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and Proposed Class Counsel

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

LINDSAY ORIN, on behalf of herself
and all others similarly situated and on
behalf of the general public,

Plaintiff,

v.

CAL. DEL. U.S.A. INC., a California
corporation, and DOES 1 through 10,
inclusive,

Defendants.

Case No. 2:23-cv-03404-FMO-KS

Assigned To: Fernando M. Olguin
Courtroom: 6D

CLASS ACTION

**NOTICE OF MOTION AND
UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF
CLASS AND PAGA ACTION
SETTLEMENT**

Date: January 11, 2024

Time: 10:00 A.M.

Courtroom: 6D

Judge: Fernando M. Olguin

[Los Angeles County Superior Court
Case No. 23STCV07181]

[State Court Complaint Filed: April 3,
2023]

TO THE COURT AND TO ALL PARTIES:

PLEASE TAKE NOTICE that on January 11, 2024 at 10:00 A.M., in Courtroom 6D of the United States District Court for the Central District of California, located at 350 W. 1st Street, 6th Floor, Courtroom 6D, Los Angeles, CA 90012, Plaintiff Lindsay Orin will, and hereby does, move this Court for an order (1) preliminarily approving the proposed class action settlement in the above-captioned case, (2) provisionally certifying a settlement class pursuant to Fed. R. Civ. P. 23, (3) provisionally approving the appointment of Plaintiff Lindsay Orin as Class Representative, (4) provisionally approving the appointment of Gaines & Gaines, APLC as Class Counsel, (5) provisionally approving the appointment of ILYM Group, Inc. as settlement administrator, (6) approving and directing distribution of notice to the settlement class, and (7) setting a final fairness and approval hearing.

The basis for this Motion is that the proposed settlement reached by the Parties is fair, adequate, and reasonable and in the best interests of the settlement class as a whole, and that the procedures proposed by the Parties are adequate to ensure the opportunity of class members to participate in, opt out of, or object to the settlement.

This unopposed motion is made following the conference of counsel pursuant to L.R. 7-3 which took place on multiple occasions over the past several months.

This motion will be based on this Notice and accompanying Memorandum of Points and Authorities, the Declaration of Daniel F. Gaines, the Stipulation and Settlement of Class, Collective and Representative Action (including exhibits), all filed herewith, and on such further evidence and argument as may be presented at the hearing.

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1 Dated: December 13, 2023

Respectfully Submitted,

2 GAINES & GAINES, APLC

3
4 By: /s/ Daniel F. Gaines

5 Daniel F. Gaines, Esq.

6 Alex P. Katofsky, Esq.

7 Attorneys for Plaintiff Lindsay Orin and
8 Proposed Class Counsel
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1 **I. INTRODUCTION**

2 Plaintiff Lindsay Orin (“Plaintiff” or “Orin”) on behalf of herself and others
 3 similarly situated, and Defendant Cal. Del. U.S.A. Inc. (“Defendant” or “CDUSA”)
 4 (“Plaintiff and “Defendant” are collectively referred to as the “Parties”) have reached
 5 a resolution of Plaintiff’s claims alleged in this Action and seek preliminary approval
 6 of their proposed class action settlement. Subject to Court approval, Plaintiff has
 7 settled her and class members’ claims against Defendant for a Gross Settlement
 8 Amount of \$250,000 (which includes all settlement payments to Class Members, the
 9 costs of settlement administration, Class Counsel’s attorneys’ fees and costs, AND
 10 the named Plaintiff’s class representative enhancement payment.

11 This proposed settlement (“Settlement”)¹ resolves all of the named Plaintiff’s
 12 and Settlement Class Members’ claims asserted in the Action against CDUSA.

13 The proposed Settlement satisfies all of the criteria for preliminary settlement
 14 approval under Federal law, and is fair, reasonable, and adequate. Accordingly, the
 15 Parties request that the Court:

- 16 1. Provisionally certify the proposed settlement class for settlement purposes;
- 17 2. Grant preliminary approval of the proposed Settlement;
- 18 3. Approve the proposed notice program and the notice proposed by the Parties;
- 19 4. Confirm the appointment of Plaintiff Lindsay Orin as Class Representative;
- 20 5. Confirm the appointment of Gaines & Gaines, APLC as Settlement Class
 21 Counsel;
- 22 6. Confirm the appointment of ILYM Group, Inc. as settlement administrator;
- 23 7. Set deadlines for mailing notice documents and for opting out or objecting to
 24 the Settlement; and
- 25 8. Schedule a final fairness hearing.

26
 27 ¹ The Parties’ Stipulation and Settlement of Class, Collective and Representative
 28 Action is attached as **Exhibit B** to the Declaration of Daniel F. Gaines (“Gaines
 Decl.”), submitted herewith.

II. FACTUAL BACKGROUND AND PROCEDURAL POSTURE

Plaintiff and Class Members are current and former non-exempt employees of CDUSA in the State of California. Defendant does business as Tod's, a luxury goods retail store. Plaintiff was employed by Defendant from October 2022 through March 2023 as a non-exempt employee in Los Angeles County, California. Declaration of Daniel F. Gaines ("Gaines Decl.") at ¶ 7.

On or about March 27, 2023, Plaintiff complied with the administrative prerequisites set forth in the Private Attorney's General Act, Labor Code ¶ 2698 *et seq.* ("PAGA") by sending a letter, by online submission to the Labor & Workforce Development Agency ("LWDA") and by certified mail to Defendant, outlining the facts and theories underlying her claims. Gaines Decl. at ¶ 8.

On April 3, 2023, Plaintiff filed a Class and Collective Action Complaint with the Los Angeles County Superior Court. On or about May 8, 2023, Defendant removed the Action to the United States District Court, Central District. On July 19, 2023, Plaintiff filed her First Amended Class, Collective, and Representative Action in the District Court. Gaines Decl. at ¶ 9.

In the First Amended Complaint, Plaintiff alleges that: Defendant paid Class Members commission wages that were not included in their regular rate of pay for purposes of paying them sick pay wages at the correct rate, in violation of Labor Code §§ 246 and 558 and IWC Wage Order No. 4-2001; Defendant failed to pay Class Members premium overtime compensation for all overtime hours worked, in violation of Labor Code §§ 510, 558, and 1194; Defendant failed to provide Class Members with legally compliant rest periods, or premium wages of one hour's pay in lieu thereof, as required by Labor Code §§ 226.7 and IWC Wage Order 4-2001; Defendant failed to permit or authorize Class Members to take timely 30-minute meal periods for shifts greater than 5 hours in length, in violation of Labor Code §§ 226.7, 512, and 558 and IWC Wage Order 4-2001; Class Members were required to incur expenses in the performance of their job duties for which they are not fully

1 reimbursed, in violation of Labor Code § 2802; Defendant failed to issue Class
 2 Members accurately itemized wage statements, in violation of Labor Code §
 3 226(a)(1), (2), (5), and (9); and Defendant failed to pay Class Members all wages due
 4 upon separation of employment, in violation of Labor Code §§ 201-202. As a result,
 5 Plaintiff claims she and the Class are entitled to wages and overtime pay pursuant to
 6 the Fair Labor Standards Act, 29 USC §§ 206, 207 and Labor Code sections 226.7,
 7 246, 510, 512, and 1194, compensation for missed rest breaks pursuant to Labor
 8 Code section 226.7; compensation for missed meal breaks pursuant to Labor Code
 9 sections 226.7 and 512, reimbursement of necessary business expenses pursuant to
 10 Labor Code section 2802; penalties for inaccurate itemized wage statements pursuant
 11 to Labor Code section 226(a), (e), penalties to separated employees pursuant to Labor
 12 Code section 203, PAGA penalties pursuant to Labor Code section 2699, and
 13 restitution and injunctive relief in accord with California Business and Professions
 14 Code section 17200, as well as interest and attorneys' fees. Gaines Decl. at ¶ 10.

15 Defendant denies all of Plaintiff's allegations. Specifically, Defendant believes
 16 that Plaintiff and the Class were properly paid all wages due under the Fair Labor
 17 Standards Act and California wage-and-hour law, including compensation for all time
 18 worked, all accrued vacation and paid time off, and that they received all meal
 19 periods and/or meal period premiums which they may have been entitled to under
 20 California law. Gaines Decl. at ¶ 11.

21 **III. DISCOVERY AND INVESTIGATION**

22 After engaging in informal discussions about the case, informal discovery and
 23 a comprehensive information exchange, the Parties agreed to engage in private
 24 mediation. Gaines Decl. at ¶ 12.

25 The Parties attended a mediation session October 4, 2023 presided over by
 26 Michael L. Ludwig, Esq., a mediator with significant experience in wage and hour
 27 class actions. Each Party was represented by respective counsel during the good-faith
 28 negotiations facilitated by Mr. Ludwig. In connection with the mediation, Defendant

provided information to Mr. Ludwig and Class Counsel concerning CDUSA's varying practices throughout the State of California with regards to wage payment, meal and rest break claims, unpaid wage claims, and issuance of wage statements. The Parties were able to reach agreement at the mediation. Gaines Decl. at ¶ 13.

The Parties subsequently negotiated the terms of a formal settlement agreement, attached as **Exhibit B** to the Gaines Declaration submitted herewith. The Stipulation of Settlement includes all terms of the Parties' agreement. Gaines Decl. at ¶ 14.

IV. SUMMARY OF SETTLEMENT TERMS

The significant terms of the Stipulation of Settlement are as follows:

A. The Settlement Class

The Class is defined as:

All current and former non-exempt employees who have worked for Defendant, in California during the Settlement Class Period [the period from April 3, 2019 through the date the Court enters an order granting approval of the settlement or December 4, 2024, whichever occurs first.

Stip. at ¶ II(I).

B. Settlement Consideration

The amount which Defendant is required pay under the Settlement is \$250,000 (the "Gross Settlement Amount")², to be allocated as follows:

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² The Gross Settlement Amount may increase based on the escalator provision. Defendant understands and believes there are approximately 6,200 workweeks by Class Members from April 3, 2019 through September 24, 2023. If it is determined that the actual number of workweeks through September 24, 2023 exceeds 6,200 by more than ten percent (10%) (i.e., exceeds 6,820), then, Defendant shall increase the Gross Settlement Amount by \$36.66 for each workweek in excess of 6,820 through September 24, 2023. Alternatively, Defendant may choose to cut off the Class Period on the date on which the workweek total reached 6,820. Stip. at ¶ XIX.

1. Attorneys' Fees and Costs to Class Counsel

The Settlement provides that Plaintiff's counsel may request up to \$83,333.33 as an award of attorneys' fees, representing one-third of the Gross Settlement Amount, in consideration of the time and effort they have expended for the benefit of Plaintiff and Settlement Class Members. Further, the Settlement provides that Plaintiff's counsel may request up to \$13,000 in reimbursement of litigation costs and expenses actually and reasonably incurred during the course of this litigation. Stip. at ¶ II(D).

2. Payment of Claims Administration Expenses

The parties have selected ILYM Group, Inc., an experienced and reputable settlement administrator, to administer the settlement, including the provision of notice and facilitation of the claims and opt-out process. The cost of settlement administration is estimated to be approximately \$3,000, which shall be paid from the Gross Settlement Amount. Stip. at ¶ II(F).

3. Class Representative Enhancement Payment to the Class Representative

The Settlement provides that Plaintiff Orin may request a class representative enhancement payment of up to \$10,000, subject to the Court's approval, which is intended to compensate her for the time, expense, and risk she has expended in bringing this lawsuit for the benefit of Class Members. Stip. at ¶ II(K).

4. Payment of Payroll Taxes

The Settlement further provides that Defendant will be responsible for any employer payroll taxes required by law, separate and in addition to the Gross Settlement Amount, including the employer FICA, FUTA, and SDI contributions on the wage portion of the Settlement Payment Checks. Stip. at ¶ II(O).

5. Resolution of Class Members' Claims Pursuant to PAGA

The amount that the Parties have agreed to pay to the LWDA in connection with PAGA. The Parties have agreed that \$10,000 of the Gross Settlement Amount

1 will be allocated to the resolution of any claims arising under PAGA (“PAGA
 2 Settlement Amount”) as set forth in the Released Aggrieved Employee Claims.
 3 Pursuant to PAGA, \$7,500 (75%) of the PAGA Settlement Amount will be paid to
 4 the LWDA and \$2,500 (25%) of the PAGA Settlement Amount will be distributed to
 5 Aggrieved Employees. The 25% portion of the PAGA Settlement Amount is referred
 6 to as “Aggrieved Employees Amount. Stip. at ¶ II(R).

7 **6. Distribution to Participating Class Members**

8 This is a fully funded settlement with no potential for a reversion to CDUSA.
 9 Each Class Member who does not submit a timely and valid Request for Exclusion
 10 from the Settlement will be deemed a Class Member and will be bound by all terms
 11 of the Settlement Agreement if the Settlement is granted Final Approval by the
 12 Court.³ Any Class Member who timely submits a valid Request for Exclusion will
 13 not receive a Settlement Payment Check, and will not be bound by the terms of the
 14 Settlement Agreement or Judgment (with the exception of claims arising under
 15 PAGA). Aggrieved Employees eligible for a portion of the PAGA Settlement
 16 Amount will receive their share of the employee portion of the PAGA Settlement
 17 Amount and will be deemed to have released the Released Aggrieved Employee
 18 Claims, regardless of whether they submit a Request for Exclusion. Stip. at ¶ II(EE).
 19 The Net Settlement Amount is approximately \$130,166.67, and is calculated as
 20 follows: the Gross Settlement Amount (\$250,000), less all attorneys’ fees
 21 (\$83,333.33), litigation costs (\$13,000), claims administration (\$3,000), class
 22 representative enhancement payment to Class Representative Lindsay Orin (\$10,000),
 23 and the PAGA Settlement Amount (\$10,500). Stip. at ¶ VIII.

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27 ³ Only Class Members who negotiate their settlement checks will be FLSA opt in
 28 Plaintiffs bound by the FLSA release. Stip. at ¶ CC, II(GG).

Any checks issued by the Claims Administrator to Class Members will be negotiable for one-hundred eighty (180) calendar days. After one-hundred eighty (180) calendar days from the date of mailing, the checks shall become null and void, and any monies remaining in the distribution account shall be distributed to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code § 1500 et seq., for the benefit of those Settlement Class members or Aggrieved Employees who did not cash their checks until such time that they claim their property. This disposition results in no “unpaid residue” under California Civil Procedure Code § 384, as the entire Settlement Payment will be paid out to Settlement Class members, whether or not they all cash their Settlement Checks. Stip. at ¶ XII(2).

C. The Release by Plaintiff and Class Members

Any Class Member who does not properly and timely submit an Exclusion Form will automatically be bound by all terms and conditions of the Settlement, including its release of claims, if the Settlement is approved by the Court, and be bound by the Final Approval Order, regardless of whether he or she has objected to the Settlement. Stip. at ¶ VII.D.54.

As of the date of the Order Granting Final Approval, and only after the Settlement has been fully funded by Defendant, all Class Members shall fully and finally release Released Parties of the Released Class Claims as follows:

The Released Class Claims are all claims, rights, demands, liabilities and causes of action alleged in the operative First Amended Complaint, and all claims, rights, demands, liabilities and causes of action which could be alleged based on the facts set forth in the First Amended Complaint, for all periods of employment in a non-exempt position in California during the Settlement Class Period. This includes claims for unpaid wages, including, failure to pay minimum wages, straight time compensation, overtime compensation, double-time compensation, and interest; reimbursement for all necessary business expenses; failure to provide accurate wage statements; unfair business practices; penalties,

including, but not limited to, civil penalties apart from those as described in Paragraph Z, above, statutory penalties, recordkeeping penalties, wage statement penalties, minimum-wage penalties, and waiting-time penalties; and attorneys' fees and costs; all claims related to the Released Claims which are asserted in the Lawsuit or which could have been asserted based on the factual allegations pled in the Lawsuit arising under: the California Labor Code (including, but not limited to, sections 201, 202, 203, 218.5, 226, 226.3, 226.7, 246, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, and 2802), Wage Order 4-2001 of the California Industrial Welfare Commission; the Fair Labor Standards Act (including, but not limited to, sections 206 and 207); and California Business and Professions Code section 17200, et seq based on the foregoing. This release excludes the release of claims not permitted by law and excludes all claims arising under PAGA. Only Settlement Class Members who cash their settlement checks by affirmatively opting in to the FLSA collective action will be bound by the FLSA release included in the Class Released Claims. The following language will be printed on the reverse of each Settlement Payment Check, or words to this effect: "By endorsing or otherwise negotiating this check, I acknowledge that I read, understood, and agree to the terms set forth in the Notice of Class Action Settlement and I consent to join in the Fair Labor Standards Act ("FLSA") portion of the [Lawsuit], elect to participate in the settlement of the FLSA claims, and agree to release all of my FLSA claims that are covered by the Settlement ("Released Claims").

Stip. at ¶ II(CC).

As of the date of the Order Granting Final Approval, and only after the Settlement has been fully funded by Defendant, all Aggrieved Employees shall fully and finally release Released Parties of the Released Aggrieved Employee Claims.

The Released Aggrieved Employee Claims include all claims, rights, demands, liabilities and causes of action under PAGA which are alleged in the operative First Amended Complaint, and all claims, rights, demands, liabilities and causes of action under PAGA which could be

alleged based on the facts set forth in the First Amended Complaint, for all periods of employment in a non-exempt position in California during the PAGA Period. This includes claims arising under PAGA for unpaid wages, including, failure to pay minimum wages, straight time compensation, overtime compensation, double-time compensation, and interest; reimbursement for all necessary business expenses; failure to provide accurate wage statements; unfair business practices; penalties, including, but not limited to, statutory penalties, recordkeeping penalties, wage statement penalties, minimum-wage penalties, and waiting-time penalties; and attorneys' fees and costs; all claims related to the PAGA Released Claims which are asserted in the Lawsuit or which could have been asserted based on the factual allegations pled in the Lawsuit arising under: the California Labor Code (including, but not limited to, sections 201, 202, 203, 218.5, 226, 226.3, 226.7, 246, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, and 2802), and Wage Order 4-2001 of the California Industrial Welfare Commission ("PAGA Released Claims"). This release excludes the release of claims not permitted by law and excludes all claims for unpaid wages and statutory penalties. Aggrieved Employees shall not be able to exclude themselves from the PAGA portion of this settlement and the PAGA Released Claims, and Aggrieved Employees shall receive their PAGA portion of the settlement even if they opt-out of the class action settlement.

Stip. at ¶ II(Z).

V. APPROVAL OF THE SETTLEMENT UNDER THE FLSA

The policy of the federal courts is to encourage settlement before trial: "Litigation settlements offer parties and their counsel relief from the burdens and uncertainties inherent in trial ... The economics of litigation are such that pretrial settlement may be more advantageous for both sides than expending the time and resources inevitably consumed in the trial process. *Franklin v. Kavpro Corp.*, 884 F.2d 1222, 1225 (9th Cir. 1989).

//

1 Consistent with this policy, the parties seek this Court's approval of the
2 settlement of Plaintiff's and any opt-in Plaintiff's claims under the FLSA. FLSA
3 claims can only be fully and finally released and settled under the supervision of
4 either the Secretary of Labor or the Court. *Lynn's Food Stores, Inc. v. United States*,
5 679 F.2d 1350, 1353 (11th Cir. 1982)). To obtain district court approval, the parties
6 must "present to the court a proposed settlement, upon which the court may enter a
7 stipulated judgment only after scrutinizing the settlement for fairness." *See Yue Zhou*
8 *v. Wang's Rest.*, 2007 U.S. Dist. LEXIS 60683 at *1 (N.D. Cal. Aug 8, 2007) (citing
9 *Schulte, Inc. v. Gangi*, 328 U.S. 108, 113 n. 8 (1946); *Lynn's Food Stores, Inc.*, 679
10 F.2d at 1353). Moreover, "[i]n reviewing the fairness of such a settlement, a court
11 must determine whether the settlement is a fair and reasonable resolution of bona fide
12 dispute." *Id.* (citing *Lynn's Food Stores, Inc.*, 679 F.2d at 1354 ("If a settlement is an
13 employee FLSA suit ... reflect[s] a reasonable compromise over issues, such as
14 FLSA coverage or computation of back wages, that are actually in dispute[,] we
15 allow the district court to approve the settlement in order to promote the policy of
16 encouraging settlement of litigation"))).

17 The parties have provided the Stipulation for the Court's review and request
18 that the Court approve the Stipulation and enter an order finding: that the terms of the
19 Stipulation are fair and reflect a reasonable compromise of Plaintiff's FLSA claims,
20 including the amount contemplated to be paid to Plaintiff and the Class for resolution
21 of their claims; that the settlement is not the product of fraud or overreaching by, or
22 collusion between, the negotiating parties; and that the settlement, taken as a whole,
23 is fair, reasonable and adequate to all concerned. *See, e.g., Officers for Justice v.*
24 *Civil Service Commission*, 688 F.2d 615, 625 (9th Cir. 1982).

25 The FLSA states that "[n]o employee shall be a party plaintiff to any such
26 action unless he gives his consent in writing to become such a party and such consent
27 is filed in the court in which such action is brought." 29 U.S.C. § 216(b). "Thus, a
28 class member can only release her federal FLSA claims if she opts in, giving her

consent in writing to become a party.” *Apparicio v. Radioshack Corp. et al.*, No. CV 08-1145, 2009 U.S. Dist. LEXIS 49316, at *6–*7 (C.D. Cal. May 21, 2009) (denying preliminary approval of class action settlement involving only state law claims where release included claims under “any state or federal statute, rule or regulation”); *Thomas La Parne et al. v. Monex Deposit Co. et al.*, Case No. SACV 08-0302, 2010 U.S. Dist. LEXIS 131029, at *9 (C.D. Cal. Nov. 29, 2010) (“[O]nly class members who affirmatively ‘opt-in’ to the Settlement should be bound by the Settlement’s release of FLSA liability.”); *Kakani et al. v. Oracle Corp.*, No. C 06-06493, 2007 U.S. Dist. LEXIS 47515, at *20 (N.D. Cal. June 19, 2007) (“Under no circumstances can counsel collude to take away FLSA rights including the worker’s right to control his or her own claim without the burden of having to opt out of someone else’s lawsuit.”) Only Settlement Class Members who cash their settlement checks by affirmatively opting in to the FLSA collective action will be bound by the FLSA release included in the Class Released Claims (Stip. at ¶ II(CC)), such that the settlement is consistent with 29 U.S.C. § 216(b).

VI. PRELIMINARY SETTLEMENT APPROVAL PROCESS

A Rule 23 opt-out class action may not be dismissed, compromised or settled without court approval. Fed. R. Civ. P. (“FRCP”) 23(e). Judicial proceedings under the Federal Rules of Civil Procedure have led to a defined procedure and specific criteria for settlement approval in class actions that are thoroughly described in the Manual for Complex Litigation (Fourth) (“*Manual* (Fourth)”) § 21.62 (2004). Federal Rule of Civil Procedure 23(e) sets forth a “two-step process in which the Court first determines whether a proposed class action settlement deserves preliminary approval and then, after notice is given to class members, whether final approval is warranted.” *Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 525 (C.D. Cal. 2004) (citing Manual for Complex Litigation (Third) (“*Manual* (Third)”) § 30.41 (1995)).

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Preliminary settlement approval and notice to the proposed class are appropriate where “the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval.” *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007) (quoting *Schwartz v. Dallas Cowboys Football Club, Ltd.*, 157 F. Supp. 2d 561, 570 n. 12 (E.D. Pa. 2001)); *see also Hanlon v. Chrysler Corp.*, 150 F. 3d 1011, 1027 (9th Cir. 1998) (the court’s task is to “balance a number of factors,” including “the risk, expense, complexity, and likely duration of further litigation,” “the extent of discovery completed and the stage of the proceedings,” and “the amount offered in settlement”). This procedure for preliminary approval of settlement agreements, endorsed by the leading class action commentator, Professor Newberg, and commonly used by Federal courts, safeguards class members’ procedural due process rights and enables a court to fulfill its role as the “guardian” of the class. *See* 4 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions* (“Newberg”), § 11.22 (4th ed. 2002).

The approval or rejection of the proposed settlement is committed to the Court’s sound discretion. *See Class Plaintiffs v. City of Seattle*, 955 F. 2d 1268, 1276 (9th Cir. 1992) (in the context of a class action settlement, appellate court cannot “substitute [its] notions of fairness for those of the [trial] judge and the parties to the agreement,” and will reverse only upon a strong showing of abuse of discretion).

The Court’s preliminary evaluation of the proposed settlement purports to determine whether it is within the permissible “range of reasonableness” and thus, whether the notice to the class is appropriate. 4 *Newberg* § 11.25-26; *Manual* (Third) § 30.41 (1995).

A. Provisional Certification of the Settlement Class

The Parties request that the Court provisionally certify the proposed Settlement Class. Provisional class certification is appropriate at the preliminary approval stage

where, as here, the proposed settlement class (as defined in the parties' Settlement) has not previously been certified by the Court, and the requirements for certification are met. 4 *Newberg* § 11.22; *see generally*. Provisional class certification facilitates distribution of notice on the terms of the proposed settlement and the date and time of the final approval hearing to all settlement class members. *See Manual* (Third) § 30.41.

The additional rulings sought by this motion – approving the form, content and distribution of the notice documents and scheduling a formal fairness hearing – facilitate the settlement approval process, and are also traditionally made at this preliminary approval stage. 4 *Newberg* § 11.26.

B. Settlement Administration Timeline

The following schedule sets forth a proposed sequence for the relevant dates and deadlines embodied in the Settlement, conditioned upon this Court granting preliminary approval of the proposed Settlement. This is outlined in the Proposed Order filed herewith:

DAY 28	Deadline for Claims Administrator to mail Class Notice and Deadline for Class Counsel to file and serve Motion for Attorneys' Fees and Costs and Class Representative's service payment
DAY 73	Deadline for Class Members to postmark or deliver objections to the Settlement to the Claims Administrator.
DAY 73	Deadline for Class Members to postmark or deliver a request for exclusion to the Claims Administrator.
■ DAYS PRIOR TO FINAL HEARING	Deadline for Class Counsel to file and serve motion for final approval of Settlement.
■ [DATE]	Final Approval Hearing

VII. PRELIMINARY APPROVAL OF THE SETTLEMENT IS APPROPRIATE

The law favors settlement, particularly in class actions and other complex cases where substantial resources can be conserved by avoiding the time, cost and rigors of formal litigation. *See* 4 *Newberg* § 11.41 (and cases cited therein); *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976).

Preliminary evaluation of class action settlements is intended to determine only whether the proposed settlement is within the range of possible approval or whether it is potentially fair, as the Court will make a final determination on adequacy at the final approval hearing. *See Acosta v. Trans Union LLC*, 243 F.R.D. 377, 386 (C.D. Cal. 2007); *In re Traffic Exec. Ass'n*, 627 F.2d 631, 633-34 (2d Cir. 1980); 4 *Newberg* § 11.25.

The Court thus has broad powers to determine whether a proposed settlement is fair under the circumstances of the case, *see Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1375 (9th Cir. 1993); *Acosta*, 243 F.R.D. at 384 (citing *Yamamoto v. Omiya*, 564 F.2d 1319, 1325 (9th Cir. 1977)), and preliminary approval of a settlement agreement should be granted unless there are reasons to doubt its fairness or there are other “obvious deficiencies” in the proposed settlement making it clear it would not ultimately weather a final approval hearing. *See In re Prudential Securities, Inc.*, 163 F.R.D. 200, 209 (S.D.N.Y. 1995).

To make this fairness determination, courts consider several relevant factors, including the strength of the 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 completed and the stage of the proceedings, as well as the experience and views of counsel. *Torrisi*, 8 F.3d at 1375. This list of factors is not exclusive, however, and the court may balance and weigh factors differently depending on the factual circumstances of each case. *See id.* at 1376.

1 When examining settlement agreements, a presumption of fairness exists
 2 where: (1) the settlement is reached through arm's-length bargaining; (2)
 3 investigation and discovery are sufficient to allow counsel and the court to act
 4 intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of
 5 objectors is small. 4 *Newberg* § 11.41.

6 Here, the proposed Settlement clearly falls well within the range of
 7 reasonableness as the terms of the agreement are fair and adequate and provide an
 8 excellent result for Plaintiff and Class Members, especially considering the
 9 complexities of the case, the risk the Court finds the class action waiver in Plaintiff's
 10 and class members' arbitration agreements to be valid, the substantial risk inherent in
 11 non-certification, the risks of not prevailing on the merits at trial, and the risk of a
 12 reduction in penalties by the Court. Gaines Decl. at ¶¶ 6, 12-26. The Parties have
 13 engaged in substantial discovery into the facts and law underlying Plaintiff's claims,
 14 and have participated in informed, good faith, arms'-length negotiations with
 15 adequate access to necessary information, and did so with the assistance of an
 16 experienced mediator. *See generally* Gaines Decl. at ¶¶ 12-26.

17 Moreover, both Plaintiff's counsel and Defendant's counsel are experienced in
 18 class action matters and are capable of assessing the strengths and weaknesses of
 19 claims and the benefits of the proposed Settlement under the circumstances of the
 20 case. Plaintiff's counsel believes the Settlement offers a fair and adequate result to
 21 Class Members, commensurate with the risks of further litigation. Accordingly,
 22 preliminary approval of the Settlement is appropriate. Gaines Decl. at ¶¶ 2-6, 12-29.

23 **A. The Terms of the Proposed Settlement Provide Reasonable**
 24 **Compensation for Plaintiff's and Class Members' Damages**

25 Ultimately, a settlement should stand or fall on the adequacy of its terms. *In re*
 26 *Corrugated Container Antitrust Litig.*, 643 F.2d 195, 211 (5th Cir. 1981). The
 27 Settlement reflects a fair compromise of the claims asserted in the Action.

28 //

1 Defendant paid Class Members commission wages that were allegedly not
2 included in their regular rate of pay for purposes of paying them sick pay wages at the
3 correct rate, in violation of Labor Code §§ 246 and 558 and IWC Wage Order No. 4-
4 2001. Defendant allegedly failed to properly blend these commission wages and
5 instead paid Class Members sick pay wages based only on the base hourly rate of
6 pay, thus depriving them of all wages earned, in violation of Labor Code §§ 246 and
7 558 and IWC Wage Order No. 4-2001. California Labor Code § 246(k)(1) provides
8 that “an employer shall calculate paid sick leave...in the same manner as the regular
9 rate of pay for the workweek in which the employee uses paid sick time, whether or
10 not the employee actually works overtime in that workweek.” Here, when Class
11 Members used sick pay, they were paid at the base hourly rate of pay. According to
12 Plaintiff’s expert statistician, Class Members are entitled to net \$41,566 as a result.
13 Gaines Decl. at ¶ 20.

14 In addition, and independent of the allegations listed above, Defendant also
15 purportedly failed to pay Class Members all premium overtime compensation due for
16 all overtime hours worked, in violation of Labor Code §§ 510, 558, and 1194. Based
17 on information and data provided by Defendant, a trivial number of pay periods
18 during the Class Period had a net underpayment of overtime hours worked. Plaintiff
19 calculates Defendant’s damages for this claim up to \$2,710 in unpaid overtime.
20 Gaines Decl. at ¶ 21.

21 Defendant also allegedly failed to provide Class Members with legally
22 compliant rest periods, or premium wages of one hour’s pay in lieu thereof, as
23 required by Labor Code §§ 226.7 and IWC Wage Order 4-2001. Class Members
24 were allegedly denied, and therefore unable to take, 10-minute rest periods for every
25 four hours of work or major fraction thereof, but were not paid premium wages of
26 one hour’s pay for each missed, denied, and unauthorized rest period. When they
27 were able to take a rest period, they were often late, cut short, or on-duty. Plaintiff
28 contends that she rarely, if ever, took a rest period. Her manager would leave the

1 store and did not give Plaintiff and other Class Members permission to take their rest
2 periods. According to the time and wage records provided by Defendant informally,
3 Defendant never paid Class Members a rest period premium for any missed, short, or
4 on-duty rest period. Plaintiff calculates Defendant's rest period damages at \$260,200
5 based on an estimated 50% violation rate. Gaines Decl. at ¶ 22.

6 Defendant allegedly failed to permit or authorize Class Members to take timely
7 30-minute meal periods for shifts greater than 5 hours in length, in violation of Labor
8 Code §§ 226.7, 512, and 558 and IWC Wage Order 4-2001. Labor Code § 512
9 provides that employers may not employ employees for work periods of more than
10 five (5) hours without providing a 30-minute meal period starting no later than the
11 end of the 5th hour. Class Members were routinely unable to take a proper meal
12 period when they worked shifts in excess of five (5) hours in duration and a second
13 meal period when they worked shifts in excess of ten (10) hours in duration. When
14 Class Members did receive a meal period, they were frequently late (after the fifth
15 hour of work). Plaintiff contends that almost all of her meal periods were well after
16 the fifth hour of work. The wage and time data provided by Defendant through
17 informal discovery show a meal period violation rate of 27.6% and a remarkable
18 74.1% of all pay periods during the PAGA Period exhibit some form of meal period
19 violation. 100% of shifts between 10 and 12 hours had no second meal period
20 recorded. What's more, Defendant never paid any meal period premiums during the
21 Class Period. Significant meal period premiums are owed. Plaintiff calculates
22 Defendant's meal period damages at \$142,733. Gaines Decl. at ¶ 23.

23 Class Members were allegedly required to incur expenses in the performance
24 of their job duties for which they are not fully reimbursed, in violation of Labor Code
25 § 2802. Class Members were required to use their personal cell phones in connection
26 with their job duties for Defendant, but they contend that they were not fully
27 reimbursed for these expenses. Defendant required Class Members to communicate
28 and outreach with its clients, but it only provided employees with a work cell phone

1 after 90 days of employment. Class Members were required to use their personal cell
2 phones during their first 90 days of employment, but were not reimbursed for these
3 expenses. Defendant has shown no evidence of reimbursement of these expenses and
4 the wage statements confirm the failure to reimburse these expenses whatsoever. This
5 violates Labor Code § 2802. Plaintiff calculates \$5,670 in unreimbursed expenses
6 (based on \$30 per month, for 3 months, per employee, for cell phone expenses).
7 Gaines Decl. at ¶ 24.

8 Defendant also allegedly failed to issue Class Members accurately itemized
9 wage statements. Class Members were not paid all wages due, as detailed above. As
10 a result, the wage statements issued by Defendant to Class Members fail to accurately
11 state all gross wages earned, in violation of Labor Code § 226(a)(1), total hours
12 worked, in violation of Labor Code § 226(a)(2), net wages earned, in violation of
13 Labor Code § 226(a)(5), and all applicable hourly rates in effect during the pay
14 period and the corresponding number of hours worked at each hourly rate, in
15 violation of Labor Code § 226(a)(9). Plaintiff calculates the damages for this claim at
16 \$114,050. Gaines Decl. at ¶ 25.

17 Finally, Defendant failed to pay Class Members all wages due upon separation
18 of employment, in violation of Labor Code §§ 201-202. As Defendant failed to pay
19 Class Members all wages due during the course of employment, as alleged above,
20 these wages remained due and owing upon separation of employment. Plaintiff
21 calculates statutory penalties on this claim at \$120,431. Gaines Decl. at ¶ 26.

22 **1. Plaintiff and Class Members Faced Risk Prevailing on a Motion** 23 **for Class Certification**

24 Although Plaintiff is reasonably confident she would have prevailed on her
25 motion for class certification, there was a risk the Court would deny certification and
26 find that individual issues predominate over class members' claims – particularly
27 with respect to Plaintiff's meal and rest period claims. Thus, the risk that Defendant
28 would defeat certification on some or all of Plaintiff's claims supports settlement at

1 this juncture, especially because most class members' claims are so small that
2 individual litigation of their claims (required in the event certification was denied) is
3 simply not feasible or realistic. Gaines Decl. at ¶ 17.

4 California and federal law pertaining to class actions is in a state of flux. New
5 controlling authority is constantly emerging, some of which dramatically alters the
6 landscape of class action practice. Even if Plaintiff prevailed on her motion for class
7 certification, new law could later support a motion by CDUSA to decertify a class.

8 **2. Plaintiff and Class Members Faced Risk Prevailing on the Merits** 9 **of Their Claims**

10 Prevailing on the merits in this case was by no means guaranteed. Plaintiff
11 asserts novel claims. Defendant flatly denies all of Plaintiff's allegations.
12 Specifically, Defendant believes that Plaintiff and the Class were properly paid all
13 wages under the Fair Labor Standards Act and California wage-and-hour law,
14 including compensation for all time worked, and received all meal and rest periods
15 which they may have been entitled to under law. Gaines Decl. at ¶ 18.

16 Defendant's defenses to liability on Plaintiff's claims are an important basis for
17 further validating the reasonableness of the settlement amount. Put simply, Plaintiff
18 faces substantial risk in prevailing on her claims. The Settlement fairly compromises
19 this risk. Gaines Decl. at ¶ 19.

20 **3. Plaintiff and Class Members Faced Risk in Obtaining a** 21 **Substantial Judgment at Trial**

22 In addition to the unpaid wage claims articulated above, Plaintiff seeks
23 substantial penalties under Labor Code § 226(e) (wage statement penalties), Labor
24 Code § 203 (waiting time penalties), and PAGA (Labor Code § 2698 *et seq.*). Each
25 of these claims is subject to independent defenses to class certification and each is
26 derivative of the unpaid wage claims as described in detail above. Recovery is by no
27 means guaranteed, especially when their value eclipses that of the alleged unpaid
28 wages. Moreover, even if Plaintiff prevailed on her underlying claims, the amount of

PAGA penalties to be awarded is completely within the Court's discretion, and many Courts reduce their value substantially. *Labor Code* § 2699(e)(2). *See generally Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157 (2008); *Caliber Bodyworks, Inc. v. Superior Court*, 134 Cal.App.4th 365 (2005). The Court may not issue a non-confiscatory penalty under PAGA, and because of the novelty of the claims and Plaintiff's and Class Members' lack of actual damages as a result of them, Plaintiff's counsel strongly considered the risk that CDUSA would defeat all penalties under PAGA, even if Plaintiff did prevail on the merits of the claim. Gaines Decl. at ¶ __.

B. The Settlement is the Product of Serious, Arm's-Length, Informed Negotiations and There are no Indications Present to Doubt its Fairness

The Parties engaged in arm's-length, informed negotiations during the course of litigation in order to reach the proposed Settlement. Gaines Decl. at ¶¶ 12-16.

The judgment of experienced counsel is also an important factor in a court's determination that negotiations were fair and informed. Absent fraud and collusion, the court may not only *rely* upon the judgment of experienced counsel, but should be hesitant to "substitute its own judgment for that of counsel." *Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977); *see also Officers for Justice v. Civ. Serv. Comm'n of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982). Furthermore, the involvement of an objective, third-party neutral tends to demonstrate the presence of arm's-length negotiations. *See Martens v. Smith Barney*, 181 F.R.D. 243, 262-63 (S.D.N.Y. 1998).

Class Counsel have conducted significant investigation and discovery into the facts of this class action case, including the exchange of documents and data through informal discovery aimed at ascertaining the potential value of Plaintiff and Class Members' claims and likelihood of ultimate success. Gaines Decl. at ¶¶ 12-16.

Based on this investigation and evaluation, Plaintiff's counsel firmly believe the Settlement, on the terms set forth in the Stipulation, is fair, reasonable, adequate, and is in the best interest of the Settlement Class in light of all known facts and

1 circumstances, including the risk of significant delay, the risk the Settlement Class
 2 will not be certified by the Court, the defenses asserted by Defendant, and potential
 3 appellate issues. Preliminary approval of the Stipulation of Settlement is appropriate.
 4 Gaines Decl. at ¶ 16.

5 **VIII. PROVISIONAL CLASS CERTIFICATION IS APPROPRIATE**

6 The Named Plaintiff may, at the preliminary approval stage, request that the
 7 Court provisionally approve certification of the class for settlement purposes,
 8 conditioned upon final approval of the settlement. 4 *Newberg* § 11.26 (the court’s
 9 findings “at a preliminary hearing or conference concerning a tentative settlement
 10 proposal . . . may be set out in conditional orders granting tentative approval to the
 11 various items.... These conditional rulings may approve a temporary settlement class,
 12 the proposed settlement, and the class counsel’s application for fees and expenses.”).
 13 Before a court evaluates a settlement under Federal Rule of Civil Procedure 23(e), it
 14 must determine that the settlement class satisfies the requirements enumerated under
 15 Rule 23(a) and at least one of the requirements in Rule 23(b). *Molski v. Gleich*, 318
 16 F.3d 937, 946 (9th Cir. 2003). As discussed below, the proposed class meets all of
 17 the requirements of certification for settlement purposes.

18 **A. FRCP 23(a) Requirements For Class Certification Are Met**

19 Preliminary approval of the Settlement is justified because the class
 20 certification requirements exist for the Settlement Class. Rule 23(a) provides the
 21 factors that the Court looks to for class certification: (1) the class is so numerous that
 22 joinder of all members is impracticable; (2) there are questions of law or fact
 23 common to the class; (3) the claims or defenses of the representative parties are
 24 typical of the claims or defenses of the class; and (4) the representative parties will
 25 fairly and adequately protect the interests of the class. All four of these elements are
 26 satisfied by the proposed class for Settlement purposes.

27 \\\

28 \\\

1 **1. Numerosity**

2 If the class is sufficiently large that joinder of all members is impractical or that
3 individual joinder is impractical, the numerosity requirement is met. *See Cox v.*
4 *American Cast Iron Pipe*, 784 F.2d 1546, 1557 (11th Cir. 1986).

5 The class consists of approximately 63 members. Therefore, joinder of their
6 individual claims would be impractical and the numerosity requirement is satisfied
7 for settlement purposes. Gaines Decl. at ¶ 32.

8 **2. Commonality**

9 The commonality requirement of Rule 23(a) is met if there are common
10 questions of fact and law among the class. *Hanlon*, 150 F.3d at 1019 (“The existence
11 of shared legal issues with divergent factual predicates is sufficient, as is a common
12 core of salient facts coupled with disparate legal remedies within the class”). Here,
13 the Settlement Class Members all seek the same remedies under identical laws, all
14 relating to Defendant’s alleged uniform policies and practices related to overtime
15 wage payment, meal and rest breaks, and expense reimbursement (and derivative
16 claims). Plaintiff submits that the same factual predicates apply to each and every
17 Class Member and the Settlement compensates Class Members for these common
18 claims. Gaines Decl. at ¶ 33. Under these circumstances, the commonality
19 requirement is satisfied for settlement purposes. *Id.* at 1019-20; *see also Cox*, 784
20 F.2d at 1557.

21 **3. Typicality**

22 The typicality requirement of Rule 23(a) is met if the claims of the Named
23 Plaintiff are typical of the class, though “they need not be substantially identical.”
24 *Hanlon*, 150 F.3d at 1020. Factual differences may exist between the class and the
25 Named Plaintiff, provided the claims arise from the same events or course of conduct
26 and are based upon the same legal theories. Moreover, the typicality and
27 commonality elements of Rule 23(a) “tend to merge” because both assess whether the
28 claims of the class and the named plaintiffs are sufficiently interrelated to make class

1 treatment appropriate. *Gen. Tel. Co. of the SW v. Falcon*, 12 S.Ct. 2364, 457 U.S.
 2 147, 157 n. 13 (1982).

3 It is Plaintiff's position that her claims are not only typical of those of all Class
 4 Members – they are identical. Plaintiff Orin alleges that the same employment
 5 policies – the payment of overtime, meal and rest breaks, and expense reimbursement
 6 – were applied to her as they were to each and every Settlement Class Member.
 7 Gaines Decl. at ¶ 34. Plaintiff satisfies the typicality requirement for settlement
 8 purposes because her claims arise from the same factual basis and are based on the
 9 same legal theories as those applicable to all Settlement Class Members. *Welmer v.*
 10 *Syntex* 117 F.R.D. 641, 644 (N.D. Cal. 1987).

11 4. Adequacy of Representation

12 Rule 23(a)(4) requires that the named plaintiff and class counsel fairly and
 13 adequately represent and protect the interests of the class. If the named plaintiff and
 14 class counsel have no interests adverse to the interest of the proposed class members
 15 and are committed to vigorously prosecuting the case on behalf of the class, then the
 16 adequacy requirement is met. *Hanlon*, 150 F.3d at 1020; *see also Griffin v. Carlin*,
 17 755 F.2d 1516 (11th Cir. 1985).

18 Here, Plaintiff Orin has interests directly aligned with all Class Members and
 19 has vigorously prosecuted this case on their behalf. She has no apparent conflicts
 20 with Class Members. She has demonstrated her commitment to prosecute this Action
 21 on their behalf through its conclusion. Gaines Decl. at ¶ 35.

22 Under the proposed Settlement, Ms. Orin will request a modest service
 23 payment – \$10,000 – for her significant time and efforts assisting Class Counsel with
 24 factual issues surrounding the case and for her participation in the litigation. *Id.*

25 Additionally, Plaintiff's counsel are highly experienced litigators, with more
 26 than five decades of litigation experience. As evidenced by the Declaration of Daniel
 27 F. Gaines filed herewith, each of the attorneys working on this matter has substantial
 28 experience prosecuting complex class action cases in the employment context. As

1 such, there is no conflict of interest between the Named Plaintiff, proposed Class
 2 Counsel, and the Settlement Class Members, and the adequacy element is met.
 3 Gaines Decl. at ¶ 34.

4 **B. FRCP 23(b)(3) Requirements for Class Certification are Met**

5 The proposed Settlement Class also meets the requirements of Rule 23(b)(3)
 6 for settlement purposes because: 1) common questions predominate over questions
 7 that affect individual members; and 2) class resolution is superior to other available
 8 methods of adjudication. When assessing predominance and superiority, the Court
 9 may consider that the class will be certified for settlement purposes only. *Amchem*
 10 *Prods., Inc. v. Windsor*, 521 U.S. 591, 618-620 (1997). A showing of manageability
 11 at trial is unnecessary; the dispositive inquiry at this stage is “whether the proposed
 12 classes are sufficiently cohesive to warrant adjudication by representation.” *Id.* at
 13 618-20, 623; *see also Hanlon*, 150 F.3d at 1022.

14 **1. Predominance**

15 The claims of the Settlement Class here are sufficiently cohesive to warrant
 16 certification for purposes of settlement. For settlement purposes, common questions
 17 of fact and law affecting proposed Class Members in this case clearly predominate
 18 over questions that may affect individual members. In analyzing predominance, as
 19 with commonality, “[i]t is not necessary that all questions of fact or law be common,
 20 but only that some questions are common and that they predominate over individual
 21 questions.” *Cox*, 784 F.2d at 1557. Plaintiff submits that the proposed Settlement
 22 Class is sufficiently cohesive because all Settlement Class Members share a common
 23 nucleus of facts and potential legal remedies – the same facts and law govern their
 24 claims; this Court could try their claims in representative fashion by common
 25 evidence regarding Plaintiff’s and Class Members’ claims, and identical law applies.
 26 Few factual issues are individualized to Class Members – the policies applied by
 27 Defendant to all Class Members will drive the resolution of the litigation. All of the
 28 Settlement Class Members seek relief based on the same allegations and factual

1 predicates (e.g. uniform policies and practices relating to overtime payment, meal and
 2 rest breaks, and expense reimbursement). As a result, common questions of law and
 3 fact predominate here. Gaines Decl. at ¶ 38.

4 **2. Superiority**

5 Particularly in the settlement context, class resolution is superior to other
 6 available methods for the fair and efficient adjudication of the controversy. *See*
 7 *Hanlon*, 150 F.3d at 1023. The superiority requirement involves a “comparative
 8 evaluation of alternative mechanisms of dispute resolution.” *Id.* At 1023. Here, as in
 9 *Hanlon*, the alternative method of resolution is individual claims for small amounts of
 10 damages, proving uneconomical for potential plaintiffs because the cost of litigation
 11 dwarfs their potential recovery.

12 Perhaps the most persuasive argument in favor of the superiority of class
 13 treatment here is the relative size of the alleged violations by Defendant; were a class
 14 not certified, many (if not all) Class Members would not bring claims for the
 15 violations alleged, because few are likely to know that CDUSA’s conduct is allegedly
 16 unlawful and few would have the incentive to pursue litigation over these small
 17 claims. As a result, class treatment is a superior method for adjudicating these
 18 claims, and a class action is the preferred method of resolution. Gaines Decl. at ¶ 39.

19 **IX. THE PROPOSED CLASS NOTICE IS APPROPRIATE**

20 **A. The Class Notice Satisfies Due Process**

21 The Class Notice, attached as Exhibit “A” to the Stipulation of Settlement, is
 22 intended to apprise all Class Members of the litigation and their right to claim a share
 23 of the settlement (or opt-out of/object to it). The proposed notice meets the standards
 24 set forth in Rule 23(c)(2)(B) for classes certified under Rule 23(b)(3). All Class
 25 Members are current and former non-exempt CDUSA employees. As such, CDUSA
 26 has a last known address for each Class Member (and the Settlement Administrator
 27 will use traditional methods, such as skip tracing, to update outdated addresses);
 28

1 notice by regular U.S. mail is sufficient and reasonably calculated to provide
2 adequate notice to the Class.

3 The Notice and Settlement administration processes are consistent with those
4 approved by numerous state and federal courts and are, under the circumstances of
5 this case, the best notice practicable.

6 **B. The Proposed Notice is Accurate and Informative**

7 The proposed notice provides information on the meaning and nature of the
8 proposed settlement and Settlement Class, the terms and provisions of the Settlement,
9 the relief the settlement will provide Settlement Class Members, the amount of the
10 proposed service enhancement payment to Ms. Orin, the amount of attorneys' fees
11 and costs that Class Counsel may request, and the date, time and place of the final
12 approval hearing. The notice clearly and accurately describes the nature of the action,
13 the definition of the Settlement Class, and the class claims. *See* Ex. "A" to
14 Stipulation. The notice also informs class members that they may enter an
15 appearance through counsel if they so desire, indicates that the Court will exclude
16 from the class any member who requests exclusion, and explains the binding nature
17 of class judgment under Rule 23(c)(3). *Id.* The notice also provides class members
18 with an opportunity to submit objections to the settlement as required by Rule
19 23(e)(4)(A). *Id.*

20 Further, the notice also fulfills the requirement of neutrality in class notices.
21 *See 2 Newberg* § 8.39. It summarizes the proceedings to date, Plaintiff's allegations,
22 and the terms and conditions of the Settlement, in an informative and coherent
23 manner, in compliance with the *Manual's* mandate that "the notice should be
24 accurate, objective, and understandable to Class Members. . . ." *Manual* (Third) at §
25 30.211. The notice clearly states that the Settlement does not constitute an admission
26 of liability, and recognizes that the Court has not ruled on the merits of the action. It
27 also states that the final Settlement approval decision has yet to be made.
28 Accordingly, the notice complies with the standards of fairness, completeness and

1 neutrality required of a settlement class notice disseminated under authority of the
 2 Court. *See* Fed. R. Civ. P. 23(c)(2), 23(e); 2 *Newberg* §§ 8.21, 8.39; *Manual* (Third)
 3 §§ 30.211, 30.212.

4 **X. A FINAL APPROVAL HEARING SHOULD BE SCHEDULED**

5 The last step in the settlement approval process is the formal fairness hearing,
 6 at which the Court may hear all evidence and argument necessary to evaluate the
 7 Settlement. At that hearing, proponents of the Settlement may explain and describe
 8 its terms and conditions and offer argument in support of Settlement approval, and
 9 members of the Settlement Class, or their counsel, may be heard in support of or in
 10 opposition to the Settlement Agreement. The parties recommend that the hearing be
 11 held at least 110 days after preliminary approval by the Court, which would give the
 12 Parties sufficient time to provide notice to Class Members. No later than the date
 13 notices are mailing to Class Members, Plaintiff will file her application for an award
 14 of attorneys' fees and costs and for the Plaintiff's service payment.

15 **XI. CONCLUSION**

16 The Settlement is fair and reasonable and all of the requirements for
 17 preliminary approval are met. The Court is therefore requested to grant this motion
 18 and enter an order in the form submitted herewith.

19 Dated: December 13, 2023

Respectfully Submitted,

20 GAINES & GAINES, APLC

21
 22 By: /s/ Daniel F. Gaines

23 Daniel F. Gaines, Esq.

24 Alex P. Katofsky, Esq.

25 Attorneys for Plaintiff Lindsay Orin and
 26 Proposed Class Counsel
 27
 28