*, \$66,600) and actual litigation expenses up to \$25,000 to Class Counsel (“Attorneys’ Fees and Costs”);
- Up to \$7,500 to Plaintiff as an enhancement payment in recognition of undertaking the additional responsibilities as Class Representative and his efforts and risks for prosecuting the lawsuit (“Enhancement Payment”);
- Up to \$12,500 to the Settlement Administrator, CPT Group, Inc., to notify members of the Class and administer the settlement (“Administration Costs”); and
- \$30,000 to the LWDA for penalties pursuant to the PAGA (“LWDA Payment”) (*i.e.*, 75% of the \$22,500 allocated to civil penalties pursuant to the PAGA (“PAGA Payment”); the remaining 25% in the amount of \$7,500 will be distributed to PAGA Group Members³).

The entire Net Settlement Amount must automatically be paid out to Class Members who do not opt out/request exclusion without the need to submit a claim form, and PAGA Group Members will receive their pro rata share of the eligible PAGA Payment irrespective of whether or not they opt out. (Settlement Agreement ¶¶ 22, 48(d) and (f), 52.) Due to financial hardship concerns raised by Defendant, payments for the Gross Settlement Amount will be funded in two (2) separate and equal installments of \$100,000. (*See* Settlement Agreement ¶ 58(a); Letter from E and J Wood Finish, attached as **Exhibit “2”** to Orshansky Decl.)

A. The Settlement Provides for Reasonable Monetary Payments

If all of the approximately 109 Class Members participate (*i.e.*, do not request exclusion/opt-out), then the average settlement payment would be an estimated \$535.78 per Settlement Class Member. (Orshansky Decl. ¶ 15.) In actuality, each Settlement Class Member will receive a proportional share of the Net Settlement Amount based on his or her individual Workweeks during the Class Period. (Settlement Agreement ¶ 48(f).) The Settlement Administrator will determine each Settlement Class Member’s Individual Settlement Share as follows: The sum of all Settlement Class Members’ individual Workweeks will be the “Total

³ “PAGA Group” and “PAGA Group Members” means all hourly, non-exempt employees, whether or not they submit a request for exclusion from the Class, employed by Defendant in California during PAGA Period. Further, the PAGA Period is defined as the period beginning on June 30, 2021 and ending on May 10, 2023. (Settlement Agreement ¶¶ 23, 26.)

1 Workweeks.” The Net Settlement Amount will be divided by the Total Workweeks to yield the
2 “Workweek Value.” Each Settlement Class Member’s Individual Settlement Share will then be
3 determined by multiplying his or her individual Workweeks by that Workweek Value. (*Id.* at ¶¶
4 18, 48(f).) Additionally, all PAGA Group Members will receive a proportional share of the 25% of
5 the PAGA Payment based on his or her own individual Pay Periods relative to the total Pay Periods
6 of all PAGA Group Members during the PAGA Period. (*Id.* at ¶¶ 23-26, 48(d).)

7 After reduction for the employee’s share of taxes on the wage portion,⁴ the net payment to
8 each Settlement Class Member will be the sum of his or her Individual Settlement Share, plus his
9 or her share of the 25% of the PAGA Payment, if applicable, which together is called the Individual
10 Settlement Payment. (Settlement Agreement ¶¶ 19, 48(d) and (f); Orshansky Decl. ¶¶ 11-12.) As a
11 result of the distribution formula, the consideration paid to each Settlement Class Member is tailored
12 to the impact of Defendant’s alleged violations, as well as to the claims he or she is releasing.
13 (Settlement Agreement ¶¶ 47, 48; Orshansky Decl. ¶¶ 10-13.) Finally, any Class Member who
14 prefers to preserve his or her right to pursue relief or seek an alternative recovery may request
15 exclusion. (Settlement Agreement ¶ 55.)⁵

16 Settlement checks will remain valid for 180 days from the mailing. (Settlement Agreement
17 ¶ 58(c).) Thereafter, any uncashed checks will be cancelled and associated funds transferred to a
18 mutually agreed upon *cy pres* beneficiary in conformity with the requirements of California Code
19 of Civil Procedure section 384. (*Ibid.*)

20 **B. Class Representative Enhancement Payment and Attorneys’ Fees and Costs**

21 As part of the Settlement, Plaintiff will apply for award of an enhancement payment at the
22 time of seeking final approval in the amount of \$7,500 for services to the Class in prosecution of
23 this lawsuit as a class representative against Defendant. (Settlement Agreement ¶¶ 13, 48(c);

24 ⁴ The Parties agreed to allocate twenty-five percent (25%) of each Individual Settlement Share to
25 wages to be reported on IRS Form W-2, with the other seventy-five percent (75%) to be equally
26 split between non-wage penalties and non-wage interest (*i.e.*, 37.5% interest and 37.5% penalties)
to be reported on IRS Form 1099. (Settlement Agreement ¶ 50(a).)

27 ⁵ Again, if approved, all Class Members who are PAGA Group Members will receive their individual
28 pro rata PAGA Payment irrespective of whether they opt out of the class settlement. (Settlement
Agreement ¶ 48(d).)

Orshansky Decl. ¶ 16; *see also* Meza Decl., *passim*.) “[I]ncentive awards are fairly typical in class action cases . . . and are intended to compensate class representatives for work done on behalf of the class [and] to make up for financial or reputational risk undertaken in bringing the action.” (*In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1393-1394.) Plaintiff’s requested enhancement payment is intended to recognize the significant benefits conferred upon the Class and be proportional to the respective time and effort that Plaintiff expended on behalf of the Class and the PAGA Group Members, including providing factual information and documents to Class Counsel, discussing the claims and theories at issue in the case with Class Counsel, identifying potential witnesses and reviewing documents, providing input during the mediation, making himself available for a full day of settlement negotiations, inquiring about and staying apprised of the status of the litigation, and reviewing the Settlement Agreement, as well as the significant risks Plaintiff undertook by agreeing to serve as named plaintiff and Class Representative. (*See* Settlement Agreement ¶¶ 13, 48(c); Orshansky Decl. ¶ 17; Meza Decl. ¶¶ 8-21.)

Class Counsel will apply for an attorneys’ fees award of thirty-three and one-third percent (33.3%) of the Gross Settlement Amount (*i.e.*, \$66,600) and reimbursement of litigation costs in an amount up to \$25,000. (Settlement Agreement ¶¶ 2, 48(a); Orshansky Decl. ¶ 18.) Plaintiff submits that the requested fee is fair compensation for undertaking this complex, risky, expensive, and time-consuming litigation on a purely contingent fee basis. (Orshansky Decl. ¶ 18.) Class Counsel have devoted substantial attorney time to pre-filing investigation; analyzing Plaintiff’s claims; conducting legal research and analysis; researching the factual and legal merits of the claims; interviewing Class Members; preparing and submitting notice to the LWDA; drafting and filing the operative complaint; requesting informal discovery; reviewing policies and procedures regarding timekeeping protocol and onboarding; investigating the payment of wages, provision and tracking of meal and rest breaks; examining a random sample of 19.3% of employees’ time and pay records (from 21 of 109 individuals, consisting of approximately 1,786 shifts and 332 pay periods); meeting and conferring; building damages models; preparing, briefing, and attending a full day mediation before Paul Grossman, Esq. of Paul Hastings LLP; preparing the long-form Settlement Agreement and Class Notice; preparing this Motion for Preliminary Approval and supporting documents; and

1 otherwise litigating the case. (*Ibid.*) Class Counsel will also expend future attorney time attending
2 the hearing on this Motion, overseeing the notice and administration process, drafting the Final
3 Approval Motion and supporting documents, and attending the Final Approval hearing, among other
4 tasks, such as addressing questions from Class Members. (*Id.* at ¶ 19.)

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

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

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

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

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

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

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

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

16 Here, the class definition is “precise, objective and presently ascertainable.” (*Sevidal v.*
17 *Target Corp.* (2010) 189 Cal.App.4th 905, 919.) Class Members are comprised of “[a]ll hourly, non-
18 exempt employees employed by Defendant E and J Wood Finish within the State of California
19 during the Class Period,” which is explicitly defined as the timeframe beginning on June 30, 2018
20 through May 10, 2023. (Settlement Agreement ¶¶ 5, 7.) Defendant is required to and does maintain
21 employment records of such persons, including contact information and social security numbers.
22 Documents and information exchanged reflect a Class of approximately 109 putative class members
23 from the beginning of the Class Period through February 9, 2023.⁶ (Orshansky Decl. ¶ 116.) Hence,
24 the proposed Class satisfies the ascertainability and numerosity requirements. (*See, e.g., Rose v. City*

25 _____
26 ⁶ Plaintiff expects a slight increase in the class size from February 9, 2023 through May 10, 2023,
27 the latter of which is the close of the Class Period. In the event of any significant variation of
28 mediation relied upon counts (*i.e.*, exceeding 10% of the associated 7,777 workweeks for 109
putative class members), however, such is safeguarded by a pro rata increase escalator clause.
(Settlement Agreement ¶ 54.) The precise count will be available at time of Class Notice mailing
and an updated figure provided at the final approval stage.

1 of *Hayward* (1981) 126 Cal.App.3d 926, 934 [stating “[n]o set number is required as a matter of law
2 for the maintenance of a class action,” and citing examples where classes comprised of as little as
3 10 [*Bowles v. Superior Court* (1955) 44 Cal.2d 574] and 28 [*Hebbard v. Colgrove* (1972) 28
4 Cal.App.3d 1017] members were upheld as sufficiently numerous]; *see also Collins v. Rocha* (1972)
5 7 Cal.3d 232 [finding a class of 44 farm workers sufficiently numerous].)

6 **B. There Is a Well-Defined Community of Interest**

7 A community of interest is established by the preponderance of common issues of law and
8 fact. (*See Vasquez, supra*, 4 Cal.3d at p. 811.) “The community of interest requirement involves
9 three factors: (1) predominant common questions of law or fact; (2) class representatives with claim
10 or defenses typical of the class; and (3) class representatives who can adequately represent the
11 class.” (*Linder, supra*, 23 Cal.4th at p. 435.)

12 **1. Common Issues of Law and Fact Predominate**

13 The Court should grant class certification when questions of law and fact common to all
14 Class Members predominate over any questions affecting only individual Class Members. The
15 predominant inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication
16 by representation. (*See, e.g., Clothesrigger, Inc. v. GTE Corp.* (1987) 191 Cal.App.3d 605; *Lazar v.*
17 *Hertz Corp.* (1983) 143 Cal.App.3d 128.)

18 In the matter *sub judice*, common issues of fact and law predominate as to each of the claims
19 alleged by Plaintiff and Class Members. Here, litigation is predicated on uniform company policies
20 and systemic top-down business practices revolving principally around Defendant’s operational
21 demands and quotas, timekeeping, and pay practices—*e.g.*, off-the-clock work attributed to
22 inequitable rounded time, pre-shift and post shift job duties, along with missed breaks due to
23 workflow demands relative to staffing and improper reliance on automatic deductions, failure to pay
24 all meal and rest break premiums owed despite non-compliance, failure to maintain accurate
25 employee time records, unreimbursed business expenses, etc.—as well as derivative inaccurate
26 wage statements and pay owed upon separation. These allegations have given rise to the following
27 claims: failure to pay minimum and overtime wages; meal period liability; rest break liability;
28 unreimbursed business expenses; failure to provide accurate itemized wage statements; failure to

1 pay wages timely and all final wages at termination of employment; failure to maintain accurate
2 payroll records; and derivative UCL and PAGA claims arising therefrom. (Settlement Agreement ¶
3 37; Orshansky Decl. ¶ 117.)

4 Because Plaintiff has alleged a single top-down compensation scheme, “the relevant proof
5 [does] not vary among class members” and “clearly presents a common question fundamental to all
6 class members.” (*See In Re NASDAQ Market-Makers Antitrust Litigation* (S.D.N.Y. 1997) 172
7 F.R.D. 119, 123 [citing *In Re NASDAQ Market-Makers Antitrust Litigation* (S.D.N.Y. 1997) 169
8 F.R.D. 493, 518].) California courts show “no hesitancy” in inferring class-wide causation, class-
9 wide injury, and class-wide damages when a common course of action has been shown. (*B.W.I.*
10 *Custom Kitchens, supra*, 191 Cal.App.3d at p. 1350 [granting class certification in a manufacturing
11 defect case when a common course of action had been proven].) This inference “eliminates the need
12 for each class member to prove individually the consequences of the defendants’ actions to him or
13 her.” (*Id.* at p. 1351.) Thus, the outcome of this matter depends upon questions that are common to
14 members of the Class. These types of claims are commonly held to be proper for class certification.
15 (*See, e.g., Bluford v. Safeway, Inc.* (2013) 216 Cal.App.4th 864, 871 [reversing denial of rest period
16 claim]; *Benton v. Telecom Network Specialists, Inc.* (2013) 220 Cal.App.4th 701, 726 [certifying
17 meal period claim]; Orshansky Decl. ¶ 118.)

18 **2. Plaintiff’s Claims Are Typical of the Claims of the Settlement Class**

19 The typicality requirement is satisfied where class representatives have claims that are
20 typical of the rest of the class. (*B.W.I. Custom Kitchens, supra*, 191 Cal.App.3d at pp. 1347.) Here,
21 Plaintiff’s claims are typical of those held by members of the Class. Like other Class Members,
22 Plaintiff was an hourly, non-exempt employee working for E and J Wood Finish in California during
23 the Class Period. (Meza Decl. ¶¶ 3, 9.) Like other Class Members, Plaintiff was not paid for all
24 hours worked due to off-the-clock work (*i.e.*, inequitable rounding, along with tasks performed
25 during pre-shift, lunch, and post-shift hours) and/or was not paid all overtime wages owed, neither
26 received timely, duty-free meal and rest breaks, nor was paid the premiums owed for said non-
27 compliant breaks, did not receive complete and accurate itemized wage statements, experienced the
28 failure of his employer to maintain accurate payroll records, and did not receive all wages and

1 premiums owed him upon termination of employment. (Meza Decl. ¶¶ 4-5; Orshansky Decl. ¶ 119.)
2 Plaintiff was therefore impacted by the same challenged policies and practices that allegedly injured
3 the Class as a whole, and subject to the same defenses raised by Defendant as to the Class; therefore,
4 his claims are typical.

5 **3. Plaintiff and His Counsel Meet the Adequacy Requirements**

6 The adequacy of representation requirement examines conflicts of interest between named
7 parties and the class(es) they seek to represent. (*Capital People First v. Department of*
8 *Developmental Services* (2007) 155 Cal.App.4th 676, 697.) Here, Plaintiff and Class Counsel will
9 adequately represent the Class, as there are no conflicts between the Plaintiff and the Class. (Meza
10 Decl. ¶ 8; Orshansky Decl. ¶ 120; *McGhee v. Bank of Bank of America* (1976) 60 Cal.App.3d 442,
11 450 [finding adequacy satisfied where there was no indication that plaintiff's counsel were not
12 qualified and the named plaintiff had no interests antagonistic to those of the proposed class].) Class
13 Counsel have extensive experience in wage and hour litigation. (See Orshansky Decl. ¶¶ 97-105.)

14 **C. A Class Action Is Superior to a Multiplicity of Litigation**

15 In making its class certification decision, the court must determine that a class action would
16 be superior to alternative means for the fair and efficient adjudication of the litigation. By
17 consolidating over 100 individual actions into a single proceeding, this Court's use of the class
18 action device enables it to manage this litigation in a manner that serves the efficiency interests of
19 the litigants and the judicial system. Absent class treatment, the only alternative would be to force
20 numerous employees to file individual actions. (*Sav-On Drug Stores, Inc. v. Superior Court* (2004)
21 34 Cal.4th 319, 339 fn. 10 [stating "[t]he relevant comparison lies between the costs and benefits of
22 adjudicating plaintiffs' claims in a class action and the costs and benefits of proceeding by numerous
23 separate actions—not between the complexity of a class suit that must accommodate some
24 individualized inquires and the absence of any remedial proceeding whatsoever."].) Finally, in the
25 context of settlement, the superiority concerns are essentially non-existent. (Orshansky Decl. ¶ 121.)

26 **V. THE TWO-STEP APPROVAL PROCESS**

27 Any settlement of class action litigation must be reviewed and approved by a court. This is
28 accomplished in two steps: (1) an early (preliminary) review by the trial court, and (2) a detailed

1 review after the notice has been distributed to the class members for their comments or objections.
2 “A court may preliminarily approve a settlement and direct notice to the class if ‘the proposed
3 settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious
4 deficiencies, does not improperly grant preferential treatment to class representatives or segments
5 of the class, and falls within the range of possible approval.’” (*Draney v. Westco Chems., Inc.*
6 (C.D.Cal. Sep. 29, 2021, No. 2:19-cv-01405-ODW (AGRx)) 2021 U.S. Dist. LEXIS 187250, at *11
7 [citing *In re Tableware Antitrust Litig.* (N.D.Cal. 2007) 484 F.Supp.2d 1078, 1079].) The
8 preliminary approval of the class action settlement by the trial court is simply a conditional finding
9 that the settlement appears to be within the range of acceptable settlements. (*See, e.g.,* 4 Conte &
10 Newberg, *Newberg on Class Actions* (4th Ed. 2002) § 11.25; *North County Contractor’s Assn., Inc.*
11 *v. Touchstone Ins. Services* (1994) 27 Cal.App.4th 1085, 1094-1095.) Thus, the preliminary
12 approval of the class action settlement by the Court is simply a conditional finding that the
13 settlement appears to be within the range of acceptable settlements. A review of the preliminary
14 approval criteria demonstrates a substantial basis for granting the preliminary approval requested
15 by this Motion and proceeding to a full settlement hearing.

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

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

27 To summarize, the Settlement here is fair because it offers payment to each Class Member
28 for releasing his or her claims, extinguishes the risk of litigation, and provides a fair and adequate

1 distribution of the settlement proceeds whereby the Net Settlement Amount is allocated to
2 Settlement Class Members proportionally based on their respective number of eligible Workweeks
3 worked during the Class Period, along with proportionally eligible Pay Periods to PAGA Group
4 Members who worked during the PAGA Period. (Orshansky Decl., *passim*.)

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

6 Moreover, courts presume the absence of fraud or collusion in the negotiation of a settlement
7 unless evidence to the contrary is offered. In short, there is a presumption that the negotiations were
8 conducted in good faith. (*See* 4 Conte & Newberg, *Newberg on Class Actions* (4th Ed. 2002) §
9 11.51; *Rodriguez v. West Publ. Corp.* (C.D.Cal. August 10, 2007) 2007 U.S. Dist. LEXIS 74767, at
10 *24-25; *In re Chicken Antitrust Litigation* (N.D.Ga. 1980) 560 F.Supp. 957, 962; *Priddy, supra*, 883
11 F.2d at p. 447; *Mars Steel Corp. v. Continental Illinois National Bank and Trust Co.* (7th Cir. 1987)
12 834 F.2d 677, 681.) Courts do not substitute their judgment for that of the proponents, particularly
13 when settlement has been reached by experienced counsel familiar with the litigation. (*Rodriguez,*
14 *supra*, 2007 U.S. Dist. LEXIS 74767, at *24.) As detailed at length in the Declaration of Anthony
15 J. Orshansky, the settlement is the result of extensive settlement negotiations between the Parties,
16 conducted at arm's length, and informed by substantial factual and legal investigations.

17 **1. Negotiations Were at Arm's Length before a Respected Mediator**

18 Here, the settlement is the result of extensive settlement negotiations between the Parties,
19 conducted at arm's length, and informed by substantial factual and legal investigations. (Orshansky
20 Decl. ¶¶ 29, 35-41.) As noted above, the Parties participated in a full-day mediation with Paul
21 Grossman of Paul Hastings LLP. (*Id.* at ¶ 38.) Mr. Grossman brought over fifty (50) years of legal
22 practice to bear, along with his considerable experience in mediating employment wage and hour
23 class and PAGA representative action matters, and with whose help the Parties eventually agreed to
24 resolve this case according to the terms set forth in Settlement Agreement. (*Id.* at ¶¶ 38-40.) Plaintiff
25 and his counsel believe that the alleged claims asserted have merit. However, Plaintiff and his
26 counsel also recognize and acknowledge the uncertainty of litigation through trial and appeals, the
27 question of certification, and the possible defenses. (*Id.* at ¶ 43.) These were contentious issues
28 because of the factual and legal complexity of the case (*i.e.*, purported meal break waivers,

evidentiary difficulty of proving off-the-clock claims, and use of automated deduction/rounding functionalities) as well as the legal uncertainty regarding many of the central issues of the litigation (*i.e.*, certification, liability, and devising a theory that properly measures monetary recovery, especially given overlap of penalties and arguments against stacking). (*Id.* at ¶ 45.)

2. Investigation Was Sufficient to Allow Counsel to Act Intelligently

Class Counsel investigated the claims by interviewing Plaintiff at length and on repeated occasions, researching California law, and upon finding it suitable for class treatment, filing a wage and hour putative class and representative action. (Orshansky Decl. ¶ 29.) Class Counsel devoted a considerable amount of time to the prosecution of this case, including, but not limited to: interviewing Plaintiff and other Class Members; preparing and submitting notice to the LWDA; drafting a written tolling agreement and the operative pleading; propounding informal requests for documents, data, and other factual investigation; reviewing Defendant's written policies concerning the claims set forth in the lawsuit, including timekeeping protocol, policies and procedures regarding the payment of wages, the provision of meal and rest breaks, reimbursement of business expenses, issuance of wage statements, and providing all wages at separation; reviewing and analyzing Class Members' time and pay records; meeting and conferring regarding the information and documents produced; preparing for and attending mediation; and negotiating and finalizing the settlement and related documents. (*Id.* at ¶¶ 18, 35-42.) Class Counsel examined a random sample of 19.3% of employees' time and pay records.⁷ (Settlement Agreement ¶ 40; Orshansky Decl. ¶¶ 18, 35-42.)

3. Class Counsel Are Experienced in Similar Litigation

Class Counsel believe that the settlement is fair and reasonable and serves the best interests of the Class Members. (Orshansky Decl. ¶¶ 42, 49, 96.) Although the recommendations of counsel proposing the class settlement are not conclusive, the Court can properly take the recommendations into account, particularly if counsel have been involved in litigation for some period of time, appear to be competent, have experience with this type of litigation, and significant discovery has been

⁷ Such constitutes a statistically significant sample as courts have found the use of similar percentage samples appropriate. (*See e.g., Brum v. MarketSource, Inc.* (E.D.Cal. 2018) 2018 WL 3861558, at *5 [10% sample]; *Talavera v. Sun Maid Growers of California* (E.D.Cal. 2017) 2017 WL 495635, at *4 [10% sample]; *Kaminske v. JP Morgan Chase Bank N.A.* (C.D.Cal. 2010) 2010 WL 5782995, at *5 [10% sample].)

completed. (See 4 Conte & Newberg, *Newberg on Class Actions* (4th Ed. 2002) § 11.47.) Here, Plaintiff is represented by competent and experienced counsel who possess extensive experience litigating wage and hour class actions and have been appointed as class counsel in numerous cases alleging similar claims. (Orshansky Decl. ¶¶ 97-105.)

B. The Settlement Is Fair, Reasonable, and Adequate

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

1. The Strength of Plaintiff’s Case

Class Counsel carefully vetted the claims at issue to arrive at a comprehensive damages model for Defendant’s liability. (Orshansky Decl. ¶ 43.) Although Plaintiff steadfastly maintains that his claims are meritorious, he acknowledges that there are substantial risks and uncertainty in proceeding with class certification and trial. (*Ibid.*) As explained in further detail in section VI.B.4, *infra*, Defendant presented numerous defenses to Plaintiff’s claims, both on the merits and with respect to class certification. For example, Defendant defended against the minimum and overtime wage claims by relying on policies that required Class Members to record time accurately and thus render off-the-clock work unauthorized. (Orshansky Decl. ¶ 44.) Defendant argued that any alleged off-the-clock hours, to the extent such work was performed, are unquantifiable and de minimis. (*Ibid.*) Defendant further contended that, as part of its onboarding process, employees were required to sign meal and rest break acknowledgment and waiver forms, which if credited, would significantly ameliorate meal period liability. (*Ibid.*) Moreover, in conjunction with the meal break waivers, Defendant often used an automatic lunch deduct functionality, with the result that Plaintiff faces significant challenges demonstrating non-compliant meal breaks manifest on timekeeping

1 records alone. (*Ibid.*) Finally, Defendant argued that Class Members held different job positions,
2 with varying duties, and reported to separate managers, and that, as a result, Defendant contended
3 there was a variation in circumstances raising highly individualized questions of fact. (*Ibid.*)

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

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

10 While Plaintiff conducted extensive informal discovery and investigation prior to mediation,
11 the Parties agreed to explore pre-litigation and early settlement efforts before launching into full-
12 fledged and hotly contested proceedings. (Orshansky Decl. ¶ 46.)⁸ Therefore, absent settlement, the
13 Parties would have needed to conduct substantial formal discovery, such as the production of
14 voluminous records and numerous depositions of experts and percipient witnesses, and prepare the
15 case for class certification and trial. (*Ibid.*) The Parties would have had to depose a number of people,
16 such as warehouse managers, supervisors, human resource representatives, and employees, in order
17 to establish liability. (*Ibid.*) Discovery disputes would have been in the offing and liability likely
18 would have entailed a battle of experts. This settlement avoids the considerable time, attorneys' fees
19 and costs, and party resources associated with conducting additional discovery, moving for class
20 certification and potentially summary judgment or adjudication, and ultimately, trial, as well as the
21 risks and the accompanying burden of continued litigation on the Court. (*Ibid.*) Thus, this factor
22 supports preliminary approval of the settlement.

23 **3. Risk of Maintaining Class Action Status**

24 Here, settlement was reached prior to class certification and the result was a successful
25 outcome for Class Members. (Orshansky Decl. ¶ 47.) Going forward, class certification was by no
26 means a foregone conclusion. (*Ibid.*) For example, Class Members worked in different job positions,

27 ⁸ Again, the Parties executed a written tolling agreement prior to mediation and in advance of filing
28 the operative complaint. (Orshansky Decl. ¶ 33.)

1 with varying duties, and had different supervisors, and that, as a result, Defendant contended there
2 was variation to the circumstances that could allegedly cause employees to work off-the-clock
3 and/or be deprived of the opportunity to take legally compliant, duty-free meal and rest periods, and
4 this variation in circumstances raised highly individualized questions of fact. (*Ibid.*) Defendant
5 further disputed Plaintiff’s characterization of working conditions, liability, and damages, and
6 possessed documentary and testimonial evidence rebutting Plaintiff’s allegations. (*Id.* at ¶ 48.) If the
7 Court either denied class certification or later decertified it, the Class would recover nothing and
8 Class Members would be forced to retain their own counsel and proceed on the basis of individual
9 claims only. (*Ibid.*) Here, Class Members may avoid each of the risks described and receive
10 substantial monetary benefits, which also weighs in favor of preliminary approval.

11 **4. Amount Offered in Settlement Given Realistic Value of Claims**

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

20 Plaintiff carefully estimated the settlement recovery as a reasonable percentage of possible
21 damages recoverable at trial. Plaintiff’s damages analysis shows that the settlement amount reflects
22 an estimated 15% to 27% of the maximum-to-realistic possible damages recoverable at trial.
23 (Orshansky Decl. ¶ 50.) Utilizing a class-wide damages study to assess the nature and magnitude of
24 the claims in question (*see Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 123), this
25 case clearly meets the requirement that a class settlement be within the “ballpark” of reasonableness.

26 Unpaid Minimum and Overtime Wages

27 Plaintiff alleges that he and other employees were subjected to uncompensated time arising
28 from inequitable rounding practices, along with pre-shift/post-shift/meal break off-the-clock work.

1 Specifically, Defendant maintained a practice of automatizing and/or rounding employees' work
2 time rather than paying based on captured contemporaneous punches of actual hours worked. (*See*
3 *See's Candy Shops, Inc. v. Superior Court* (2012) 210 Cal.App.4th 889 [permitting employer
4 rounding only if "will not result, over a period of time, in failure to compensate the employees
5 properly for all the time they have actually worked."].) Further, Plaintiff also contends that he and
6 other employees were engaged in off-the-clock work activities pre-shift, during lunches, and post-
7 shift. As such, Plaintiff argues that these claims are susceptible to "substantial evidence of
8 systematic company policy to pressure or require employees to work off-the-clock." (*Brinker Rest.*
9 *Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004; Orshansky Decl. ¶ 52.) Finally, given that the average
10 shift length was 9.4 hours per day, it is inevitable that some portion of the off-the-clock hours result
11 in unpaid overtime under Labor Code sections 510 and 1198. (Orshansky Decl. ¶ 53.)

12 Class Counsel analyzed the documents and data produced by Defendant and, with the
13 assistance of a consultant, determined Defendant's degree of liability and damages—specifically,
14 the incidence and amount of purported off-the-clock activity. (Orshansky Decl. ¶ 54.)
15 Notwithstanding the obvious evidentiary challenge of quantifying unrecorded off-the-clock hours,
16 Plaintiff estimates that Defendant is liable for a net underpayment of 1,325.45 hours. (*Id.* at ¶ 55.)
17 Coupled with the estimated uncompensated off-the-clock activity, at the average hourly rate of
18 \$18.32, plus the additional \$9.16 overtime premium, such yields an estimated damages amount of
19 \$40,487, without discounting for risks associated with certification or merits. (*Ibid.*)

20 In opposition, however, Defendant contended that the incidence of any off-the-clock time
21 by individual employees is de minimis. Plaintiff countered that such defense lacks viability in light
22 of *Troester v. Starbucks Corp.* (2018) 5 Cal.5th 829, given that the California Supreme Court refused
23 to allow the de minimis defense to insulate Starbucks from having to pay employees for small
24 amounts of work regularly performed off-the-clock. What is not clear, however, is to what extent
25 the de minimis defense applies to uncaptured hours associated with an occasionally recurring
26 activity. (Orshansky Decl. ¶ 56.)

27 Defendant further responded that Plaintiff's claim for off-the-clock work is not amenable to
28 class treatment, because employees worked in a variety of job positions with different requirements,

1 were managed by different supervisors, and it would require an unmanageable series of mini-trials
2 to determine how much time was worked without pay. (Orshansky Decl. ¶ 57.) Further, in terms of
3 merit defenses, Defendant vigorously disagreed with Plaintiff’s theories regarding how much off-
4 the-clock work occurred in reality, and the credibility of those claimed hours, given Defendant’s
5 policies to the contrary. (*Id.* at ¶ 58.) Here, the failure to track all hours poses evidentiary difficulties,
6 because it is hotly contested how much off-the-clock work actually occurred. (*Id.* at ¶ 59.) For
7 Plaintiff to establish the quantity of specific disputed and unrecorded work activities—and where
8 automated punches evidence otherwise—would have been costly and time-consuming. (*Id.* at ¶ 59.)

9 In light of these considerations—especially the evidentiary difficulties of demonstrating off-
10 the-clock work on a class wide basis—Class Counsel acknowledged a forty percent discount,
11 yielding **\$24,292** in unpaid minimum and overtime wages, to account for the risks of non-
12 certification and being unsuccessful on the merits. (Orshansky Decl. ¶ 60.)

13 Meal and Rest Period Violations

14 In terms of written meal policies, the Parties diverged on one significant issue: the validity—
15 or invalidity—of Defendant’s meal break acknowledgment and waiver form. (Orshansky Decl. ¶
16 61.) Plaintiff contends that the meal break waiver form does not actually say that an employee is
17 waiving his or her 30-minute meal break, only that said option exists. (*Ibid.*) Without the express
18 waiver by mutual consent of the employee, the document does nothing to alter employees’ meal
19 break rights. Further, in actual practice, Plaintiff’s review of the data of employee time-punches
20 demonstrates substantial reliance on automated functionality, including rounded time entries and/or
21 30-minute automated deductions. But on February 25, 2021, the California Supreme Court in
22 *Donahue v. AMN Service, LLC* ruled that employers are not permitted to round time records when
23 determining if employees are entitled to meal premium payments. (*See Donohue v. AMN Services,*
24 *LLC* (2021) 11 Cal.5th 58.) At best, such practices were dubious prior to 2021, but continuing post-
25 *Donohue, supra*, Defendant’s reliance on automated functionality is a high-stakes gamble.
26 (Orshansky Decl. ¶ 62.) Moreover, time records indicate that second meal periods for qualifying
27 shifts in excess of ten (10) hours were nearly non-existent. (*Id.* at ¶ 63.) Finally, there is no indication
28 that Defendant ever made anywhere close to a corresponding equivalent of meal period premiums

1 for “missed,” “short,” “late,” or otherwise non-compliant meal periods. (*Id.* at ¶ 64.) Consequently,
2 Plaintiff alleges that Defendant violated Labor Code sections 226.7 and 512, and applicable Wage
3 Orders, by failing to compensate Plaintiff and Class Members for non-compliant meal breaks. (*Ibid.*)

4 Defendant, however, contended that it had practices, policies, and procedures to provide
5 meal and rest breaks every workday to its employees that fully complied with the law. (Orshansky
6 Decl. ¶ 65.) Foremost, Defendant pointed to timekeeping records that, ostensibly in part due to
7 their automation, facially showed compliance, along with the affirmative defense of reliance on
8 purportedly valid meal break waivers. If credited, the meal break waivers would substantially
9 reduce the alleged meal break violation rate and undercut Plaintiff’s meal break theory of liability.
10 (*Ibid.*) For shifts outside the reach of any purported meal break waivers, Defendant vehemently
11 argued that it complied with the requirements articulated by the California Supreme Court in
12 *Brinker Rest. Corp., supra.* (*Id.* at ¶ 66.) Specifically, Defendant maintained that it provided
13 employees with a reasonable opportunity to take timely meal periods of at least 30 minutes, relieved
14 employees of all duties during meal periods, and relinquished control over employees’ activities,
15 including the ability to leave the premises to take meal periods. (*Ibid.*)

16 Plaintiff faced significant challenges to his Labor Code section 226.7 meal period liability
17 claim for two main reasons. First, Defendant’s reliance on automation of meal breaks resulted in
18 facially compliant time records whereby the recorded meal breaks are depicted as timely and
19 exactly 30 minutes in duration. Plaintiff cannot rely on the rebuttable presumption that liability
20 attaches to each facially non-evident meal period because, here, over ninety percent of recorded
21 meal punches are compliant on paper, in theory. Of course, the Parties would argue over the
22 application of *Donohue, supra*, and dispute the extent meal breaks founded on rounding and/or
23 subject to automated deductions meet the thresholds for accurate recording. But even if Plaintiff
24 succeeds in convincing the Court that rounded and automated meal period entries are inaccurate
25 and/or sham, Plaintiff still faces the evidentiary burden of demonstrating non-compliance of meal
26 breaks in the absence of contemporaneous time punches. (Orshansky Decl. ¶ 67.)

27 Second, Plaintiff must acknowledge his legal and factual vulnerability around the purported
28 meal break acknowledgement and waiver forms. Although Plaintiff contends that the waivers are

1 invalid, if credited, the meal break violation rate—especially for qualifying second meal periods—
2 would substantially decrease Defendant’s exposure. (Orshansky Decl. ¶ 68.) Thus, the existence of
3 meal break acknowledgments and waivers also poses a serious risk in terms of the legal obligations
4 imposed and evidence that may be used to prove liability and damages. (*Ibid.*)

5 Finally, like most employers facing meal period litigation, Defendant argued that where
6 time records otherwise show a deficiency, employees were apprised of their right to take meal
7 periods but chose to voluntarily waive them. (Orshansky Decl. ¶ 69.) Defendant contended that the
8 issue of voluntary waiver would necessarily devolve into a series of individualized mini-trials,
9 precluding class certification. (*See Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1,
10 25 [holding that the defendant must be provided an opportunity to litigate affirmative defenses,
11 even when they turn on individual questions].) Thus, although Plaintiff argues that Defendant had
12 an impermissible top-down practice of requiring Class Members to work during meal breaks to
13 meet workflow and operational demands, in light of policies and other evidence suggesting an
14 intent to follow those policies, establishing the alleged unlawful business practice as a rule rather
15 than exception might prove daunting. (Orshansky Decl. ¶ 70.)

16 Based upon analysis of Class Member time and pay records, approximately seventy-five
17 percent (75%) of eligible shifts (or, 22,587 out of 29,821 shifts) were the subject of unique
18 violations for missed, short, or late meal periods. Plaintiff calculated the maximum exposure of this
19 claim to be \$413,795. Yet, Defendant is entitled to credit for those few meal period premiums (or,
20 22 instances) it paid, in the estimated amount of \$403.04; thereby resulting in an approximate net
21 exposure amount of \$413,392. However, to account for the above-described certification and
22 liability risks—including the evidentiary hurdles of automated but facially compliant records, along
23 with the gamble as to the validity of the meal period waivers—Plaintiff took a fifty percent discount
24 for associated risks, to yield **\$206,696** as a realistic exposure value. (Orshansky Decl. ¶ 71.)

25 Plaintiff also alleged that employees did not receive compliant rest breaks. (*Augustus v. ABM*
26 *Security Service, Inc.* (2016) 2 Cal.5th 257, 260 [employers must “relinquish control over how
27 employees spend their time and relieve employees of all duties” during rest breaks].) Here,
28 employees did not receive timely rest breaks, nor did Defendant relinquish control over how

1 employees spent their 10-minute rest breaks. (Orshansky Decl. ¶ 72.) Defendant conditioned the
2 scheduling of rest breaks on workflow and operational demands. (*Id.* at ¶ 73.) As a shipping and
3 receiving laborer, Plaintiff missed rest breaks due to workload related pressures (*e.g.*, project time
4 constraints, customer needs, and delivery demands). (*Ibid.*) Significantly, in contrast to Defendant's
5 payment of at least some meal premiums, Defendant never made a single premium payment as
6 required under Labor Code section 226.7 for non-compliant rest breaks. (*Id.* at ¶ 74.)

7 Here again, Defendant disputes liability and damages. Defendant maintains that it authorized
8 and permitted duty-free rest breaks of not less than ten minutes for every major fraction of four
9 hours worked as required by Labor Code section 226.7. (Orshansky Decl. ¶ 75.) Defendant
10 explained that Class Members had ample opportunity to take, and did take, regular rest breaks.
11 (*Ibid.*) As with meal breaks, Defendant argued that any Class Member who failed to take a rest
12 break, or took a short or late rest period, did so voluntarily and that all applicable rest periods were
13 still authorized and provided. (*Ibid.*) Thus, Defendant argued that it did not act unlawfully to deprive
14 Class Members of rest breaks. (*Ibid.*)

15 Class Counsel recognizes that, unlike meal periods, rest breaks need not be recorded and
16 thus establishing Defendant's exertion of pressure, control, and resulting violations is likely to be
17 more difficult. (Orshansky Decl. ¶ 76.) Hence, Class Counsel applied a violation rate for Class
18 Members that is roughly one-third of the violation rate of meal breaks, thus, a count of
19 approximately 12,280 violations and a rest break maximum exposure of \$224,970. (*Ibid.*) For
20 settlement purposes and to account for the difficulties of certifying and proving unrecorded rest
21 break violations, however, a fifty percent reduction from the maximum exposure was and is
22 warranted for a realistic recovery of **\$112,485**. (*Ibid.*)

23 Unreimbursed Business Expenses

24 Plaintiff alleges a cause of action under Labor Code section 2802, subdivision (a), which
25 states that an employer must reimburse employees for all necessary expenditures that employees
26 incur in discharging their duties. (Orshansky Decl. ¶ 77.) Here, Plaintiff alleges Defendant's failure
27 to reimburse non-exempt employees for necessary business expenses incurred: to wit, Plaintiff and
28 Class Members incurred costs for supplying certain of their own tools (*e.g.*, wrenches, screw drivers,

1 and tape measures), as well as costs associated with use of personal cell phones for business
2 purposes. (*Ibid.*) For settlement purposes, with recognition that this claim is difficult to certify class-
3 wide and quantify in terms of damages, Plaintiff assigns a relatively nominal \$50 rate per Class
4 Member, which results in **\$5,450** attributed to this claim. (*Id.* at ¶ 78.)

5 Wage Statement Violations

6 Plaintiff alleges a cause of action under Labor Code section 226, subdivision (a), for
7 Defendant's failure to provide accurate itemized wage statements. (Orshansky Decl. ¶ 79.) Failure
8 to comply with the statute entitles employees to recover the greater of all actual damages or fifty
9 dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100)
10 for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand
11 dollars (\$4,000). (*See* Lab. Code, § 226, subd. (e).) This cause of action is derivative of the foregoing
12 causes of action because if Defendant did not provide minimum and overtime wages for all hours
13 worked, or owed premiums for non-compliant meal and rest breaks, unreimbursed business
14 expenses, and so forth, then the wage statements were inevitably inaccurate.

15 Defendant contended, however, that Labor Code section 226, subdivision (e), penalties are
16 not automatic; instead, employees must show that Defendant's noncompliance was "knowing and
17 intentional." (Orshansky Decl. ¶ 80.) Defendant suggested that any noncompliance was not knowing
18 and intentional. (*Ibid.*) Defendant argued that any wage statement penalties derivative of non-
19 compliant meal and rest breaks are not appropriate because entitlement to such penalties was not
20 established law until the May 2022 California Supreme Court decision in *Naranjo v. Spectrum*
21 *Security Services, Inc.* (2022) 15 Cal.5th 93.⁹ Thus, the fluctuating legal landscape engendered a
22 good-faith dispute and potential safe harbor defense precluding penalties. (Orshansky Decl. ¶ 80.)

23 Because the damages for this cause of action are penalties, the statute of limitations is one
24 year prior to the filing of the original complaint. (*See* Code Civ. Proc., § 340.) The Parties discussed
25 these issues and based on the more conservative \$50 initial violation penalty rate across the
26

27 ⁹ Post-mediation and earlier this year, the appellate court, re-visiting *Naranjo* on remand,
28 substantiated such arguments. (*See Naranjo v. Spectrum Security Services, Inc.* (2023) 88
Cal.App.5th 937, review granted May 31, 2023, No. S279397.)

1 qualifying 3,204 pay periods, Plaintiff estimates the total maximum wage statement exposure to be
2 \$160,200. (Orshansky Decl. ¶ 81.) However, if Plaintiff deducts for risks such as loss on the merits
3 of the underlying derivative claim(s) and safe harbor defense under *Naranjo, supra*, then a forty
4 percent reduction yields a realistic recovery amount of **\$96,120**. (Orshansky Decl. ¶ 81.)¹⁰

5 Waiting Time Violations

6 Plaintiff further asserts a cause of action against Defendant for failure to timely pay all wages
7 due employees at separation. (*See* Lab. Code, §§ 201-203.) However, Defendant argued that waiting
8 time penalties are not appropriate because it attempted to pay employees all final wages owed in
9 good faith upon their separation, thereby precluding a finding of willfulness necessary to obtain
10 waiting time penalties. (Orshansky Decl. ¶ 83.) Moreover, Defendant maintained that no waiting
11 time penalties were recoverable from alleged meal or rest period violations. (*Id.* at ¶ 84.) Again,
12 Defendant argued that payment of waiting-time penalties is not appropriate here because such
13 penalties for missed meal breaks and rest periods was not clearly established law until the May 2022
14 California Supreme Court decision in *Naranjo, supra*. As with wage statements, Defendant
15 contended that the fluctuating legal landscape arguably engendered a good-faith dispute and
16 potential safe harbor defense precluding penalties. (Orshansky Decl. ¶ 84.)

17 Based on the count of 66 former employees at the time of mediation, Class Counsel
18 appraised the maximum value of the waiting time claim as \$366,359. (Orshansky Decl. ¶ 85.) But
19 after the Parties discussed the above risks, Class Counsel factored in a reduction of forty percent—
20 Plaintiff believes that the combined potential derivative liability makes the claim relatively
21 recoverable—and posits **\$219,815** as a more realistic exposure value. (*Ibid.*)

22 Derivative PAGA Penalties

23 Plaintiff notified Defendant and the LWDA of the alleged violations on June 30, 2022, and
24 having waited the requisite administrative exhaustion timeframe, Plaintiff included a
25 representative PAGA claim in the operative complaint. A true and correct copy of Plaintiff's June

26
27 ¹⁰ Plaintiff's Labor Code section 1174, subdivision (d)—failure to maintain accurate payroll records—cause of
28 action is discussed under the “Derivative PAGA Penalties” analysis. (*See Cleveland v. Groceryworks.com, LLC* (N.D.Cal. 2016) 200 F.Supp.3d 924, 958 [holding Lab. Code, § 1174, subd. (d), allows LWDA to seek penalties for violation but does not provide a private right of action].)

1 30, 2022 pre-filing notice to the LWDA and Defendant is attached as **Exhibit “3”** to Orshansky
2 Decl. The success of Plaintiff’s PAGA claim is heavily dependent upon the success of the
3 underlying claims occurring within the one-year statute of limitations applicable to the PAGA.
4 (Orshansky Decl. ¶ 86.) In response, Defendant contended that these penalties are derived from
5 the underlying wage and hour violations discussed above, which Defendant disputes. (*Ibid.*)

6 Defendant maintained, and continues to maintain, that it had compliant employment policies
7 and practices throughout the statutory period. (Orshansky Decl. ¶ 87.) Defendant denied, and
8 continues to deny, that it ever violated any provision of the Labor Code and argued that, even
9 assuming such violations occurred, Defendant will not be treated as having engaged in subsequent
10 violations giving rise to heightened penalties. (*Ibid.*) Defendant argued that heightened civil
11 penalties for subsequent violations would not be assessed unless it could be shown that Defendant
12 had notice that it was violating the law, *e.g.*, having been cited by a labor agency or adjudged by a
13 court to have done so. (*Ibid.*; *see, e.g., Amaral v. Cintas Corp.* (2008) 163 Cal.4th 1157, 1209.)
14 Thus, Defendant contended that, at best, even if a violation giving rise to a penalty was shown each
15 pay period, only the civil penalty associated with initial violations applies. (Orshansky Decl. ¶ 87.)

16 Under Labor Code section 2699, subdivision (f)(2), Defendant is subject to civil penalties of
17 \$100 for the initial violation of the underlying Labor Code sections, and \$200 for each subsequent
18 pay period where the violation occurred. Extrapolating the one-year statutory PAGA period,
19 Plaintiff estimated 3,204 pay periods at issue. (Orshansky Decl. ¶ 88.) Although, strictly speaking,
20 class certification requirements are not required to be satisfied in order to adjudicate a PAGA claim,
21 Defendant contended that the state of the law with respect to the adjudication and valuation of a
22 PAGA claim is uncertain.¹¹ (*Id.* at ¶ 89.) Thus, Class Counsel applied discounts for the risks

23
24 ¹¹ Instead, what is clear is that the purpose of the PAGA is not to generate revenue for the State but rather to
25 facilitate the enforcement of the labor laws. (*See, e.g., Williams v. Superior Court* (2017) 3 Cal.5th 531, 546;
26 *Arias v. Superior Court* (2009) 46 Cal.4th 969, 986; Lab. Code, § 2699, subd. (i).) In assessing the adequacy
27 of the recovery under a PAGA claim, the focus is not the amount which the LWDA and the aggrieved
28 employees are to receive formally in the form of monetary civil penalties but instead whether the total
settlement amount achieves the PAGA’s objectives. When PAGA claims are settled, courts “consider
whether the proposed PAGA settlement is fair and adequate in view of the purposes and policies of the
statute[]” and “[t]hose purposes and policies include benefit[ing] the public by augmenting the state’s
enforcement capabilities, encouraging compliance with California Labor Code provisions, and deterring
noncompliance.” (*O’Connor v. Uber Techs., Inc.* (N.D.Cal. 2016) 201 F.Supp.3d 1110, 1132-33, 1135.) A

involved with establishing manageability and possible bifurcation of discovery and/or trial, the risks related to success on the merits and in establishing liability, and the risks related to proving the extent of penalties that are warranted and possible discretionary reduction of penalties by the Court. (*Ibid.*) As a result, Plaintiff applied the initial \$100 penalty violation rate to calculate \$320,400 in potential PAGA penalty exposure. (*Id.* at ¶ 90.) However, of the \$320,400 in PAGA penalties—by statute, only 25%, or **\$80,100**—would be recoverable by aggrieved employees. (*Ibid.*)

Summary

Using the estimated figures for each of the claims discussed above, Plaintiff predicted that approximately \$1,290,958 would be the maximum possible recovery in damages available to Class Members. Without any discount for risks for certification or liability, the proposed recovery to the Class of \$1,290,958 thus represents 15% of the maximum possible exposure to Defendant. (Orshansky Decl. ¶ 92.) “The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved.” (*Linney v. Cellular Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242; *see also, Altamirano v. Shaw Industries, Inc.* (N.D.Cal. 2015) 2015 WL 4512372, at *9 [preliminarily approving wage-and-hour class action settlement, stating “[a]lthough 15% represents a modest fraction of the hypothetical maximum recovery estimated by Plaintiff, that figure is sufficient for the Court to grant preliminary approval given the merits of Plaintiff’s claims.”].)¹² Plaintiff reiterates that at least two highly contested issues—*i.e.*, the purported meal break waiver and automated functionalities pre- and post-*Donohue, supra*—posed risks akin to all-or-nothing that could alter potential recoveries. (Orshansky Decl. ¶ 94.)

“[c]ourt does not review the PAGA allocation in isolation, but rather reviews the settlement as a whole, to determine whether it is fundamentally fair, reasonable and adequate, with primary consideration for the interests of absent class members.” (LWDA’s Comments on Proposed PAGA Settlement, *O’Connor v. Uber Techs., Inc.* (N.D.Cal. July 29, 2016) No. 13-CV-03826-EMC, Docket No. 736, at 4:17-19.) “PAGA penalties must be evaluated in terms of their public policy objective and not just through the prism of what private relief has been sought or obtained.” (*Id.* at 4:14-16.)

¹² Note, \$684,299 of the maximum is attributable to wages, meal and rest break premiums, and unreimbursed expenses, while the remainder is discretionary penalties. Thus, the settlement amount of \$200,000 represents 29% of the estimated potential maximum value of unpaid wages, meal and rest break period violations, and unreimbursed expenses as opposed to discretionary penalties. (Orshansky Decl. ¶ 93.)

As discussed above, Plaintiff assumed multiple discounts tailored to the various claims and together, Plaintiff estimates approximately \$744,958 would be the realistic value of Class Members' claims, for which \$200,000 represents 27% of the possible exposure to Defendant. (Orshansky Decl. ¶ 95.) In sum, the data, coupled with factual and legal analysis, shows that the settlement amount reflects an estimated range of 15%-27% of the potential maximum/realistic damages recoverable at trial. (*Ibid.*) Moreover, each Class Member will be given the opportunity to opt out of the settlement, allowing those who feel they have claims that are greater than the benefits they can receive under the settlement to pursue their own claims. (*Id.* at ¶ 96.) Finally, settlement awards are based on eligible workweeks and/or pay periods and, therefore, are tailored to the amount Settlement Class Members were affected by Defendant's alleged wage-and-hour violations. (*Ibid.*) After analyzing the claims in this matter, Plaintiff and Class Counsel have concluded that the value of this settlement is fair, reasonable, and adequate.

VII. PROPOSED NOTICE PROVIDES ADEQUATE NOTICE TO THE CLASS

This Court should order distribution of the proposed Class Notice (*see* Orshansky Decl. Exh. 1 [Settlement Agreement] at internal Exhibit 1), in both English and Spanish, to the Class by first class U.S. mail, postage prepaid, using the last known mailing address information provided by Defendant. This manner of giving notice is the "best notice practicable" under the circumstances because it provides "individual notice to all members who can be identified though reasonable effort." (*Eisen v. Carlisle and Jacqueline* (1974) 417 U.S. 156, 173.) Here, the Parties propose that the settlement be administered by CPT Group, Inc. ("CPT"), an experienced class action settlement administrator. (Settlement Agreement ¶¶ 33, 51.) Class Members' addresses will be ascertainable through Defendant's personnel and payroll records, which Defendant will provide to CPT within ten (10) calendar days after preliminary approval of the Settlement. (*Id.* at ¶ 51(b).) CPT will then run all addresses through the National Change of Address database and, if any notices are returned, will conduct skip traces to obtain current addresses, and remail those notices. (*Id.* at ¶ 51(d)-(e).) CPT shall also establish a telephonic hotline and maintain a case-specific website for hosting relevant documents, including a copy of the Class Notice and Settlement Agreement. (*Id.* at ¶ 51(a).)

The content of the proposed Class Notice satisfies California Rules of Court, rule 3.766,

subdivision (d), because it advises Class Members of the nature of the claims, the basic contentions and denials of the Parties, the key terms of the settlement, the uniform 45-day deadline to submit a dispute, request for exclusion/opt-out, or objection to the settlement and the procedure by which to do so, and explains the recovery formula and credited number of workweeks and pay periods for each Class Member and PAGA Group Member. The proposed Class Notice will also notify Class Members of the final approval hearing date, provide the contact information for Class Counsel, and advise Class Members that they may enter an appearance through their own counsel if they wish. This manner of giving notice satisfies California Rules of Court, rule 3.766, subdivision (e), as the “best notice practicable” under the circumstances because it provides “individual notice to all members who can be identified through reasonable effort.” (*Eisen, supra*, 417 U.S. at p. 173.)

VIII. SUBMISSION OF SETTLEMENT TO THE LWDA

Labor Code section 2699, subdivision (l), requires that the Court “shall review and approve any settlement of any civil [PAGA] action filed pursuant to this part. The proposed settlement shall be submitted to the agency at the same time that it is submitted to the court.” As such, on the day of filing of this Motion, a copy of this Motion and the Settlement Agreement will be submitted to the LWDA, in accordance with this section. (Orshansky Decl. ¶ 125.)

IX. THE COURT SHOULD SET A FINAL APPROVAL HEARING

Finally, this Court should set a hearing for final approval of the settlement on a date appropriately scheduled to follow the deadline by which Class Members must submit any disputes, requests for exclusion/opt-outs, or objections to the Settlement. (*See* California Rules of Court, rule 3.769.)¹³

X. CONCLUSION

Based upon the foregoing, and because the proposed Settlement is fair, reasonable, and advantageous to the Class Members, Plaintiff respectfully requests that the Court enter an Order:

¹³ Plaintiff requests a date approximately 100 calendar days out, which would allow for 5 days to obtain and circulate the Preliminary Approval Order, 10 days for Defendant to produce the Class List, 10 days for the Class Notice to be mailed, plus the 45-day response period required by the Settlement Agreement, plus 21 days in advance of hearing for preparation and filing of the Motion for Final Approval and supporting papers, with a couple of days buffer.

1. Preliminarily approving the Settlement Agreement as fair, reasonable, and adequate;
2. Preliminarily approving the form and content of the Class Notice (attached as internal Exhibit 1 to the Settlement Agreement);
3. Provisionally certifying the Settlement Agreement's proposed Class comprised of the Class Members identified during the Class Period under Civil Code section 382, for settlement purposes only;
4. Approving and appointing Plaintiff Joel Meza as the Class Representative;
5. Approving and appointing CounselOne, PC as Class Counsel;
6. Approving and appointing CPT Group, Inc. as the Settlement Administrator;
7. Setting a date for the Final Approval Hearing; and
8. For any further relief the Court deems just and proper.

Dated: September 15, 2023

Respectfully submitted,

COUNSELONE, PC

By:



Anthony J. Orshansky

Justin Kachadoorian

Attorneys for Plaintiff, Class Members, and
Aggrieved Employees