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of herself and others similarly situated
11
12

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **FOR THE COUNTY OF ORANGE**
15

16 XIMENA GARCIA, on behalf of herself and
others similarly situated,

17
18 Plaintiff,

19 v.

20 HILTY'S ELECTRIC-CALIFORNIA, INC.;
21 and DOES 1 through 100, inclusive,

22 Defendants.
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28

Case No. 30-2023-01324391-CU-OE-CXC

Assigned for all purposes to:
Layne H. Melzer, Dept. CX102

CLASS ACTION

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

[Declarations of Anthony J. Orshansky and
Sahag Majarian II, and Proposed Order
submitted concurrently herewith]

Preliminary Approval Hearing

Date: July 3, 2025
Time: 2:00 p.m.
Dept. CX102
Reservation No.: 74524616

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

2 **PLEASE TAKE NOTICE** that on July 3, 2025 at 2:00 p.m. before the Honorable Layne
3 H. Melzer in Department CX102 of the above-entitled Court located at 751 West Santa Ana
4 Boulevard, Santa Ana, California 92701, Plaintiff Ximena Garcia (“Plaintiff” or “Class
5 Representative”), individually and on behalf of all others similarly situated, will and hereby does
6 move this Court pursuant to California Rules of Court, Rule 3.769 for an order:

7 1. Granting preliminary approval of the proposed Joint Stipulation of Class Action and
8 PAGA Settlement (“Settlement Agreement”), entered into with Defendant Hilty’s Electric-
9 California, Inc. (“Defendant”);

10 2. Provisionally certifying a class pursuant to Code of Civil Procedure section 382,
11 defined as follows:

12 **Class Members:** All persons currently or formerly employed as non-exempt
13 employees in California for Defendant during the Class Period (the “Class” or “Class
Members”).¹

14 3. Preliminarily appointing Plaintiff as the Class Representative;

15 4. Preliminarily appointing CounselOne, PC and the Law Offices of Sahag Majarian II
16 as Class Counsel;

17 5. Scheduling a Final Approval Hearing to consider whether the settlement should be
18 finally approved and whether to award the agreed-upon amounts for the Class Representative
19 Enhancement Award, Administration Costs to the Settlement Administrator, penalties pursuant to
20 the Private Attorneys General Act of 2004 (Lab. Code, § 2698 et seq.; “PAGA”) to the California
21 Labor and Workforce Development Agency, as well as the Attorneys’ Fees and Costs to Class
22 Counsel;

23 6. Appointing CPT Group, Inc. as the Settlement Administrator; and
24
25

26 ¹ “Participating Class Members” are defined as all Class Members who do not timely request
27 exclusion from/opt out of the class settlement. (Settlement Agreement § I(W).) “Class Period” is
28 defined as the period beginning on May 10, 2019 and ending on the date of Preliminary Approval,
or on an earlier date at Defendant’s discretion pursuant to section III(D)(5) of the Settlement
Agreement. (Settlement Agreement §§ I(G); III(D)(5).)

1 7. Approving the proposed Notice of Pendency of Class and Representative Action
2 Settlement and directing it to be disseminated to the Class as provided in the Settlement Agreement.

3 This motion is based on this Notice, the attached Memorandum of Points and Authorities,
4 the Declarations of Anthony J. Orshansky and Sahag Majarian II, filed concurrently herewith and
5 the exhibits attached thereto, the pleadings and other papers filed in this action, and on any further
6 oral or documentary evidence or argument presented at the time of hearing. Finally, given the
7 multiplicity of issues addressed in this motion, Plaintiff respectfully submits there is good cause to
8 exceed the 20-page limit set forth in California Rules of Court, Rule 3.764(c)(2), and respectfully
9 requests that the Court consider the attached Memorandum of Points and Authorities.

10
11 Dated: April 1, 2025

Respectfully submitted,

COUNSELONE, PC

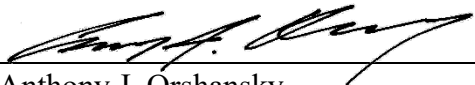
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13 By: 
14 Anthony J. Orshansky
15 P. Bartholomew Quintans
16 Attorneys for Plaintiff
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Ximena Garcia (“Plaintiff” or “Class Representative”), individually and on behalf
4 of all others similarly situated,² seeks preliminary approval of the Joint Stipulation of Class Action
5 and PAGA Settlement (“Settlement Agreement”) entered into with Defendant Hilty’s Electric-
6 California, Inc. (“Defendant”). The Settlement Agreement between Plaintiff and Defendant
7 (together, the “Parties”), if approved, will resolve specific claims of the Participating Class
8 Members³ and Aggrieved Employees⁴ in exchange for Defendant’s agreement to pay *Nine*
9 *Hundred and Sixty-Five Thousand Dollars (\$965,000) into a non-reversionary common*
10 *settlement fund.*

11 By way of this lawsuit, Plaintiff pursued her rights against Defendant for violating wage-
12 and-hour laws under the California Labor Code, Business and Professions Code, and the California
13 Industrial Welfare Commission (“IWC”) Wage Orders. Plaintiff sought to recover unpaid wages,
14 premiums for non-compliant meal and rest breaks, restitution, penalties for improper wage
15 statements, reimbursement of business expenses, waiting time penalties, civil penalties pursuant to
16 California’s Private Attorneys General Act of 2004, Labor Code section 2698 et seq. (“PAGA”),
17 injunctive and other equitable relief, prejudgment interest, and attorneys’ fees and costs.

18 After engaging in substantial investigation and discovery, and following a full-day mediation
19 with Gig Kyriacou, Esq., the Parties agreed to settle the Participating Class Members’ and
20 Aggrieved Employees’ claims alleged in this litigation for the non-reversionary sum of Nine
21 Hundred and Sixty-Five Thousand Dollars (\$965,000) (“Gross Settlement Amount”). A true and

22 _____
23 ² “Class Members” are defined as all persons currently or formerly employed as non-exempt
24 employees in California for Defendant during the Class Period. (Settlement Agreement §§ I(C),
25 (E).) “Class Period” is defined as the period beginning on May 10, 2019 and ending on the date of
26 Preliminary Approval, or on an earlier date at Defendant’s discretion pursuant to section III(D)(5)
27 of the Settlement Agreement. (*Id.* at §§ I(G); III(D)(5).)

28 ³ “Participating Class Members” are defined as all Class Members who do not timely request
exclusion from/opt out of the class settlement. (Settlement Agreement § I(W).)

⁴ “Aggrieved Employees” are defined as all Class Members, whether or not they submit a request
for exclusion from the class settlement, employed by Defendant during the PAGA Period.
(Settlement Agreement § I(B).) “PAGA Period” is defined as the period beginning on February 27,
2022 and ending on the date of Preliminary Approval, or on an earlier date at Defendant’s discretion
per section III(D)(5) of the Settlement Agreement. (*Id.* at §§ I(V); III(D)(5).)

1 correct copy of the fully executed Settlement Agreement is attached as **Exhibit A** to Declaration of
2 Anthony J. Orshansky (“Orshansky Decl.”) filed concurrently herewith.

3 The settlement is fair, reasonable, and adequate, and in the best interests of Class Members.
4 Consequently, Plaintiff, with the consent and approval of Defendant, hereby moves for an order: (1)
5 conditionally certifying the Class for settlement purposes; (2) granting preliminary approval of the
6 Settlement Agreement; (3) approving the Notice of Pendency of Class and Representative Action
7 Settlement (“Class Notice”); and (4) setting a hearing for final approval of the settlement.

8 **II. THE EXTENT OF INVESTIGATION AND STAGE OF PROCEEDINGS**

9 **A. Discovery and Investigation**

10 Here, the Parties engaged in extensive discovery—informally exchanging information,
11 documents and reviewing and analyzing extensive data produced by Defendant—which enabled the
12 Parties to thoroughly evaluate the claims of the Class Members and the Aggrieved Employees, along
13 with Defendant’s affirmative defenses and the likely outcomes, risks, and expense of litigation.

14 Prior to initiating the lawsuit, as early as June 2020, counsel for Plaintiff, CounselOne, PC
15 and the Law Offices of Sahag Majarian II (“Class Counsel”), independently and thoroughly
16 investigated the claims and considered the facts and circumstances underlying the pertinent issues
17 and applicable law. (Orshansky Decl. ¶ 32.) This required thorough discussions and interviews with
18 Plaintiff and other Class Members as well as research into the various legal issues involved in the
19 case. (*Ibid.*) After conducting their initial investigation, Class Counsel determined that the claims
20 were well suited for class action adjudication owing to what appeared to be a common course of
21 conduct affecting a similarly situated group of employees. (*Ibid.*)

22 On February 27, 2023, Class Counsel provided pre-filing written notice to the LWDA and by
23 certified mail to Defendant of the below-identified allegations on behalf of Plaintiff and Aggrieved
24 Employees in accord with the PAGA, Labor Code section 2698 et seq. (Orshansky Decl. ¶ 33.)

25 On May 10, 2023, Plaintiff filed her Class and Representative Action Complaint, asserting
26 the following claims: (1) Failure to Pay Minimum Wages (Lab. Code, §§ 1182.12, 1194, 1194.2,
27 1197, and 1197.1); (2) Failure to Pay Overtime Wages (Lab. Code, §§ 223, 510, and 1198); (3)
28 Failure to Provide Meal Periods (Lab. Code, §§ 226.7 and 512); (4) Failure to Authorize and Permit

1 Rest Breaks (Lab. Code § 226.7); (5) Failure to Provide Accurate Itemized Wage Statements (Lab.
2 Code, §§ 226 and 226.3); (6) Failure to Pay All Wages Within a Timely Manner and Upon
3 Separation of Employment (Lab. Code, §§ 201-204 and 210); (7) Failure to Reimburse Business
4 Expenses (Lab. Code, §§ 2800 and 2802); (8) Failure to Maintain Payroll Records (Lab. Code §
5 1174, subd. (d)); (9) Unfair Competition Law Violations (Bus. & Prof. Code, § 17200 et seq.); and
6 (10) Penalties Pursuant to the PAGA (Lab. Code, § 2698 et seq.). (Orshansky Decl. ¶ 34.)

7 Defendant denies Plaintiff's allegations of wrongdoing and makes no admissions related to
8 the lawsuit. (Orshansky Decl. ¶¶ 36, 42; Settlement Agreement §§ II, IV(A)-(B).) Defendant does
9 not believe that any liability to Plaintiff or Class Members exists, or that Plaintiff or Class Members
10 are entitled to any recovery. (Orshansky Decl. ¶ 36; Settlement Agreement §§ II, IV(A)-(B).)

11 Class Counsel conducted substantial informal discovery prior to mediation. (Orshansky
12 Decl. ¶ 37.) Defendant produced information and documentation concerning the alleged violations,
13 such as Defendant's written policies concerning those claims, including Defendant's employee
14 handbook, policies and procedures regarding the payment of wages, the provision of meal and rest
15 breaks, and time keeping policies, such as recording hours, issuance of wage statements, and
16 providing all wages at separation, as well as composite data regarding the number of Class Members
17 and Aggrieved Employees and the mix of current versus former employees, total number of pay
18 periods, total number of workweeks, and the average hourly rate in effect. (*Ibid.*) Counsel met and
19 conferred at length regarding the information and documents produced. (*Ibid.*) Class Counsel also
20 interviewed Class Members and analyzed the documents and data produced to determine
21 Defendant's degree of liability and potential amounts due in damages. (*Id.* at ¶ 38.)

22 **B. Mediation and Settlement**

23 After having performed extensive investigation and analysis of the legal and factual issues
24 and risks, the Parties participated in a full-day mediation before Gig Kyriacou, Esq., where they
25 debated and discussed their respective positions in an attempt to resolve the action. (Orshansky Decl.
26 ¶ 39.) Mr. Kyriacou is a well-respected mediator with considerable experience mediating wage and
27 hour class actions and PAGA representative actions. (*Ibid.*) During the mediation, the Parties
28 exchanged further information and discussed all aspects of the two actions, including the risks and

1 delays of litigation and the risk of proceeding with a motion for class certification, liability under
2 the claims asserted, and the implications of a PAGA representative action. (*Ibid.*) Pursuant to a
3 mediator's proposal, the Parties came to an agreement on all material terms of settlement. (*Ibid.*)

4 From Class Counsel's review of the facts, strengths, and weaknesses of the case, and the
5 risks and delays posed by further litigation, Class Counsel believe that the recovery being made
6 available to Class Members is fair, reasonable, and adequate taking into consideration the amounts
7 received in other wage and hour class and representative actions, the risks inherent in litigation of
8 this genre, and the reasonable tailoring of each Class Members' claim to the settlement award he or
9 she will receive. (Orshansky Decl. ¶ 43.) Class Counsel believe that the settlement serves the best
10 interests of Class Members and Aggrieved Employees. (*Ibid.*) Further, and based on the settlement
11 negotiations, which were hard fought and conducted in good faith and at arm's length between
12 attorneys with substantial experience litigating class actions, representative actions, and wage and
13 hour cases, the settlement was the product of a non-collusive settlement process in which the Parties
14 were forced to make significant compromises. (*Id.* at ¶ 41.) The Parties have concluded that it is in
15 their best interests to compromise, settle, and accept the terms of the Settlement Agreement.

16 **III. SUMMARY OF BASIC SETTLEMENT TERMS**

17 Under the terms of the Settlement Agreement, Defendant has agreed to pay a non-
18 reversionary Gross Settlement Amount of Nine Hundred Sixty-Five Thousand Dollars (\$965,000)
19 into a common fund to settle the specific wage and hour claims of the Participating Class Members
20 and Aggrieved Employees. (Settlement Agreement § III(D)(7)(a).) This Gross Settlement Amount
21 shall be inclusive of all settlement payments to Participating Class Members, Enhancement Award
22 to the Class Representative, Administration Costs to the Settlement Administrator, Attorneys' Fees
23 and Costs to Class Counsel, and PAGA Penalties, including payment to Aggrieved Employees and
24 to the LWDA for civil penalties pursuant to statute. (*Ibid.*) The employer's share of payroll taxes
25 will be paid by Defendant separately from, and in addition to, the Gross Settlement Amount.
26 (Settlement Agreement § III(D)(7)(f); Orshansky Decl. ¶ 15.)

27 The amount available for distribution to Participating Class Members is determined by
28 deducting the following from the Gross Settlement Amount:

- Up to \$321,666.67—which is 33-⅓% of the Gross Settlement Amount—in attorneys’ fees and up to \$25,000 in litigation costs to Class Counsel (“Attorneys’ Fees and Costs”);
- Up to \$10,000 to Plaintiff (“Enhancement Award”)—in recognition of her service as the Class Representative and in exchange for a general release of claims;
- Up to \$80,000 to settle all claims under the PAGA (“PAGA Penalties”)—of which 75% (\$60,000) is allocated to the LWDA for civil penalties pursuant to statute (“LWDA Payment”) and 25% is allocated to Aggrieved Employees; and
- Up to \$14,500 to the Settlement Administrator to notify Class Members and administer the settlement (“Administration Costs”).

The amount remaining after the foregoing deductions, \$513,833.33, is called the “Net Settlement Amount.” (Settlement Agreement §§ I(S), III(D)(7); Orshansky Decl. ¶ 7.) The entire Net Settlement Amount shall be paid out to Participating Class Members. (Orshansky Decl. ¶ 7.) Participating Class Members shall automatically receive Individual Settlement Payments without the need to submit a claim form, and Aggrieved Employees shall receive their PAGA Settlement Payments irrespective of whether or not they opt-out of the class settlement. (Settlement Agreement §§ I(W), III(D)(2); Orshansky Decl. ¶ 7.)

Settlement checks will be valid for a period of 180 days following the date of mailing. (Settlement Agreement § III(D)(7)(f); Orshansky Decl. ¶ 16.) For any Participating Class Member/Aggrieved Employee whose Individual Settlement Payment check or PAGA Settlement Payment check is uncashed and cancelled after the void date, the funds associated with such checks will be transferred to the California State Controller’s Office’s Unclaimed Property Division to be held under the name of that individual until such a time as he or she may claim it. (Settlement Agreement § III(D)(7)(f); Orshansky Decl. ¶ 16.)

A. The Settlement Provides for Reasonable Monetary Payments

Although exact recovery amounts depend on each Participating Class Member’s relative number of qualifying workweeks, for estimation purposes only, the average Individual Settlement Payment would be an estimated \$939.62 per Class Member. (Orshansky Decl. ¶ 13.) Of course, any

1 Class Member who prefers to preserve his or her right to pursue relief or seek an alternative recovery
2 may opt out. (*Ibid.*; Settlement Agreement § III(D)(2).)

3 The Net Settlement Amount will be the amount that is available for distribution to
4 Participating Class Members on a pro rata basis based on qualifying workweeks during the Class
5 Period. (Settlement Agreement § III(D)(7)(f); Orshansky Decl. ¶ 8.) Specifically, the Net Settlement
6 Amount shall be divided by the total of all workweeks of Participating Class Members during the
7 Class Period to determine the value of a workweek. (Orshansky Decl. ¶ 8.) Each Participating Class
8 Member's Individual Settlement Payment will be calculated by multiplying the value of a workweek
9 by the number of workweeks worked by that Class Member during the Class Period. (*Ibid.*)

10 In addition, each Aggrieved Employee will receive a proportional share of 25% of the PAGA
11 Penalties based on his or her qualifying pay periods during the PAGA Period. (Settlement
12 Agreement § III(D)(7)(e); Orshansky Decl. ¶ 9.) Specifically, the 25% portion of the PAGA
13 Penalties amount (or, \$20,000) shall be divided by the total of all pay periods worked by Aggrieved
14 Employees during the PAGA Period in order to establish the value of each pay period. (Orshansky
15 Decl. ¶ 9.) Each Aggrieved Employee's PAGA Settlement Payment will be calculated by
16 multiplying the value of a pay period by the number of pay periods worked by the Aggrieved
17 Employee during the PAGA Period. (*Ibid.*)

18 The payment to each Participating Class Member/Aggrieved Employee will be the sum of
19 his or her Individual Settlement Payment, plus, if applicable, his or her PAGA Settlement Payment.
20 (Orshansky Decl. ¶ 10.) As a result of the distribution formulas, the consideration paid to each
21 employee is tailored to the impact of Defendant's alleged violations as well as to the claims the
22 employee is releasing. (*Ibid.*) Further, a Participating Class Member may submit a written letter to
23 the Settlement Administrator disputing the number of workweeks credited to him/her if they believe
24 that the count is inaccurate. (Settlement Agreement § III(D)(1); see also internal Exh. 1 to Settlement
25 Agreement [Class Notice].) Finally, any Class Member who prefers to preserve his or her right to
26 pursue relief or seek an alternative recovery may opt out.⁵ (Settlement Agreement § III(D)(2).)

27 _____
28 ⁵ Again, if approved, Aggrieved Employees will receive their PAGA Settlement Payments
irrespective of whether they opt out of the class settlement. (Settlement Agreement § III(D)(2).)

1 **B. Class Representative Enhancement Award and Class Counsel’s Fees and Costs**

2 As part of the settlement, Plaintiff will apply for an enhancement award at the time of seeking
3 final approval in the amount of \$10,000 for services to the Class. (Settlement Agreement §§ I(M),
4 III(D)(7)(d); Orshansky Decl. ¶ 18.) “[I]ncentive awards are fairly typical in class action cases . . .
5 and are intended to compensate class representatives for work done on behalf of the class [and] to
6 make up for financial or reputational risk undertaken in bringing the action.” (*In re Cellphone Fee*
7 *Termination Cases* (2010) 186 Cal.App.4th 1380, 1393-1394.) Plaintiff’s requested enhancement
8 award is intended to recognize the significant benefits conferred upon the Class and be proportional
9 to the time and effort that Plaintiff expended on behalf of the Class, including providing factual
10 information and documents to Class Counsel, discussing the claims and theories at issue in the case
11 with Class Counsel, identifying potential witnesses, and reviewing the Settlement Agreement, the
12 significant risks Plaintiff undertook by agreeing to serve as a named plaintiff, and the fact that
13 Plaintiff has agreed to a general release of all claims subject to a waiver of Civil Code section 1542.
14 (Settlement Agreement § V(C); Orshansky Decl. ¶ 19.)

15 Class Counsel will apply at the time of final approval for an attorneys’ fees award of thirty-
16 three and one-third percent (33- $\frac{1}{3}$ %) of the Gross Settlement Amount, plus reimbursement of up to
17 \$25,000 in litigation costs. (Settlement Agreement §§ I(M) 2, 48(a); Orshansky Decl. ¶ 20.) The fee
18 award will be split between the two firms as follows: sixty percent (60%) to CounselOne and forty
19 percent (40%) to the Law Offices of Sahag Majarian II; Plaintiff has approved this fee split in
20 writing. (Orshansky Decl. ¶ 20.) Plaintiff submits that the requested fee is fair compensation for
21 undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent fee
22 basis. (*Id.* at ¶ 21.) Class Counsel have incurred substantial attorneys’ fees conducting pre-filing
23 investigation, analyzing Plaintiff’s claims, conducting legal research and analysis, conducting
24 informal discovery, meeting and conferring with defense counsel, interviewing putative class
25 members, analyzing documents produced by Defendant (including corporate policies and employee
26 time and payroll records), consulting with an expert, building damages models, preparing for and
27 attending mediation, routine case updates and consultations with Plaintiff, and negotiating and
28 preparing the long-form Settlement Agreement, the Class Notice, and this Motion for Preliminary

1 Approval and supporting documents. (*Ibid.*) Class Counsel will also expend future attorney time in
2 attending the hearing on this motion, overseeing the notice and administration process, drafting the
3 final approval motion and supporting documents, and attending the final approval hearing, among
4 other tasks, such as addressing questions from Class Members. (*Id.* at ¶ 22.)

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 Conte & Newberg, 4 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 the
19 Parties have conducted the litigation. (Orshansky Decl. ¶ 23.) Assuming that the Court grants
20 preliminary approval, Class Counsel will seek an award of attorneys' fees and litigation costs at the
21 time of seeking final approval of this 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 and not in the perceived factual or legal merit of the class claims. (*Linder v. Thrifty Oil Co.* (2000)
2 23 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 Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341.) These criteria
9 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 all persons
18 currently or formerly employed as non-exempt employees in California for Defendant during the
19 Class Period. (Settlement Agreement § I(C).) Further, the Class Period is defined as the period
20 beginning on May 10, 2019 and ending on the date of Preliminary Approval, or on an earlier date at
21 Defendant’s discretion pursuant to section III(D)(5) of the Settlement Agreement. (*Id.* at §§ I(G);
22 III(D)(5).) Thus, all Class Members are of a specific type (current and former non-exempt
23 employees) employed within California. (Orshansky Decl. ¶ 97.) Defendant is required to and does
24 maintain employment records of such persons, including contact information and Social Security
25 numbers. (*Ibid.*) Documents and information exchanged reflect a class of approximately 739 current
26 and former non-exempt employees working for Defendant in California during the Class Period.
27 (*Ibid.*) Thus, the proposed Class satisfies the ascertainability and numerosity requirements. (*See e.g.,*
28 *Collins v. Rocha* (1972) 7 Cal.3d 232 [finding a class of 44 farm workers sufficiently numerous].)

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

2 A community of interest is established by the preponderance of common issues of law and
3 fact. (See *Vasquez, supra*, 4 Cal.3d at p. 811.) The requirement of a community of interest:

4 does not depend upon an identical recovery, and the fact that each member of the
5 class must prove his separate claim to a portion of any recovery by the class is only
6 one factor to be considered...The mere fact that separate transactions are involved
7 does not of itself preclude a finding of the requisite community of interest so long as
8 every member of the alleged class would not be required to litigate numerous and
substantial questions to determine his individual right to recover subsequent to the
rendering of any class judgment which determined in plaintiffs' favor whatever
questions were common to the class.

9 (*Id.* at p. 809.) The instant litigation is predicated on uniform company policies and systemic top-
10 down business practices revolving principally around Defendant's timekeeping and pay practices—
11 *e.g.*, off-the-clock work attributed to understaffing, inequitable rounding, failure to provide
12 compliant meal and rest breaks, failure to pay meal and rest break premiums, and unreimbursed
13 business expenses, as well as derivative inaccurate wage statements and pay owed upon separation.
14 (Orshansky Decl. ¶ 98.) These allegations have given rise to the following claims: failure to pay
15 minimum and overtime wages; meal period liability; rest break liability; failure to reimburse
16 necessary business expenses; failure to timely pay all wages; failure to provide accurate itemized
17 wage statements; and derivative UCL and PAGA claims arising therefrom. (*Ibid.*)

18 Plaintiff has alleged a single top-down compensation scheme where “the relevant proof
19 [does] not vary among class members” and “clearly present[] a common question fundamental to
20 all class members.” (See *In Re NASDAQ Market-Makers Antitrust Litigation* (S.D.N.Y. 1997) 172
21 F.R.D. 119, 123, citing *In Re NASDAQ Market-Makers Antitrust Litigation* (S.D.N.Y. 1997) 169
22 F.R.D. 493, 518.) California courts show “no hesitancy” in inferring class-wide causation, class-
23 wide injury, and class-wide damages when a common course of action has been shown. (*B.W.I.*
24 *Custom Kitchen, supra*, 191 Cal.App.3d at p. 1350 [granting class certification in a manufacturing
25 defect case when a common course of action had been proven].) This inference “*eliminates* the need
26 for each class member to prove individually the consequences of the defendants' actions to him or
27 her.” (*Id.* at p. 1351, *emphasis added.*) Thus, the outcome of this matter depends upon questions that
28 are common to members of the Class. (Orshansky Decl. ¶ 99.) These types of claims are commonly

1 held to be proper for class certification. (See, e.g., *Bluford v. Safeway, Inc.* (2013) 216 Cal.App.4th
2 864, 871 [reversing denial of rest period claim]; *Benton v. Telecom Network Specialists, Inc.* (2013)
3 220 Cal.App.4th 701, 726 [certifying meal period claim].)

4 **C. The Claims of the Named Plaintiff Are Typical**

5 The typicality requirement is satisfied where class representatives have claims that are
6 typical of those of the rest of the class. (*B.W.I. Custom Kitchen, supra*, 191 Cal.App.3d at p. 1347.)

7 Here, Plaintiff's claims are typical of those held by the members of the Class. (Orshansky
8 Decl. ¶ 100.) Like all other Class Members, Plaintiff was a non-exempt employee working for
9 Defendant in California during the Class Period. (*Ibid.*) As alleged, Plaintiff was not compensated
10 for all hours she worked, not provided with legally compliant meal and rest breaks or premiums
11 thereon, required to incur business expenses necessary to perform her job duties without
12 reimbursement, not provided with accurate itemized wage statements, and so forth. (*Ibid.*) Plaintiff
13 was therefore impacted by the same challenged policies that allegedly injured the Class as a whole
14 and subject to the same defenses forwarded by Defendant; thus her claims are typical. (*Ibid.*)

15 **D. Plaintiff and Class Counsel Will Fairly and Adequately Represent the Class**

16 The adequacy of representation requirement examines conflicts of interest between named
17 parties and the class(es) they seek to represent. (*Capital People First v. Department of*
18 *Developmental Services* (2007) 155 Cal.App.4th 676, 697.) Here, Plaintiff and Class Counsel will
19 adequately represent the Class as there are no conflicts between the named Plaintiff and the Class
20 she seeks to represent. (Orshansky Decl. ¶ 101; *McGhee v. Bank of America* (1976) 60 Cal.App.3d
21 442, 450 [finding adequacy satisfied where there was no indication that plaintiff's counsel were not
22 qualified and the named plaintiff had no interests antagonistic to those of the proposed class].) Class
23 Counsel also have extensive experience in wage and hour litigation. (Orshansky Decl. ¶¶ 91-95,
24 101; Declaration of Sahag Majarian II ("Majarian Decl."), filed concurrently herewith, at ¶¶ 2-3.)

25 **E. A Class Action Is Superior to a Multiplicity of Litigation**

26 In making its class certification decision, the court must determine that a class action would
27 be superior to alternative means for the fair adjudication of the litigation. By consolidating hundreds
28 of individual actions into a single proceeding, this Court's use of the class action device enables it

1 to manage this litigation in a manner that serves the efficiency interests of the litigants and the
2 judicial system. (Orshansky Decl. ¶ 102.) Absent class treatment, the only alternative would be to
3 force these employees to file individual actions. (*Sav-On Drug Stores v. Super. Ct.* (2004) 34 Cal.4th
4 319, 339, fn. 10 [stating “[t]he relevant comparison lies between the costs and benefits of
5 adjudicating Plaintiff’s claims in a class action and the costs and benefits of proceeding by numerous
6 separate actions – not between the complexity of a class suit that must accommodate some
7 individualized inquires and the absence of any remedial proceeding whatsoever.”].) Finally, in the
8 context of settlement, the superiority concerns are essentially non-existent.

9 **F. No Other Cases Will Be Impacted by This Settlement**

10 Finally, there are no other pending cases that could be affected by the settlement of claims
11 in this matter. There are no other pending PAGA claims, whether in a court or in the pre-filing
12 LWDA waiting period, that could be affected by the settlement herein. (Orshansky Decl. ¶ 17.)

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

14 Any settlement of class action litigation must be reviewed and approved by a court. This is
15 accomplished in two steps: (1) an early (preliminary) review by the trial court, and (2) a detailed
16 review after the notice has been distributed to the class members for their comments or objections.
17 “A court may preliminarily approve a settlement and direct notice to the class if ‘the proposed
18 settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious
19 deficiencies, does not improperly grant preferential treatment to class representatives or segments
20 of the class, and falls within the range of possible approval.’” (*Draney v. Westco Chems., Inc.*
21 (C.D.Cal. Sep. 29, 2021, No. 2:19-cv-01405-ODW (AGRx)) 2021 U.S.Dist.LEXIS 187250, at *11
22 [citing *In re Tableware Antitrust Litig.* (N.D.Cal. 2007) 484 F.Supp.2d 1078, 1079].)

23 The preliminary approval of the class action settlement by the trial court is simply a
24 conditional finding that the settlement appears to be within the range of acceptable settlements. (See,
25 e.g., Conte & Newberg, 4 Newberg on Class Actions (4th Ed. 2002) § 11.25; *North County*
26 *Contractor’s Assn., Inc. v. Touchstone Ins. Services* (1994) 27 Cal.App.4th 1085, 1094-1095.) Thus,
27 the preliminary approval of the class action settlement by the Court is simply a conditional finding
28 that the settlement appears to be within the range of acceptable settlements. A review of the

1 preliminary approval criteria demonstrates a substantial basis for granting the preliminary approval
2 requested by this Motion and proceeding to a full settlement hearing.

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

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

14 To summarize, the settlement here is fair because it offers payment to each Participating
15 Class Member and Aggrieved Employee for releasing his or her claims, extinguishes the risk of
16 litigation, and provides a fair and adequate distribution of the settlement proceeds whereby the funds
17 are allocated proportionally based on the respective number of workweeks/pay periods that he or
18 she worked during the relevant periods. (Orshansky Decl., *passim*.) For all of the foregoing reasons,
19 the proposed settlement should be preliminarily approved.

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

21 Moreover, courts presume the absence of fraud or collusion in the negotiation of a settlement
22 unless evidence to the contrary is offered. In short, there is a presumption that the negotiations were
23 conducted in good faith. (See 4 Conte & Newberg, Newberg on Class Actions (4th Ed. 2002) §
24 11.51; *Rodriguez v. West Publ. Corp.* (C.D.Cal. August 10, 2007) 2007 U.S.Dist.LEXIS 74767,
25 *24-25; *In re Chicken Antitrust Litigation* (N.D.Ga. 1980) 560 F.Supp. 957, 962; *Priddy, supra*, 883
26 F.2d at p. 447; *Mars Steel Corp. v. Continental Illinois National Bank and Trust Co.* (7th Cir. 1987)
27 834 F.2d 677, 681.) Courts do not substitute their judgment for that of the proponents, particularly
28 when settlement has been reached by experienced counsel familiar with the litigation. (*Rodriguez*,

1 *supra*, 2007 U.S.Dist.LEXIS 74767 at *24.) As detailed at length in the accompanying Orshansky
2 Declaration, the settlement is the result of extensive settlement negotiations between the Parties,
3 conducted at arm's length, and informed by substantial factual and legal investigations. (Orshansky
4 Decl., *passim*; Majarian Decl. ¶¶ 4-5.)

5 **B. Negotiations Were at Arm's Length Before a Respected Mediator**

6 As noted above, the Parties engaged in a full day mediation session with Gig Kyriacou, Esq.
7 (Orshansky Decl. ¶ 39.) Mr. Kyriacou is a well-respected mediator with considerable experience
8 mediating wage and hour class and representative actions. (*Ibid.*) The settlement was reached
9 pursuant to a mediator's proposal. (*Id.* at ¶ 40.) The settlement negotiations were hard fought and
10 conducted in good faith and at arm's length between attorneys with substantial experience litigating
11 class actions, representative actions, and wage and hour cases. (*Id.* at ¶ 41.) The settlement was the
12 product of a non-collusive settlement process in which the Parties were forced to make significant
13 compromises in the interest of reaching a full and complete settlement of the action. (*Ibid.*)

14 **C. Investigation Was Sufficient to Allow Counsel to Act Intelligently**

15 Throughout this case, Class Members have been represented by counsel who have years of
16 experience in employment class action litigation. (Orshansky Decl. ¶¶ 91-95.) Class Counsel
17 devoted a considerable amount of time to the prosecution of this case, including, but not limited to,
18 analyzing Plaintiff's claims; conducting pre-filing investigation and research; conducting informal
19 discovery; reviewing Defendant's written policies concerning the claims set forth in the action,
20 including Defendant's policies and procedures regarding the payment of wages, the provision of
21 meal and rest breaks, time keeping policies, reimbursement for business expenses, issuance of wage
22 statements, and providing all wages at separation; reviewing and analyzing time and pay records;
23 meeting and conferring regarding the information and documents produced; interviewing Class
24 Members; drafting pleadings; preparing damages models; consulting with an expert; preparing for
25 and attending mediation; providing routine case updates and consultations with Plaintiff and
26 negotiating and finalizing the settlement and related documents. (Orshansky Decl. ¶ 21.)

27 ///

28 ///

1 **D. Class Counsel Are Experienced in Similar Litigation**

2 Class Counsel believe that the settlement is fair and reasonable and serves the best interests
3 of the Class. (See Settlement Agreement § VI(J); Orshansky Decl. ¶ 43.) Although the
4 recommendations of counsel proposing the settlement are not conclusive, the Court can properly
5 take the recommendations into account, particularly if counsel have been involved in litigation for
6 some period of time, appear to be competent, have experience with this type of litigation, and
7 significant discovery has been completed. (*See* Conte & Newberg, 4 Newberg on Class Actions (4th
8 Ed. 2002) § 11.47.) Here, Plaintiff is represented by competent counsel who possess extensive
9 experience litigating wage and hour class actions and have been appointed class counsel in
10 numerous cases alleging similar claims. (Orshansky Decl. ¶¶ 91-95; Majarian Decl. ¶¶ 2-3.)

11 **E. The Settlement Is Fair, Reasonable, and Adequate**

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

20 **1. The Strength of Plaintiff’s Case**

21 Class Counsel carefully vetted the claims at issue to arrive at a comprehensive damages
22 model for Defendant’s liability. (Orshansky Decl. ¶ 44.) Although Plaintiff steadfastly maintains
23 that her claims are meritorious, she acknowledges that there are substantial risks and uncertainty in
24 proceeding with class certification and trial. (*Ibid.*) As explained in further detail in Section VI.E.4
25 *infra*, Defendant presented numerous defenses to Plaintiff’s claims, both on the merits and with
26 respect to class certification. (Orshansky Decl. ¶ 44.) For example, Defendant defended against the
27 minimum and overtime wage claims by relying on policies that explicitly prohibited Class Members
28 from engaging in off-the-clock work. (*Id.* at ¶ 45.) Defendant also argued that Class Members

1 worked in different job positions and had different managers, and, as a result, Defendant contended
2 there was variation to the circumstances that could allegedly cause the employees to be deprived of
3 the opportunity to take legally compliant, duty-free meal and rest periods, and this variation in
4 circumstances raised highly individualized questions of fact. (*Ibid.*) Additionally, Defendant
5 possessed written waivers for employees of their meal break periods which would significantly
6 reduce the strength of Plaintiff's meal break claims. (*Ibid.*)

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

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

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

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

26 Here, settlement was reached prior to class certification and the result was a successful
27 outcome for the Class. (Orshansky Decl. ¶ 477.) Yet, class certification was by no means a foregone
28 conclusion. (*Ibid.*) For example, Class Members worked in different job positions and had different

1 managers; as a result, Defendant contended there was variation to the circumstances that could
2 allegedly cause employees to work off-the-clock and/or be deprived of the opportunity to take
3 legally compliant, duty-free meal and rest periods, and this variation in circumstances raised highly
4 individualized questions of fact. (*Ibid.*)

5 Defendant disputed Plaintiff’s characterization of working conditions, liability, and
6 damages, and possessed documentary and testimonial evidence rebutting Plaintiff’s allegations.
7 (Orshansky Decl. ¶ 48.) Even if Plaintiff prevailed and certified a class action, there is no guarantee
8 Defendant would not later move for and obtain decertification. (*Ibid.*) If the Court either denied
9 class certification or later decertified it, the Class would recover nothing, and Class Members would
10 be forced to retain their own counsel and proceed on the basis of individual claims only. (*Ibid.*)

11 Here, Class Members may avoid each of the risks described and receive substantial monetary
12 benefits, which also weighs in favor of preliminary approval.

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

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

21 Plaintiff’s estimate of the settlement recovery is a reasonable percentage of recoverable
22 damages at trial. Plaintiff’s damages analysis shows that the settlement reflects an estimated 26%
23 of the maximum potential damages recoverable at trial. (Orshansky Decl. ¶ 50.) Utilizing a class-
24 wide damages study to assess the nature and magnitude of the claims in question (see *Kullar v. Foot
25 Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 123), this case clearly meets requirements
26 establishing that the class settlement is within the “ballpark” of reasonableness. The settlement
27 provides a fair and reasonable monetary recovery for the Class in the face of disputed claims.

28 ///

Unpaid Wages

Plaintiff alleges that she and other employees were subjected to uncompensated time arising from inequitable rounding practices, along with off-the-clock work. (Orshansky Decl. ¶ 52.) Specifically, Defendant maintained a practice of rounding employees' work time rather than paying based on captured contemporaneous punches of actual hours worked. (*Ibid.*; see *See's Candy Shops, Inc. v. Superior Court* (2012) 210 Cal.App.4th 889 [permitting employer rounding only if it "will not result, over a period of time, in failure to compensate the employees properly for all the time they have actually worked."].) Further, Plaintiff contends employees were required to engaged in off-the-clock work pre-and post- shift, and sometimes during meal breaks. (Orshansky Decl. ¶ 52.) As such, Plaintiff argues that these claims are susceptible to "substantial evidence of systematic company policy to pressure or require employees to work off-the-clock." (*Ibid.*; see *Brinker Rest. Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004.) Labor Code section 510 requires an employer to compensate an employee who works more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours worked on the seventh consecutive day no less than one and one-half times the regular rate of pay for an employee, and no less than twice the regular rate of pay when an employee works more than twelve (12) hours in a day or more than eight (8) hours on the seventh consecutive day of work. Thus, Plaintiff also alleged that Defendant violated Labor Code sections 510 and 1198, and the applicable IWC Wage Orders, by failing to compensate Plaintiff and other non-exempt employees at the correct overtime rate for all hours worked.

Class Counsel analyzed the documents and data produced by Defendant, and in conjunction with interviews of Plaintiff and Class Members, determined Defendant's degree of liability and amounts due in damages—specifically, the incidence and amount of purported off-the-clock activity and amounts that were withheld from Plaintiff and Class Members based on Defendant's rounding practices. (Orshansky Decl. ¶ 54.)

Based on Defendant's records, Plaintiff estimated that Defendant is liable for a net underpayment of \$293,954.00 attributable to Defendant's rounding practices. (Orshansky Decl. ¶ 55.) Plaintiff also estimated that Defendant is liable for an aggregate of approximately ten (10) minutes of unpaid pay per shift, with 4.7 shifts on average per workweek. (*Ibid.*) At the average

1 straight time hourly rate of \$20.86 and the average overtime hourly rate of \$31.29, yields estimated
2 damages of \$1,072,530.46. (*Ibid.*) Thus, the estimated total of unpaid wages is approximately
3 \$1,366,484.46, without discounting for risks associated with certification or merits. (*Ibid.*)

4 In opposition to certification, Defendant contended that Plaintiff's claim for off-the-clock
5 work is not amenable to class treatment because employees had different job titles, responsibilities,
6 and managers, and it would require an unmanageable series of mini-trials to determine how much
7 time was spent without pay. (Orshansky Decl. ¶ 56.) Further, in terms of merit defenses, Defendant
8 vigorously disagreed with Plaintiff's theories regarding how much off-the-clock work occurred in
9 reality and the credibility of those claimed hours given Defendant's policies to the contrary. (*Id.* at
10 ¶ 57.) The failure to track all hours poses evidentiary difficulties because it is hotly contested how
11 much off-the-clock work actually occurred. (*Id.* at ¶ 58.) Although Class Counsel conducted
12 multiple Class Member interviews, for Plaintiff to establish the quantity of specific disputed and
13 unrecorded work activities—especially over multiple job titles with different requirements and
14 different managers—would have been costly, time-consuming, and daunting. (*Ibid.*)

15 Defendant further responded that any off-the-clock time is de minimis. (Orshansky Decl. ¶
16 59.) Plaintiff countered that such defense lacks viability in light of *Troester v. Starbucks Corp.*
17 (2018) 5 Cal.5th 829, given that the California Supreme Court refused to allow the de minimis
18 defense to insulate Starbucks from having to pay employees for small amounts of work regularly
19 performed off the clock. (Orshansky Decl. ¶ 59.) What is not clear, however, is to what extent the
20 de minimis defense would apply where the uncaptured hours were associated with an occasionally
21 recurring activity. (*Ibid.*) In light of these considerations—especially the evidentiary difficulties of
22 demonstrating off-the-clock work on a class-wide basis—Class Counsel applied a 50 percent
23 discount that incorporated the risks of non-certification and being unsuccessful on the merits, and
24 posits that the maximum realistic value attributable to unpaid straight and overtime wages is
25 \$683,242.23. (*Id.* at ¶ 60.)

26 Meal and Rest Period Violations

27 Plaintiff asserted that there are compliance issues *vis-à-vis* meal breaks—some are late,
28 missed, short, or interrupted. (Orshansky Decl. ¶ 61.)

On February 25, 2021, in *Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58, the California Supreme Court reversed the Fourth Appellate District and set forth two clear rules: (1) employers are not permitted to round time records when determining if employees are entitled to meal premium pay, and (2) it is the employer’s burden to show that compliant meal periods were provided to employees if the time records show otherwise. Using this opportunity to echo its longstanding position that California liberally construes the Labor Code and Wage Orders to favor protection of employees, the California Supreme Court emphasized that meal periods are part of the remedial worker protection framework to protect the health and safety of employees.

Labor Code sections 226.7, 512, and IWC Wage Order No. 16-2001 require employers to provide employees with a thirty (30) minute uninterrupted and duty-free meal period within the first five (5) hours of work. (*Brinker Rest. Corp.*, *supra*, 53 Cal.4th at p. 1042 [“Accordingly, first meal periods must start after no more than five hours.”].) Moreover, an employee who works more than ten (10) hours per day is entitled to receive a second thirty (30) minute uninterrupted and duty-free meal period. (See Lab. Code, § 512.) Here, there is no evidence that Defendant made any premium payments for non-compliant meal periods. (Orshansky Decl. ¶ 64; *c.f. Ferra v. Loews Hollywood Hotel* (2021) 11 Cal.5th 858; IWC Wage Order No. 16-2001, § 11(b).) Hence, Plaintiff alleged that Defendant violated *Ferra*, *supra*, Labor Code sections 226.7 and 512, and IWC Wage Order No. 16-2001 by failing to provide compliant, duty-free meal periods and failing to compensate Plaintiff and Class Members for short, late, interrupted, and missed meal periods. (Orshansky Decl. ¶ 65.)

Defendant, however, contended that it had practices, policies, and procedures to provide meal and rest breaks every workday that fully complied with the law. (Orshansky Decl. ¶ 66.) Defendant vehemently argued that it complied with the requirements articulated by the California Supreme Court in *Brinker*, *supra*, 53 Cal.4th 1004. (Orshansky Decl. ¶ 66.) Specifically, Defendant maintained that it “provides” employees with a reasonable opportunity to take timely meal periods of at least 30 minutes, relieves employees of all duties during meal periods, relinquishes control over employees’ activities, and allows employees to leave the premises during meal periods. (*Ibid.*)

Defendant argued that employees were apprised of their right to take meal periods and provided compliant meal periods, but some may voluntarily have waived them. (Orshansky Decl. ¶

67.) Indeed, Defendant possessed voluntary written waivers from employees for meal periods, which Defendant contended would cause the action to necessarily devolve into a series of individualized mini-trials, precluding class certification. (*Ibid.*; see *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 25 [holding that the defendant must be provided an opportunity to litigate affirmative defenses, even when they turn on individual questions].)

Based upon the analysis of Class Members' time and payroll records, Plaintiff determined that 24% of eligible shifts were the subject of unique violations for missed, short, or late meal periods, and calculated the potential exposure of this claim to be \$902,053.15. (Orshansky Decl. ¶ 68.) For settlement purposes, and to account for the difficulties of certifying and proving meal break violations, a 25 percent downward departure from that maximum exposure was and is warranted, resulting in a value of \$676,539.86 attributable to this claim. (*Ibid.*)

Plaintiff also alleged that Class Members did not receive legally compliant rest breaks; Defendant did not "relinquish control over how employees spend their time and relieve employees of all duties." (Orshansky Decl. ¶ 69; *Augustus v. ABM Security Service, Inc.* (2016) 2 Cal.5th 257, 260.) Due to Defendant's work demands and inadequate staffing, Plaintiff and Class Members did not receive compliant rest breaks, nor did Defendant relinquish control over how employees spent their 10-minute rest breaks. (Orshansky Decl. ¶ 69.) At times, Plaintiff and Class Members received one 20-minute rest break over an entire day, rather than the required two 10-minute breaks. (*Ibid.*) Plaintiff also did not receive rest break premium payments for non-compliant rest breaks, nor is there evidence that Defendant made rest break premium payments to Class Members at any time. (*Id.* at ¶ 70.) Thus, Plaintiff also alleged that Defendant did not provide premium pay for each non-compliant rest break as required under Labor Code section 226.7. (Orshansky Decl. ¶ 70.)

Here again, Defendant disputed liability and damages. Defendant maintained that it authorized and permitted duty-free rest breaks of not less than ten minutes for every major fraction of four hours worked as required by Labor Code section 226.7. (Orshansky Decl. ¶ 71.) Defendant explained that Class Members had ample opportunity to take, and did take, regular rest breaks. (*Ibid.*) As with meal periods, Defendant argued that any Class Member who failed to take a rest break, or took a short or late rest break, did so voluntarily and that all applicable rest breaks were still

1 authorized and provided. (*Ibid.*) Defendant also attempted to distinguish *Augustus, supra*, which
2 involved security guards who were required to monitor a pager, phone, or other device as having an
3 added constraint that is not present in the matter sub judice. (Orshansky Decl. ¶ 71.)

4 Unlike meal periods, rest breaks need not be recorded and thus establishing Defendant's
5 exertion of pressure, control, and resulting violations is likely to be more difficult. (Orshansky Decl.
6 ¶ 72.) Class Counsel applied a 40% violation rate based on the narratives of Plaintiff and other Class
7 Members. (*Ibid.*) For settlement purposes, and to account for the difficulties of certifying and
8 proving unrecorded rest break violations, 75 percent downward departure from that maximum
9 exposure was and is warranted, resulting in a value of \$402,702.30 attributable to this claim. (*Ibid.*)

10 Unreimbursed Expenses

11 Plaintiff alleged a cause of action under Labor Code section 2802, subdivision (a), which
12 states that an employer must reimburse employees for all necessary expenditures that employees
13 incur in discharging their duties. (Orshansky Decl. ¶ 73.) Specifically, Plaintiff and Class Members
14 were required to use their personal cell phones to communicate with supervisors and coworkers for
15 reasons related to work, yet Defendant failed to reimburse for these expenses. (*Ibid.*)

16 Defendant contended that it has a policy and practice of reimbursing employees for necessary
17 business-related expenses. (Orshansky Decl. ¶ 74.) Defendant also contended that, with respect to
18 the alleged expenses for which Plaintiff and other Class Members never requested reimbursement
19 from Defendant, Defendant did not know and had no reason to know that the alleged business-related
20 expenses were incurred. (*Ibid.*) Moreover, to the extent it occurred, Defendant asserted that this
21 claim is not suitable for class treatment as it would require individualized determinations as to
22 whether each employee used a personal cell phone for work-related purposes and, if so, how much
23 of that use was a reasonable percentage of his or her individual monthly phone bill. (*Ibid.*)

24 Defendant also argued that the Labor Code only requires reimbursement of "necessary"
25 expenses—as opposed to any expense incurred in the course of performing work—and argued that
26 distinguishing a necessary expense from an unnecessary one requires individualized factual inquiry
27 and statistical evidence. (Orshansky Decl. ¶ 75; *Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42
28 Cal.4th 554; *Cochran v. Schwan's Home Services, Inc.* (2014) 228 Cal.App.4th 1137.)

1 For the foregoing reasons, and taking into account the wide variety of telephone plans,
2 providers, and costs, which creates evidentiary complexities on an individual basis, let alone class-
3 wide, Plaintiff assigned de minimis value to this claim. (Orshansky Decl. ¶ 76.)

4 Wage Statement Violations

5 Plaintiff alleged a cause of action under Labor Code section 226, subdivision (a), for
6 Defendant's failure to provide accurate itemized wage statements. (Orshansky Decl. ¶ 77.) Failure
7 to comply with the statute entitles employees to recover the greater of all actual damages or fifty
8 dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100)
9 for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand
10 dollars (\$4,000). (See Lab. Code, § 226, subd. (e).) This cause of action is derivative of the foregoing
11 causes of action because if Defendant did not provide wages for all hours worked, premiums for
12 non-compliant meal and rest breaks, reimburse business expenses, and so forth, then the wage
13 statements were inevitably inaccurate. (Orshansky Decl. ¶ 77.)

14 Defendant contended, however, that Labor Code section 226, subdivision (e), penalties are
15 not automatic. (Orshansky Decl. ¶ 78.) Rather, the employee must show that Defendant's non-
16 compliance was "knowing and intentional." (*Ibid.*) Defendant suggested that any non-compliance
17 was not knowing and intentional. (*Ibid.*)

18 Because the damages for this cause of action are penalties, the statute of limitations is only
19 one year prior to the filing of the original complaint. (See Code Civ. Proc., § 340.) Based on the \$50
20 initial violation, plus the \$100 per pay period subsequent violation rates, Plaintiff estimates the total
21 wage statement exposure is \$590,200.00, without deductions for certification and liability.
22 (Orshansky Decl. ¶ 79.) However, for settlement purposes, and in consideration of the risks of a loss
23 on the merits of the underlying derivative claim(s) and/or good faith defense,⁶ a 25 percent

24 _____
25 ⁶ (See, e.g., *Naranjo v. Spectrum Security Services, Inc.* (2022) 15 Cal.5th 93.) In 2023, the Court
26 of Appeals, re-visiting *Naranjo* on remand, substantiated such good faith arguments because
27 penalties for missed meal rest breaks were not clearly established law until the May 2022 California
28 Supreme Court decision. (See *Naranjo v. Spectrum Security Services, Inc.* (2023) 88 Cal.App.5th
937.) On May 6, 2024, the California Supreme Court, on review, clarified that an employer is not
liable for statutory penalties for inaccurate wage statements when it had a good faith and reasonable
belief that the issued statements were accurate. (*Naranjo v. Spectrum Security Services, Inc.* (2024)
15 Cal.5th 1056.)

1 downward departure from that maximum exposure was and is warranted, for a value of \$442,650.00
2 attributable to this claim. (*Ibid.*)

3 Derivative Waiting Time and UCL Claims

4 Plaintiff further asserted causes of action against Defendant for failure to timely pay all
5 wages due employees at separation and for engaging in unfair, unlawful, and fraudulent business
6 practices. (Orshansky Decl. ¶ 80; see Lab. Code, § 203; Bus. & Prof. Code, § 17200 et seq.) As with
7 other claims, Defendant vigorously disagreed that it engaged in any conduct giving rise to liability,
8 or entitlement to recovery of penalties or equitable relief. (Orshansky Decl. ¶ 80.)

9 Defendant argued that waiting time penalties are not appropriate because it attempted to pay
10 employees all final wages owed in good faith upon their separation, thereby precluding a finding of
11 willfulness necessary to obtain waiting time penalties. (Orshansky Decl. ¶ 81.) Moreover, as with
12 wage statements, Defendant maintained that no waiting time penalties were recoverable from
13 alleged meal or rest period violations and/or the fluctuating legal landscape arguably engendered a
14 good-faith dispute defense precluding penalties. (*Id.* at ¶ 82.)

15 Based on the count of 262 former employees, Class Counsel determined the maximum value
16 of the waiting time claim is \$1,311,676.80. (Orshansky Decl. ¶ 83.) However, to account for the
17 risks of a loss on the merits of the derivative claims and/or good faith defense, a downward departure
18 from that maximum exposure was and is warranted, for a value of \$655,838.40. (*Ibid.*)

19 PAGA Penalties

20 The success of Plaintiff's PAGA claim is wholly dependent upon the success of her
21 underlying claims occurring within the one-year statute of limitations applicable to the PAGA.
22 (Orshansky Decl. ¶ 84.) Defendant maintained and continues to maintain that it had legally
23 compliant policies and practices throughout the statutory period. (*Id.* at ¶ 85.) Defendant denied and
24 continues to deny that it ever violated any provision of the Labor Code and argued that, even
25 assuming such violations occurred, Defendant will not be treated as having engaged in subsequent
26 violations giving rise to heightened penalties; Defendant argued that heightened civil penalties for
27 subsequent violations would not be assessed unless it could be shown that Defendant had notice that
28 it was violating the law, *e.g.*, it had been cited by a labor agency or adjudged by a court to have done

1 so. (*Ibid.*; see, e.g., *Amaral v. Cintas Corp.* (2008) 163 Cal.4th 1157, 1209.) Thus, Defendant
2 contended that, at best, even if a violation giving rise to a penalty was shown for each pay period,
3 only the lower civil penalty associated with initial violations would apply. (Orshansky Decl. ¶ 75.)

4 Moreover, Defendant asserted that before a PAGA claim could be tried, the court of law
5 would have to be satisfied that the adjudication of the PAGA claim, based on a theory of uniform
6 wage and hour practices relating to a large group of aggrieved employees, is sufficiently
7 “manageable” so as not to interfere with Defendant’s right to due process. (Orshansky Decl. ¶ 86.)
8 Defendant reiterated how employees’ job duties, managers, and work hours varied. (*Id.* at ¶ 87.)
9 Defendant contended that there was variation as to the circumstances that could allegedly cause
10 employees to work off the clock or to be deprived of the opportunity to take legally compliant, duty-
11 free meal and/or rest periods. (*Ibid.*) Defendant further opined that these issues presented challenges
12 not only to liability but also to Plaintiff’s ability to show that a PAGA claim could be efficiently and
13 manageably adjudicated without abridging Defendant’s due process rights. (*Ibid.*)

14 Finally, Defendant maintained that the Court has discretion to reduce any award of PAGA
15 penalties where it views them as duplicative. (Orshansky Decl. ¶ 88; see Lab. Code, § 2699, subd.
16 (e)(2) [the Court may “award a lesser amount than the maximum civil penalty amount [authorized
17 by PAGA] if, based on the facts and circumstances of the particular case, to do otherwise would
18 result in an award that is unjust, arbitrary and oppressive, or confiscatory.”].)

19 Class Counsel applied discounts for the risks in establishing manageability and possible
20 bifurcation of discovery and/or trial, the risks regarding success on the merits and establishing
21 liability, and the risks with proving the extent of penalties that are warranted and possible
22 discretionary reduction of penalties by the Court. (Orshansky Decl. ¶ 89.) As a result, Plaintiff used
23 the initial \$100 penalty violation rate (as opposed to the \$200 subsequent per violation rate) per pay
24 period to calculate an estimated \$857,000 in potential PAGA penalty exposure, of which, by statute,
25 only 25% (\$214,250) would be recoverable by the Aggrieved Employees. (*Ibid.*)

26 Summary

27 Class Counsel calculated that the recovery for each of the above claims, in the aggregate, is
28 \$3,717,972.79. (Orshansky Decl. ¶ 90.) Hence, the gross settlement amount of \$965,000 represents

1 approximately 26% of the potential realistic recovery, while avoiding the further expense and risk
2 of proceeding toward class certification and trial. (*Ibid.*) “The fact that a proposed settlement may
3 only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed
4 settlement is grossly inadequate and should be disapproved.” (*Linney v. Cellular Alaska Partnership*
5 (9th Cir. 1998) 151 F.3d 1234, 1242, internal quotations omitted; see, e.g., *Altamirano v. Shaw*
6 *Industries, Inc.* (N.D.Cal. 2015) 2015 WL 4512372, at *9 [preliminarily approving wage and hour
7 class action settlement stating, “[a]lthough 15% represents a modest fraction of the hypothetical
8 maximum recovery estimated by Plaintiff, that figure is sufficient for the Court to grant preliminary
9 approval given the merits of Plaintiff’s claims.”].) Taking into account the risks of non-certification
10 and failure to prevail on the merits, and the Court’s power to reduce the civil penalties, the proposed
11 settlement falls within the realm of being fair, reasonable, and adequate. (Orshansky Decl. ¶ 90.)

12 **VII. PROPOSED NOTICE PROVIDES ADEQUATE NOTICE TO THE CLASS**

13 This Court should order distribution of the Class Notice (see Orshansky Decl. Exh. A
14 [Settlement Agreement] at internal Exhibit 1) to the Class by first class mail, postage prepaid, using
15 the last known mailing address information provided by Defendant. (Orshansky Decl. ¶ 103.) Here,
16 Plaintiff proposes that the settlement be administered by CPT Group, Inc. (“CPT”), an experienced
17 class action settlement administrator. (Settlement Agreement §§ I(EE), III(B); Orshansky Decl. ¶
18 104.) Class Members’ addresses will be ascertainable through Defendant’s personnel and payroll
19 records, which Defendant will provide to CPT within twenty (20) business days after preliminary
20 approval of the settlement. (Settlement Agreement § III(C); Orshansky Decl. ¶ 104.) CPT will run
21 all addresses through the National Change of Address database, and to the extent that any notices
22 are returned, will conduct skip traces and remail those notices. (Orshansky Decl. ¶ 104.) CPT shall
23 also establish a telephonic hotline and maintain a case-specific website for hosting relevant
24 documents, including a copy of the Class Notice and Settlement Agreement. (*Ibid.*)

25 The content of the proposed notice satisfies California Rules of Court, Rule 3.766(d) because
26 it advises Class Members of the nature of the claims, contentions and denials of the Parties, the key
27 terms of the settlement, the uniform 45-day deadline to submit a dispute, opt-out, or object to the
28 class settlement and the procedure by which to do so, and explains the recovery formula and credited

1 number of workweeks and pay periods for each Class Member. (Orshansky Decl. ¶ 105.) Optional
2 request for exclusion form will also be attached to the Class Notice for their convenience. (*Ibid.*)
3 The proposed notice will also notify Class Members of the final approval hearing date, provide the
4 contact information for Class Counsel, and advise Class Members that they may enter an appearance
5 through counsel if they wish. (*Id.* at ¶ 106.) This manner of giving notice satisfies California Rules
6 of Court, Rule 3.766(e) as the most reliable and cost-effective method of reaching Class Members.
7 Thus, the proposed method of notice is reasonably calculated to reach Class Members by the best
8 means practicable and should be approved. (Orshansky Decl. ¶ 106.)

9 **VIII. CONCLUSION**

10 Based upon the foregoing, and because the proposed settlement is fair and reasonable to the
11 Class, Plaintiff respectfully requests that the Court enter an order: (1) preliminarily approving the
12 Settlement Agreement as fair, reasonable, and adequate; (2) preliminarily approving the form and
13 content of the Class Notice; (3) provisionally certifying the Class under Civil Code section 382 for
14 settlement purposes only; (4) approving and appointing Plaintiff Ximena Garcia as the Class
15 Representative; (5) approving and appointing CounselOne, PC and the Law Offices of Sahag
16 Majarian II as Class Counsel; (6) approving and appointing CPT Group, Inc. as the Settlement
17 Administrator; (7) setting a date for the Final Approval Hearing; and (8) for any further relief the
18 Court deems just and proper.

19
20 Dated: April 1, 2025

Respectfully submitted,

21 COUNSELONE, PC

22 By: _____

23 Anthony J. Orshansky
24 P. Bartholomew Quintans
25 Attorneys for Plaintiff
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