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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

CYNTHIA ARAUJO, individually, and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act,

Plaintiff,

v.

CHURCH & DWIGHT CO., INC., a Delaware corporation; and DOES 1 through 100, inclusive,

Defendants.

Case No.: CIVSB2320517 [Lead]
[Consolidated Case No. CIVSB2324269]

Assigned for all purposes to:
Hon. Joseph T. Ortiz, Dept. S17

<u>CLASS ACTION</u>

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

[Declarations of Anthony J. Orshansky and Maria Halwadjian and Proposed Order submitted concurrently herewith]

<u>Preliminary Approval Hearing</u>
Date: December 12, 2025
Time: 1:30 p.m.
Dept.: S17

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN that on December 12, 2025, at 1:30 p.m., or as soon thereafter as the matter may be heard before the Honorable Joseph T. Ortiz in Department S17 of the above-captioned court located at 247 West Third St., San Bernardino, CA 92415, Plaintiff Cynthia Araujo ("Plaintiff"), individually, and on behalf of all others similarly situated, will and hereby does move this Court pursuant to Cal. Civ. Proc. Code § 382, California Rules of Court, Rule 3.769(c), and Cal. Lab. Code § 2699(g)(1) for an entry of an order:

1. Preliminarily certifying the proposed class of all current and former non-exempt California employees of Defendant Church & Dwight Co., Inc. ("Defendant") at any time during the Class Period, which is defined as the period from August 25, 2019 to January 31, 2025;

2. Preliminarily appointing Plaintiff as Class Representative for purposes of settlement;

3. Preliminarily appointing CounselOne, PC and Lawyers *for* Justice, PC as Class Counsel for purposes of settlement;

4. Preliminarily approving the settlement as fair, adequate, and reasonable based upon the terms set forth in the Class Action and PAGA Settlement Agreement ("Settlement Agreement") entered into with Defendant, including payment by Defendant of the non-reversionary Gross Settlement Amount of Three Hundred and Seventy-Five Thousand Dollars ($375,000);

5. Preliminarily approving Class Counsel's request for up to one-third (33⅓%) of the Gross Settlement Amount in attorneys' fees, plus reimbursement of actual litigation costs up to $40,000;

6. Appointing CPT Group, Inc. as the third-party Administrator, responsible for, among other tasks, mailing notices of the settlement and overall settlement administration,, and preliminarily approving up to $20,000 be deducted from the Gross Settlement Amount for its expenses;

7. Approving the proposed Court Approved Notice of Class Action Settlement and Hearing Date for Final Court Approval and ordering it be distributed to Class Members and Aggrieved Employees; and

8. Scheduling a hearing to consider whether the settlement should be finally approved and awarding the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, the Class Representative Service Payment, the Administrator Expenses Payment, and the payment of penalties pursuant California's Private Attorneys General Act of 2004, Cal. Lab. Code § 2698 et seq., including payment to the California Labor and Workforce Development Agency and to Aggrieved Employees.

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

Dated: November 26, 2025

Respectfully submitted,

COUNSELONE, PC

By: ______________________

Anthony J. Orshansky
P. Bartholomew Quintans
Attorneys for Plaintiff and the Class

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Cynthia Araujo ("Plaintiff"), on behalf of herself and a putative class of current and former non-exempt employees of Defendant Church & Dwight Co., Inc. ("Defendant") (together with Plaintiff, the "Parties") during the applicable limitations period, seeks preliminary approval of the Class Action and PAGA Settlement Agreement ("Settlement Agreement") entered into with Defendant. If approved, the Settlement Agreement, attached as **Exhibit 1** to the Declaration of Anthony J. Orshansky ("Orshansky Decl.") filed concurrently herewith, will resolve all claims of Plaintiff and participating Class Members, as well as Plaintiff's claims for penalties under the Private Attorneys General Act of 2004 ("PAGA"), Cal. Lab. Code § 2698 et seq. on behalf of herself and all similarly-situated aggrieved employees and the California Labor and Workforce Development Agency ("LWDA").

In this consolidated action, the Parties reached the proposed settlement following an investigation of Plaintiff's claims, an exchange of information, and arm's-length negotiations including a full-day mediation with Kevin T. Barnes, Esq. The settlement entails a non-reversionary payment by Defendant of Three Hundred and Seventy-Five Thousand Dollars ($375,000) ("Gross Settlement Amount"). After deducting an estimated $125,000 for Class Counsel's attorneys' fees, an estimated $40,000 in costs to Class Counsel, a $10,000 Service Payment to Plaintiff, $20,000 for settlement administration expenses, and $40,000 in penalties pursuant to the PAGA, the remaining net settlement amount will be distributed to participating Class Members following the Court's final approval thereof.

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

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II. SUMMARY AND STATUS OF THE LITIGATION

Plaintiff and Class Members[1] were employed by Defendant in California as non-exempt employees. Through this lawsuit, Plaintiff alleged that Defendant: (1) failed to pay overtime wages in violation of Cal. Lab. Code §§ 510 and 1198, and applicable California Industrial Welfare Commission ("IWC") Wage Orders; (2) failed to provide meal periods in violation of Cal. Lab. Code §§ 226.7 and 512, and applicable IWC Wage Orders; (3) failed to provide rest periods in violation of Cal. Lab. Code § 226.7 and applicable IWC Wage Orders; (4) failed to pay minimum wages in violation of Cal. Lab. Code §§ 1194, 1197, and 1197.1, and applicable IWC Wage Orders; (5) failed to pay all wages upon separation of employment, in violation of Cal. Lab. Code §§ 201-202; (6) failed to pay all wages timely, in violation of Cal. Lab. Code § 204; (7) failed to provide accurate itemized wage statements in violation of Cal. Lab. Code § 226(a); (8) failed to maintain required records, in violation of Cal. Lab. Code § 1174(d); (9) failed to reimburse business expenses in violation of Cal. Lab. Code §§ 2800 and 2802; and (10) engaged in unfair competition in violation of Cal. Bus. & Prof. Code § 17200 et seq. *See generally* Complaints in these consolidated actions.

Plaintiff additionally sought recovery of penalties under the PAGA for the foregoing Labor Code violations as to herself and similarly-situated aggrieved employees ("PAGA Members") occurring during the PAGA Period.[2]

A. Procedural History

On June 20, 2023, Class Counsel[3] provided pre-filing written notice to LWDA and by certified mail to Defendant of the above-identified allegations on behalf of Plaintiff and similarly situated aggrieved employees in accord with the PAGA. Halwadjian Decl. ¶ 18 and Exh. A;

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[1] "Class" or "Class Members" are defined as all current and former non-exempt California employees of Defendant at any time during the Class Period. Settlement Agreement ¶ 1.5. "Class Period" is defined as the period from August 25, 2019 to January 31, 2025. *Id.* at ¶ 1.12.

[2] "PAGA Period" is defined as the period from June 20, 2022 to January 31, 2025. *Id.* at ¶ 1.31.

[3] CounselOne, PC ("CounselOne") and Lawyers *for* Justice, PC are referred to herein separately and together for ease of reference as "Class Counsel;" however, the attorneys at Lawyers for Justice, PC were responsible for the initial investigation, notice to the LWDA, and filing of Plaintiff's original complaints. CounselOne associated into the actions for Plaintiff in September 2024. The full details of Lawyers *for* Justice's work is discussed in the concurrently filed Declaration of Maria Halwadjian ("Halwadjian Decl.").

Orshansky Decl. ¶ 24. On August 25, 2023, Plaintiff commenced the instant representative action by filing her Complaint for Enforcement Under the Private Attorneys General Act, California Labor Code section 2698 et seq. On the same day, Plaintiff filed a Class Action Complaint for Damages against Defendant, entitled *Cynthia Araujo v. Church & Dwight, Co. Inc.*, San Bernardino Superior Court Case No. CIVSB2324269. Orshansky Decl. ¶ 25. Pursuant to the Parties' stipulation, the Court consolidated this PAGA action and the related class action on July 11, 2025, with the instant action serving as the lead case. *Id.*

Defendant denies Plaintiff's allegations of wrongdoing. Defendant does not believe that any liability to Plaintiff or other Class Members exists, or that Plaintiff or Class Members are entitled to any recovery. Orshansky Decl. ¶ 27. In settling, Defendant does not admit liability with respect to the alleged claims made by Plaintiff and makes no admission regarding any facts or law related to the lawsuit. *Id.*

B. Discovery and Investigation

Prior to initiating the actions, Class Counsel independently and thoroughly investigated the claims and considered the facts and circumstances underlying the pertinent issues and applicable law. Orshansky Decl. ¶ 23; Halwadjian Decl. ¶ 9. This required thorough discussions and interviews with Plaintiff and other Class Members as well as research into the various legal issues involved in the case. Orshansky Decl. ¶ 23; Halwadjian Decl. ¶ 9. After conducting their initial investigation, Class Counsel determined that the claims were well suited for class and representative action adjudication owing to what appeared to be a common course of conduct affecting a similarly situated group of employees. Orshansky Decl. ¶ 23; Halwadjian Decl. ¶ 9.

Counsel for the Parties agreed to engage in settlement negotiations regarding the actions. Orshansky Decl. ¶ 28; Halwadjian Decl. ¶ 10. The Parties participated in substantial discovery as to the alleged class and PAGA claims, including meeting and conferring over the information and documents; reviewing policies and procedures regarding Defendant's timekeeping protocol, payment of wages, and provision and tracking of meal and rest breaks, along with examining additional employee time and payroll records; interviewing Class Members; and retaining a consultant and building a damages model. Orshansky Decl. ¶ 28; Halwadjian Decl. ¶ 10.

C. Mediation and Settlement

The Parties participated in a full-day mediation with Kevin T. Barnes, Esq., following the exchange of significant information and documents regarding the claims asserted, including employees' time and pay records and Defendant's policies. Orshansky Decl. ¶ 29; Halwadjian Decl. ¶ 12. With the assistance of the mediator, the Parties came to an agreement to settle both the class and PAGA claims across the actions. Orshansky Decl. ¶ 29. The Parties subsequently memorialized these terms in the long-form Settlement Agreement. *Id.*

III. SUMMARY OF THE SETTLEMENT TERMS

From Class Counsel's review of the facts, strengths, and weaknesses of the case, the risks and delays posed by further litigation, and Class Counsel's own prior litigation experience, Class Counsel believe that the recovery being made available to Class Members is fair, reasonable, and adequate taking into consideration the amounts received in other wage and hour class and representative actions, the risks inherent in litigation of this genre, and the reasonable tailoring of each Class Member's claim to the settlement award he or she will receive. Orshansky Decl. ¶ 30. Class Counsel believe that the settlement serves the best interests of Class Members and Aggrieved Employees. *Id.*; Halwadjian Decl. ¶ 20.

Under the terms of the settlement, Defendant agrees to pay the non-reversionary Gross Settlement Amount of Three Hundred and Seventy-Five Thousand Dollars ($375,000) to settle the claims asserted in the actions. The Gross Settlement Amount shall be inclusive of all settlement payments to Participating Class Members (*e.g.*, Class Members who do not opt out of the settlement), Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment, Administrator Expenses Payment to the Administrator, CPT Group, Inc. ("CPT"), and the payment of penalties pursuant to the PAGA, including payment to the LWDA and to Aggrieved Employees, but exclusive of employer federal and state payroll taxes. *See* Settlement Agreement ¶ 1.22; Orshansky Decl. ¶ 5. The amount available for distribution to Participating Class Members is determined by deducting the following from the Gross Settlement Amount:

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- Up to one-third (33⅓%) of the Gross Settlement Amount in attorneys' fees (*i.e.*, $125,000) ("Class Counsel Fees Payment") and up to $40,000 in litigation costs to Class Counsel ("Class Counsel Litigation Expenses Payment");
- Up to $10,000 to Plaintiff as a service payment in recognition of her service as the Class Representative ("Class Representative Service Payment");
- Up to $20,000 to the Administrator to notify members of the Class and administer the settlement ("Administrator Expenses Payment"); and
- $40,000 in penalties pursuant to the PAGA ("PAGA Penalties"), of which is 75% (or $30,000) is allocated to the LWDA ("LWDA Payment"), and 25% (or $10,000) is allocated to Aggrieved Employees.

Settlement Agreement ¶¶ 3.2.1-3.25; Orshansky Decl. ¶ 6. The amount remaining after the foregoing deductions is called the "Net Settlement Amount." *Id.*; Settlement Agreement ¶ 1.28. The entire Net Settlement Amount will be paid out to Participating Class Members. Participating Class Members will automatically receive payments ("Individual Class Payments") without the need to submit a claim form, and Aggrieved Employees shall receive their pro rata share of the 25% of the PAGA Penalties ("Individual PAGA Payments") irrespective of whether they opt out of the class settlement. Orshansky Decl. ¶ 6; Settlement Agreement ¶ 7.5.4.

A. The Settlement Provides for Reasonable Monetary Payments

If all of the estimated 160 Class Members participate (*i.e.*, do not submit a request for exclusion), and assuming hypothetically that distribution was on an individual pro rata basis, then each individual settlement payment would be an estimated $875 per Participating Class Member (not including any additional payment of PAGA penalties for which any given Class Member may also be eligible). Orshansky Decl. ¶ 7. In actuality, each Participating Class Member will receive an Individual Class Payment based on his or her eligible workweeks during the Class Period. *Id.*; *see also* Settlement Agreement ¶ 3.2.4. Administrator will determine each Participating Class Member's Individual Class Payment based on his or her proportionate workweeks worked during the Class Period compared to the total number of workweeks worked by all Participating Class Members during the Class Period. Orshansky Decl. ¶ 7. Each Class Member's estimated workweeks worked shall be identified in the Class Notice. *Id.* If there are any valid and timely Requests for Exclusion as to the class portion of the settlement, the Settlement Administrator shall increase payment distributable to Participating Class Members so that the amount actually distributed to Participating Class Members equals 100% of the Net Settlement Amount allocated toward payment to Participating Class Members. *See* Orshansky Decl. ¶ 7; Settlement Agreement ¶ 3.2.4. In addition, each Aggrieved Employee will receive a proportional share of the 25% of the PAGA Penalties based on his or her eligible pay periods during the PAGA Period. Orshansky Decl. ¶ 8. Specifically, each PAGA Member shall receive their Individual PAGA Payment proportionate to the number of pay periods worked by the PAGA Member during the PAGA Period compared to the total number of pay periods worked by all PAGA Members during the PAGA Period. *Id.*; Settlement Agreement ¶ 3.2.5.1.

As a result of this distribution formula, the consideration paid to each Participating Class Member and Aggrieved Employee is tailored to the impact of Defendant's alleged violations as well to the claims he or she is releasing.[4] Furthermore, a Class Members may submit a written letter to the Administrator disputing the number of workweeks credited if he or she believes that count is inaccurate. *See* Settlement Agreement ¶ 7.6. Finally, any Class Member who prefers to preserve his or her right to pursue relief or seek an alternative recovery may opt out.[5] *See id.* at ¶ 7.5.

B. Class Representative Service Payment; Attorneys' Fees and Costs

As part of the settlement, Plaintiff will apply for a service payment at the time of seeking final approval in the amount of $10,000 for her services as the Class Representative, as well as for providing a general release of claims subject to a waiver of rights under Cal. Civ. Code § 1542. *See* Settlement Agreement ¶¶ 3.2.1; 5.1; Orshansky Decl. ¶ 9. "[I]ncentive awards are fairly typical in class action cases . . . and are intended to compensate class representatives for work done on behalf of the class [and] to make up for financial or reputational risk undertaken in bringing the action." *In*

[4] The Parties agreed to allocate 20% of each Individual Class Payment to wages, and 80% of each Individual Class Payment to interest, penalties, and other non-wage damages. *See* Settlement Agreement ¶ 3.2.4.1.

[5] Again, if approved, PAGA Members will receive Individual PAGA Payments irrespective of whether they opt-out of the class settlement. Orshansky Decl. ¶ 6; Settlement Agreement ¶ 7.5.4.

re Cellphone Fee Termination Cases, 186 Cal. App. 4th 1380, 1393-94 (2010). Plaintiff's requested Service Payment is intended to recognize the significant benefits conferred upon the Class and be proportional to the time and effort that Plaintiff expended on behalf of Class Members and Aggrieved Employees, including providing factual information and documents to Class Counsel, discussing the claims and theories at issue in the case with Class Counsel, identifying potential witnesses and reviewing documents, participating in the mediation, and reviewing the Settlement Agreement, as well as the significant risks Plaintiff undertook by agreeing to serve as a named plaintiff. Orshansky Decl. ¶ 10.

At the time of seeking final approval, Class Counsel will apply for an attorneys' fees award of up to one-third (33⅓%) of the Gross Settlement Amount and reimbursement of litigation costs in an amount up to $40,000 (again, "Class Counsel Fees Payment" and "Class Counsel Litigation Expenses Payment"). *See* Settlement Agreement ¶ 3.2.2; Orshansky Decl. ¶ 11. The fee award will be split between the two firms as follows: fifty percent (50%) to CounselOne, and fifty percent (50%) to Lawyers *for* Justice, PC. *Id.* Plaintiff has approved this fee split in writing. *Id.* Plaintiff submits that the requested fee is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent fee basis. *Id.* at ¶ 12; Halwadjian Decl. ¶ 16. Class Counsel have devoted substantial attorney time to: pre-filing investigation; analyzing Plaintiff's claims; conducting legal research and analysis; meeting and conferring over pre-mediation information and data; reviewing policies and procedures regarding Defendant's timekeeping protocol, payment of wages, and provision and tracking of meal and rest breaks, along with examining a sample of actual employee time records, payroll information, and wage statements; interviewing Class Members; retaining a consultant and building a damages model; preparing, briefing, and attending mediation; preparing and submitting notice to the LWDA; negotiating and preparing the Settlement Agreement and Class Notice; preparing and filing the Complaints in the actions; preparing this motion for preliminary approval; and otherwise litigating the case. *Id.* Class Counsel will also expend future attorney time in attending the hearing on this Motion, overseeing the notice and administration process, drafting the Final Approval Motion and supporting documents, and attending the Final Approval hearing, among other tasks, such as addressing questions from Class Members. Orshansky Decl. ¶ 13; Halwadjian Decl. ¶¶ 10-12, 16.

Both California and federal courts have recognized that an appropriate method for awarding attorneys' fees in class actions is to award a percentage of the "common fund" created as a result of the settlement. *See Laffitte v. Robert Half International, Inc.*, 1 Cal. 5th 480, 506 (2016) ("the percentage of fund method survives in California class action cases"); *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 254 (2001) (recognizing both the "percentage of recovery" and "lodestar/multiplier" methods). Historically, courts have awarded percentage fees in the range of 20% to 50%, depending on the circumstances of the case. *See* 4 A. Conte & H. Newberg, *Newberg on Class Actions* § 14.6 (4th Ed. 2002) ("No general rule can be articulated on what is a reasonable percentage of a common fund. Usually 50% of the fund is the upper limit on a reasonable fee award from a common fund in order to assure that the fees do not consume a disproportionate part of the recovery obtained for the class, although somewhat larger percentages are not unprecedented."); *Banda v. Verizon California, Inc.*, L.A. Cty. Super. Court Case No. BC434587 (35% fee awarded on $15,000,000 settlement of mixed PAGA/class claims); *Birch v. Office Depot*, U.S. District Court, S.D. Cal. Case No. 06-cv-1690-DMS (40% fee awarded on $16,000,000 settlement of mixed PAGA/class claims); *Zelada v. Majestic Terminal Services*, San Bernardino Cty. Super. Court Case No. CIVDS1916968 (38% fee awarded on $1,800,000 settlement of PAGA-only claims).

Class Counsel submit that their request for attorneys' fees is reasonable when viewed as an overall percentage of the settlement amount in light of the substantial risks and significant work undertaken, the excellent results obtained for the Class Members, and the efficiency with which the Parties have conducted the litigation. Orshansky Decl. ¶ 14; Halwadjian Decl. ¶16. Assuming that the Court grants preliminary approval, Class Counsel will seek an award of attorneys' fees and litigation costs at the time of seeking final approval of the settlement. Orshansky Decl. ¶ 14.

IV. CERTIFICATION FOR SETTLEMENT PURPOSES IS APPROPRIATE

Express judicial policy favors maintaining wage and hour actions as class actions. *Prince v. CLS Transp., Inc.*, 118 Cal. App. 4th 1320, 1328 (2004); *Richard v. Dart Industries, Inc.*, 29 Cal. 3d 462 (1981) (finding that California public policy "encourages the use of the class action device").

Any doubt as to the appropriateness of class treatment should be resolved in favor of class certification, subject to later modification if necessary. *Id.* at 473-75. The decision to certify a class is purely a procedural one, and should be based on the allegations in the operative complaint, and not in the perceived factual or legal merit of the class claims. *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 439-41 (2000).

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

A. There is an Ascertainable and Sufficiently Numerous Class

Whether a class is ascertainable is determined by examining the class definition, the size of the class and the means available for identifying class members. *See Vasquez*, 4 Cal. 3d at 821-22; *Reyes v. Bd. of Supervisors*, 196 Cal. App. 3d 1263, 1271 (1987); *Miller v. Woods*, 148 Cal. App. 3d 862, 873 (1983). Class members are "ascertainable" where they may be readily identified without unreasonable expense or time.

Here, the class definition is "precise, objective and presently ascertainable." *Sevidal v. Target Corp.*, 189 Cal. App. 4th 905, 919 (2010). Class Members are comprised of all current and former non-exempt California employees of Defendant at any time during the Class Period, which is defined as the period from August 25, 2019 to January 31, 2025. Settlement Agreement ¶¶ 1.5, 1.12. Defendant is required to and does maintain employment records of such persons, including contact information and social security numbers. Orshansky Decl. ¶ 75. Documents and information exchanged reflect a class of approximately 160 non-exempt employees during the relevant period. *Id.* As a result, the proposed Class satisfies the ascertainability and numerosity requirements. *See, e.g.*, *Rose v. City of Hayward*, 126 Cal. App. 3d 926, 934 (1981) (stating that "[n]o set number is required as a matter of law for the maintenance of a class action," and citing examples where classes as little as 10 (*Bowles v. Superior Court*, 44 Cal. 2d 574 (1955)), and 28 (*Hebbard v. Colgrove*, 28 Cal. App. 3d 1017 (1972)) were upheld); *see also Collins v. Rocha*, 7 Cal. 3d 232 (1972) (finding a class of 44 farm workers sufficiently numerous).

B. There is a Well-Defined Community of Interest

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

1. Common Issues of Law and Fact Predominate

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

Here, common issues of fact and law predominate as to each of the claims alleged by Plaintiff and Class Members. This litigation is predicated on uniform company policies and systemic top-down business practices revolving principally around Defendant's timekeeping and pay practices—*e.g.*, unpaid wages due to off-the-clock work attributed to common job duties and unreasonable work schedule demands, and failure to pay meal and rest break premiums despite records depicting non-compliance and practices resulting in interruption, etc., and unreimbursed business expenses—as well as derivative inaccurate wage statements and pay owed upon separation. Orshansky Decl. ¶ 77. These allegations have given rise to Plaintiff's claims in the operative Complaints for unpaid wages, premiums for improper meal and rest breaks, reimbursement of business expenses, restitution, liquidated damages, penalties for improper wage statements, waiting time penalties, civil penalties pursuant to the PAGA, injunctive and other equitable relief, prejudgment interest, and attorneys' fees and costs. *Id.* at ¶¶ 25-26.

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

2. Plaintiff's Claims Are Typical of the Claims of the Settlement Class

The typicality requirement is satisfied where class representatives have claims that are typical of the rest of the class. *B.W.I. Custom Kitchen*, 191 Cal. App. 3d at 1347. Here, Plaintiff's claims are typical of those held by members of the proposed Class. Like other Class Members, Plaintiff was a non-exempt employee working for Defendant in California during the Class Period. Orshansky Decl. ¶ 79. Like other Class Members, Plaintiff alleged she was not paid for all hours worked due to being required to work off the clock (*i.e.*, pre-/post-shift duties and interrupted meal periods); did not receive timely and duty-free meal and rest breaks, and was not paid premiums for non-compliant meal and rest breaks; did not receive accurate itemized wage statements; was not paid all wages and premiums owed upon termination; and incurred necessary business expenses without reimbursement. *Id.* Plaintiff was therefore impacted by the same challenged policies and practices that allegedly injured the Class as a whole and subject to the same defenses raised by Defendant as to the Class, and her claims therefore are typical. *Id.*

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3. Plaintiff and Her Counsel Meet the Adequacy Requirements

The adequacy of representation requirement examines conflicts of interest between named parties and the class(es) they seek to represent. *Capitol People First v. State Dep't of Developmental Servs.*, 155 Cal. App. 4th 676, 697 (2007). Here, Plaintiff will adequately represent the settlement class, as there are no conflicts between the Plaintiff and the Class she seeks to represent. Orshansky Decl. ¶ 80; *see McGhee v. Bank of America*, 60 Cal.App.3d 442, 450 (1976) (finding adequacy satisfied where there was no indication that plaintiff's counsel were not qualified and the named plaintiff had no interests antagonistic to those of the proposed class). Class Counsel also have extensive experience in wage and hour litigation, and are thus adequate to represent Plaintiff and the Class. Orshansky Decl. ¶¶ 80, 70-74; Halwadjian Decl. ¶¶ 2-7.

C. A Class Action is Superior to a Multiplicity of Litigation

In making its class certification decision, the court must determine that a class action would be superior to alternative means for the fair and efficient adjudication of the litigation. By consolidating many individual actions into a single proceeding, this Court's use of the class action device enables it to manage this litigation in a manner that serves the efficiency interests of the litigants and the judicial system. Absent class treatment, the only alternative would be to force numerous employees to file individual actions. *Sav-On Drug Stores, Inc. v. Superior Court*, 34 Cal. 4th 319, 339 n.10 (2004) (stating "[t]he relevant comparison lies between the costs and benefits of adjudicating plaintiffs' claims in a class action and the costs and benefits of proceeding by numerous separate actions—*not* between the complexity of a class suit that must accommodate some individualized inquiries and the absence of any remedial proceeding whatsoever.") (emphasis in original). Finally, in the context of settlement, the superiority concerns are essentially non-existent. Orshansky Decl. ¶ 81.

V. THE TWO-STEP APPROVAL PROCESS

Any settlement of class action litigation must be reviewed and approved by a court. This is accomplished in two steps: (1) an early (preliminary) review by the trial court, and (2) a detailed review after the notice has been distributed to the class members for their comments or objections. "A court may preliminarily approve a settlement and direct notice to the class if '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.'" *Draney v. Westco Chems., Inc.*, No. 2:19-cv-01405-ODW (AGRx), 2021 U.S. Dist. LEXIS 187250, at *11 (C.D. Cal. Sep. 29, 2021) (citing *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007)).

The preliminary approval of the class action settlement by the trial court is simply a conditional finding that the settlement appears to be within the range of acceptable settlements. *See, e.g.*, 4 A. Conte & H. Newberg, *Newberg on Class Actions*, § 11.25 (4th Ed. 2002); *North County Contractor's Assn., Inc. v. Touchstone Ins. Services*, 27 Cal. App. 4th 1085, 1094-95 (1994). A review of the preliminary approval criteria demonstrates a substantial basis for granting the preliminary approval requested by this Motion and proceeding to a full settlement hearing.

VI. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE

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

In sum, the settlement here is fair because it offers payment to each Participating Class Member for releasing his or her claims, extinguishes the risk of litigation, and provides a fair and adequate distribution of the settlement proceeds whereby the Net Settlement Amount is allocated to Participating Class Members proportionally based on his or her respective number of eligible workweeks worked during the Class Period.

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A. The Settlement is Entitled to a Presumption of Fairness

Courts presume the absence of fraud or collusion in the negotiation of a settlement unless evidence to the contrary is offered. In short, there is a presumption that the negotiations were conducted in good faith. *See* 4 A. Conte & H. Newberg, *Newberg on Class Actions* § 11.51 (4th Ed. 2002); *Rodriguez v. West Publ. Corp.*, 2007 U.S. Dist. LEXIS 74767, at *24-25 (C.D. Cal. August 10, 2007); *In re Chicken Antitrust Litigation*, 560 F. Supp. 957, 962 (N.D. Ga. 1980); *Priddy*, 883 F.2d at 447; *Mars Steel Corp. v. Cont'l Ill. Nat'l Bank & Tr. Co.*, 834 F.2d 677, 681 (7th Cir. 1987). Courts do not substitute their judgment for that of the proponents, particularly when settlement has been reached by experienced counsel familiar with the litigation. *Rodriguez*, 2007 U.S. Dist. LEXIS 74767, at *24. As detailed at length in the accompanying declaration of counsel, the settlement is the result of extensive settlement negotiations between the Parties, conducted at arm's length, and informed by substantial factual and legal investigations. Orshansky Decl. ¶ 23-30.

1. Negotiations were at Arm's Length Before a Respected Mediator

The Parties participated in a full-day mediation session with Kevin T. Barnes, Esq. Orshansky Decl. ¶ 29. Mr. Barnes is a highly experienced class action mediator. *Id.* With the assistance of the mediator, and pursuant to a mediator's proposal, the Parties agreed to resolve the matter and reached the terms of the proposed arm's-length settlement. *Id.*

2. Investigation was Sufficient to Allow Counsel to Act Intelligently

Class Counsel independently and thoroughly investigated the claims and considered the facts and circumstances underlying the pertinent issues and applicable law. Orshansky Decl. ¶ 23. This required thorough discussions and interviews with Plaintiff and other Class Members as well as research into the various legal issues involved in the case. *Id.* After conducting their initial investigation, Class Counsel determined that the claims were well suited for class action adjudication owing to what appeared to be a common course of conduct affecting a similarly situated group of employees. *Id.* Class Counsel have devoted substantial attorney time to: pre-filing investigation; analyzing Plaintiff's claims; conducting legal research and analysis; meeting and conferring over pre-mediation information and data; reviewing policies and procedures regarding Defendant's timekeeping protocol, payment of wages, and provision and tracking of meal and rest breaks, along with examining a sample of actual employee time records, payroll information, and wage statements; interviewing Class Members; retaining a consultant and building a damages model; preparing, briefing, and attending mediation; preparing and submitting notice to the LWDA; negotiating and preparing the Settlement Agreement and Class Notice; preparing and filing the Complaints in the two actions; preparing this motion for preliminary approval; and otherwise litigating the case. *Id.* at ¶ 12; Halwadjian Decl. ¶ 10.

3. Class Counsel Are Experienced in Similar Litigation

Class Counsel believe that the settlement is fair and reasonable and serves the best interests of the Class Members. Orshansky Decl. ¶ 30; Halwadjian Decl. ¶ 20. Although the recommendations of counsel proposing the class settlement are not conclusive, the Court can properly take these recommendations into account, particularly if counsel have been involved in litigation for some period of time, appear to be competent, have experience with this type of litigation, and significant discovery has been completed. *See* 4 A. Conte & H. Newberg, *Newberg on Class Actions* § 11.47 (4th Ed. 2002). Here, Plaintiff is represented by competent and experienced counsel who possess extensive experience litigating wage and hour class actions and have been appointed as class counsel in numerous cases alleging similar claims. Orshansky Decl. ¶¶ 70-74; Halwadjian Decl. ¶¶ 2-7.

B. The Settlement is Fair, Reasonable, and Adequate

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

1. The Strength of Plaintiff's Case

Class Counsel carefully vetted the claims at issue to arrive at a comprehensive damages model for Defendant's liability. Orshansky Decl. ¶ 31. Although Plaintiff steadfastly maintains that her claims are meritorious, she acknowledges that there are substantial risks and uncertainty in proceeding with class certification and trial. *Id*. As explained in further detail below, Defendant presented numerous defenses to Plaintiff's claims, both on the merits and with respect to class certification. *Id.* For example, Defendant defended against the minimum and overtime wage claims by relying on written policies that explicitly prohibited Class Members from engaging in off-the-clock work. *Id.* at ¶ 32. Defendant also argued that Class Members worked in different job positions and had different duties, and as a result, Defendant contended there was variation to the circumstances that raised highly individualized questions of fact. *Id.*

Although Plaintiff was prepared to litigate these claims through class certification and, ultimately, through trial, given the substantial amount offered in settlement, Class Counsel predicted that it was far from certain that Plaintiff would be able to recover a greater amount at trial, particularly after considering the increased litigation costs that would accrue. Orshansky Decl. ¶ 35. Thus, this factor supports preliminary approval of the settlement.

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

Absent settlement, the Parties would have needed to conduct substantial additional discovery, such as the production of voluminous records and numerous depositions of experts and percipient witnesses, and prepare the case for class certification and trial. Orshansky Decl. ¶ 33. The Parties would have had to depose a number of people such as managers, supervisors, human resource representatives, and employees in order to establish liability. *Id.* Discovery disputes would have no doubt arisen and liability likely would have entailed a battle of experts. *Id.* This settlement avoids the considerable time, attorneys' fees and costs, and party resources associated with conducting additional discovery, moving for class certification and potentially summary judgment or adjudication, and ultimately, trial, as well as the risks and the accompanying burden of continued litigation on the Court. *Id.* Thus, this factor supports preliminary approval of the settlement.

3. Risk of Maintaining Class Action Status

Here, settlement was reached prior to class certification and the result was a successful outcome for the Class. Orshansky Decl. ¶ 34. Yet, class certification was by no means a foregone conclusion. *Id.* For example, as noted above, Class Members worked in different job positions and had different supervisors, and as a result, Defendant contended there was variation to the circumstances that could allegedly cause the employees to work off-the-clock and/or be deprived of the opportunity to take legally compliant, duty-free meal and rest periods, and this variation in circumstances raised highly individualized questions of fact. *Id.* Defendant further disputed Plaintiff's characterization of working conditions, liability, and damages, and possessed documentary and testimonial evidence rebutting Plaintiff's allegations. *Id.* If the Court either denied class certification or later decertified it, the Class would recover nothing and Class Members would be forced to retain their own counsel and proceed on the basis of individual claims only. *Id.* Here, Class Members may avoid each of the risks described and receive substantial monetary benefits, which also weighs in favor of preliminary approval.

4. Amount Offered in Settlement Given Realistic Value of Claims

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

Plaintiff's estimate of the settlement recovery is a reasonable percentage of possible recoverable damages at trial. Based on data received before and during mediation, Plaintiff's damages analysis shows that the settlement reflects approximately 21.4% of the estimated maximum realistic damages recoverable at trial. Orshansky Decl. ¶ 36. Utilizing a class-wide damages study to assess the nature and magnitude of the claims in question (*see Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 123 (2008)), this case clearly meets the requirements that the class settlement is within the "ballpark" of reasonableness. This settlement provides a fair and reasonable monetary recovery for the Class in the face of disputed claims. Orshansky Decl. ¶ 36.

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Unpaid Wages

Plaintiff alleged that she and other employees were subjected to uncompensated time arising from pre- and post- shift duties, along with interrupted meal periods, that were worked off the clock due to unreasonable workloads. Orshansky Decl. ¶ 38. 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." *Brinker Rest. Corp. v. Sup. Ct.*, 53 Cal. 4th 1004 (2012).

Class Counsel analyzed the documents and data produced by Defendant, and, in conjunction with interviews of Plaintiff and Class Members, determined Defendant's potential degree of liability and amounts due in damages—specifically, the incidence and amount of purported off-the-clock activity. Orshansky Decl. ¶ 39. Notwithstanding the obvious evidentiary challenge of quantifying unrecorded off-the-clock hours, Plaintiff estimated that Defendant is liable for an average of approximately 30 minutes of unpaid time per workweek. *Id.* at ¶ 40. At an estimated overtime rate of $35.78, such yields an estimated damages amount of $321,975. *Id.*

Defendant contended that Plaintiff's claim for off-the-clock work and reporting-time pay is not amenable to class treatment because employees worked in a variety of job positions with different requirements, and it would require an unmanageable series of mini-trials to determine how much time was spent without pay. Orshansky Decl. ¶ 41. Further, in terms of merit defenses, Defendant vigorously disagreed with Plaintiff's theories regarding how much off-the-clock work occurred in reality and the credibility of those claimed hours given Defendant's express written policies to the contrary. *Id.* Here, the failure to track all hours poses evidentiary difficulties because it is hotly contested how much off-the-clock work actually occurred. *Id.* For Plaintiff to establish the quantity of specific disputed and unrecorded work activities—especially over multiple job titles, at differing pay rates—would have been costly, time-consuming, and daunting. *Id.*

Defendant further contended that any off-the-clock time is de minimis. Orshansky Decl. ¶ 42. Plaintiff countered that such defense lacks viability in light of *Troester v. Starbucks Corp.*, 5 Cal. 5th 829 (2018) given that the California Supreme Court refused to allow the de minimis defense to insulate Starbucks from having to pay employees for small amounts of work regularly performed off-the-clock. Orshansky Decl. ¶ 42. What is not clear, however, is to what extent the de minimis defense would apply where the uncaptured hours were associated with an occasionally recurring activity. *Id.*

Meal and Rest Period Violations

On February 25, 2021, in *Donohue v. AMN Services, LLC*, 11 Cal. 5th 58 (2021), 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 long stance 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. *Id.* at 70. Pursuant to IWC Wage Order No. 4-2001, § 7(A)(3), an "employer shall keep accurate information with respect to each employee including the following . . . [t]ime records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded." Under California law, employers, not employees, have the burden to record and maintain accurate time records. The California Supreme Court in *Donohue* also reiterated that it is the employer's duty to maintain accurate time records for meal periods. *See* 11 Cal. 5th at 81.

Plaintiff's review of employee time and pay data suggests Defendant's non-compliance. Orshansky Decl. ¶ 43. Records indicate that meal periods were occasionally "missed," "short," or "late." *Id.* Consequently, Plaintiff alleged that Defendant violated Cal. Lab. Code §§ 226.7 and 512, as well as the applicable IWC Wage Orders, by failing to compensate Plaintiff and Class Members for short, late, interrupted, and missed meal periods. Orshansky Decl. ¶ 43.

Defendant, however, contended that it had practices, policies, and procedures to provide meal and rest breaks every workday to its employees that fully complied with the law. Orshansky Decl. ¶ 45. Defendant vehemently argued that it complied with the requirements articulated by the California Supreme Court in *Brinker*, 53 Cal. 4th 1004. Orshansky Decl. ¶ 45. Specifically, Defendant maintained that it provided employees with a reasonable opportunity to take timely meal periods of at least 30 minutes, relieved employees of all duties during meal periods, and relinquished control over employees' activities. *Id.* Like most employers facing meal period litigation, Defendant argued that employees were apprised of their right to take meal periods, but voluntarily waived them. *Id.* Defendant also contended that the issue of voluntary waiver would necessarily devolve into a series of individualized mini-trials, precluding class certification. *Id.*; *see Duran v. U.S. Bank Nat'l Ass'n*, 59 Cal. 4th 1, 25 (2014) (holding that the defendant must be provided an opportunity to litigate affirmative defenses, even when they turn on individual questions). Finally, Defendant showed that it had paid thousands of meal period premiums, suggesting it had made efforts to comply with California law in this regard. Orshansky Decl. ¶ 45. Thus, although Plaintiff argues that Defendant had an impermissible top-down practice of requiring Class Members to work during meal breaks, in light of its written policies and other evidence suggesting an intent to follow those policies, establishing the alleged unlawful business practice as a rule rather than exception might prove daunting. *Id*.

Based upon analysis of Class Member time and payroll records, and estimating an average of one meal period violation per workweek, Plaintiff calculated the potential maximum exposure of this claim to be approximately $429,300 (*i.e.*, one meal premium owed per workweek over approximately 18,000 workweeks at an average hourly rate of $23.85), without taking into account associated risks to proving the claim on a class-wide basis as discussed above in section VI(B)(1). Orshansky Decl. ¶ 46.

Plaintiff also alleged that she and Class Members did not receive authorized rest breaks as required, whereby employers "relinquish control over how employees spend their time and relieve employees of all duties." *Augustus v. ABM Security Service, Inc.*, 2 Cal. 5th 257, 260 (2016); *see* Orshansky Decl. ¶ 47. Since Defendant did not offer Plaintiff and the Class the opportunity to receive compliant off-duty rest periods, Plaintiff contended that "the court may not conclude employees voluntarily chose to skip . . . breaks." *Alberts v. Aurora Behavioral Health Care*, 241 Cal. App. 4th 388, 410 (2015) ("If an employer fails to provide legally compliant meal or rest breaks, the court may not conclude employees voluntarily chose to skip those breaks."); *accord*, *Brinker*, 53 Cal. 4th at 1033 ("No issue of waiver ever arises for a rest break that was required by law but never authorized; if a break is not authorized, an employee has no opportunity to decline to take it."); *see also Cicairos v. Summit Logistics, Inc.*, 133 Cal. App. 4th 949, 963 (2005) (reversing summary judgment for employer based, in part, on evidence that truck drivers "felt pressured" not to take rest breaks, and management knew some drivers were not taking breaks); *see* Orshansky Decl. ¶ 47.

Plaintiff also did not receive rest break premium payments for all non-compliant rest breaks, nor is there evidence that Defendant made all rest break premium payments to Class Members. Orshansky Decl. ¶ 48. Thus, Plaintiff alleged that Defendant did not provide premium pay for each non-compliant rest break as required under Cal. Lab. Code § 226.7.

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 Cal. Lab. Code § 226.7. Orshansky Decl. ¶ 49. Defendant explained that Class Members had ample opportunity to take, and did take, regular rest breaks. *Id.* As with meal breaks, Defendant argued that any Class Member who failed to take a rest break, or took a short or late rest period, did so voluntarily and that all applicable rest periods were still authorized and provided. *Id.* Thus, Defendant argued that it did not act unlawfully to deprive Class Members of rest breaks. *Id.*

Unlike meal periods, rest breaks need not be recorded, and thus establishing Defendant's exertion of pressure, control, and resulting violations is likely to be more difficult. Orshansky Decl. ¶ 50. As such, and based on the narrative of Plaintiff, Class Counsel used half of the maximum exposure for meal breaks, thus yielding an estimated realistic maximum exposure of $214,650 attributable to rest break liability. *Id.*

<u>Unreimbursed Expenses</u>

Plaintiff alleged a cause of action under Cal. Lab. Code § 2802(a), which requires that an employer reimburse employees for all necessary expenditures that employees incur in discharging their duties. Orshansky Decl. ¶ 51. Here, Plaintiff alleged Defendant's failure to reimburse non-exempt employees for necessary business expenses incurred, *i.e.*, Plaintiff and Class Members were required to use their personal cell phones for job-related purposes, but were not reimbursed for such use, and Plaintiff also had to pay out-of-pocket for safety glasses required by Defendant. *Id.*

Defendant contended that it has a policy and practice of reimbursing employees for necessary business-related expenses. Orshansky Decl. ¶ 52. Defendant also contended that, with respect to the alleged expenses for which Plaintiff and other Class Members never requested reimbursement from Defendant, Defendant did not know and had no reason to know that the alleged business-related expenses were incurred. *Id.* Moreover, to the extent it occurred, Defendant asserted that this claim is not suitable for class treatment as it would require individualized determinations as to whether each employee used a personal cell phone for work-related purposes and, if so, how much of that use was a reasonable percentage of his or her individual monthly phone bill. *Id.*

Defendant also argued that the California Labor Code only requires reimbursement of "necessary" expenses—as opposed to any expense that is incurred in the course of performing work—and argued that distinguishing a necessary expense from an unnecessary one would require individualized inquiry. Orshansky Decl. ¶ 53; *see also* Cal. Lab. Code § 2802; *Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal. 4th 554 (2007). Furthermore, whether an expense was necessary would depend in part on the reasonableness of the employee's choice and would thus have to be established by way of extensive individual factual inquiry and/or statistical evidence. *Cochran v. Schwan's Home Services, Inc.*, 228 Cal. App. 4th 1137 (2014).

With recognition that this claim is difficult to certify class-wide and quantify in terms of damages, Plaintiff assigned a de minimis value to this claim. Orshansky Decl. ¶ 54.

<u>Derivative Wage Statement Violations</u>

Plaintiff alleged a cause of action under Cal. Lab. Code § 226(a) for Defendant's failure to provide accurate itemized wage statements. Orshansky Decl. ¶ 55. Failure to comply with the statute entitles employees to recover the greater of all actual damages or fifty dollars ($50) for the initial pay period in which a violation occurs and one hundred dollars ($100) for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars ($4,000). *See* Cal. Lab. Code § 226(e). This cause of action is derivative of the foregoing causes of action because if Defendant did not provide minimum and overtime wages for all hours worked, owe premiums for non-compliant meal and rest breaks, unreimbursed expenses, and so forth, then the wage statements were inevitably inaccurate.

Defendant contended, however, that Cal. Lab. Code § 226(e) penalties are not automatic. Orshansky Decl. ¶ 56. Rather, the employee must show that Defendant's non-compliance was "knowing and intentional." *Id*. Defendant suggested that any non-compliance was not knowing and intentional, demonstrated by, for example, its payment of meal period premiums and compliant wage-and-hour policies. *Id.*

Because the damages for this cause of action are penalties, the statute of limitations is only one year prior to the filing of the original complaint. *See* Cal. Civ. Proc. Code § 340. For settlement purposes, and in consideration of the risks of a loss on the merits of the underlying derivative claim(s) and/or good faith defense,[6] a significant downward departure from any maximum exposure was and is warranted. Orshansky Decl. ¶ 57. In reality, many of the pay periods may ultimately have been found to contain no violation at all. The Parties discussed these issues and, based on the $50 initial violation plus the $100 per pay period subsequent violation rates, Plaintiff estimated the maximum realistic wage statement exposure to be $413,350. *Id.*

<u>Derivative Waiting Time Violations</u>

Plaintiff further asserted a purely derivative cause of action against Defendant for failure to timely pay all wages due employees at separation. *See* Cal. Lab. Code §§ 201-203. As with other claims, Defendant vigorously disagreed that it engaged in any conduct giving rise to liability or entitlement to recovery of penalties. Orshansky Decl. ¶ 58. Defendant argued that waiting time penalties are not appropriate because it attempted to pay employees all final wages owed in good faith upon employees' separation, thereby precluding a finding of willfulness necessary to obtain waiting time penalties. *Id.* at ¶ 59. After the Parties discussed the above risks and the uncertainty of

[6] *See, e.g.*, *Naranjo v. Spectrum Security Services, Inc.*, 15 Cal. 5th 93 (2022). In 2023, the Court of Appeals, re-visiting *Naranjo* on remand, substantiated such good faith arguments because penalties for missed meal rest breaks were not clearly established law until the May 2022 California Supreme Court decision. *See Naranjo v. Spectrum Security Services, Inc*., 88 Cal. App. 5th 937 (2023). 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.*, 15 Cal. 5th 1056 (2024).

proving the underlying claims, Class Counsel estimated $372,060 to be the maximum exposure value for this claim. *Id.* at ¶ 57.

<u>Derivative PAGA Penalties</u>

The Parties exchanged sufficient data and information such that the potential liability and exposure to PAGA penalties could be analyzed. Orshansky Decl. ¶ 61. The success of Plaintiff's PAGA claim is wholly dependent upon the success of the underlying claims occurring within the one-year statute of limitations applicable to the PAGA. *Id.* Defendant contended that these penalties are derived from the underlying wage and hour violations discussed above, which Defendant disputed. *Id.*

Defendant maintained and continues to maintain that it had legally compliant employment policies and practices throughout the statutory period. Orshansky Decl. ¶ 62. Defendant denied and continues to deny that it ever violated any provision of the California Labor Code and argued that, even assuming such violations occurred, Defendant will not be treated as having engaged in subsequent violations giving rise to heightened penalties. *Id.* In other words, Defendant argued that heightened civil penalties for subsequent violations would not be assessed unless it could be shown that Defendant had notice that it was violating the law—*e.g.*, it had been cited by a labor agency or adjudged by a court to have done so. *Id.*; *see, e.g.*, *Amaral v. Cintas Corp.*, 163 Cal. 4th 1157, 1209 (2008). Thus, Defendant contended that, at best, even if a violation giving rise to a penalty was shown for each pay period, only the lower civil penalty associated with initial violations would apply. Orshansky Decl. ¶ 62.

Moreover, Defendant asserted that before a PAGA claim could be tried, the court of law would have to be satisfied that the adjudication of the PAGA claim, based on a theory of uniform wage and hour practices relating to a large group of aggrieved employees is sufficiently "manageable" so as not to interfere with Defendant's right to due process. Orshansky Decl. ¶ 63. Defendant reiterated how hourly employees' job duties, managers, and work hours varied. *Id.* at ¶ 64. Defendant contended that there was variation as to the circumstances that could allegedly cause employees to work off-the-clock or to be deprived of the opportunity to take legally compliant, duty-free meal and/or rest periods. *Id.* Defendant further opined that these issues presented challenges not only to liability but also to Plaintiff's ability to show that a PAGA claim could be efficiently and manageably adjudicated without abridging Defendant's due process rights. *Id.* Defendant also maintained that the Court has discretion to reduce any award of PAGA penalties where it views them as duplicative. *Id.* at ¶ 65; *see* Cal. Lab. Code § 2699(e)(2) (the Court may "award a lesser amount than the maximum civil penalty amount [authorized by PAGA] if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.").[7] Although, strictly speaking, class certification requirements are not required to be satisfied in order to adjudicate a PAGA claim, Defendant maintained that the state of the law with respect to the adjudication and valuation of a PAGA claim is uncertain.[8] In *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504, 517 (2018), for example, a court imposed PAGA penalties of just $5 per instance of proven wage-and-hour violations following its determination of liability, noting that the "violations were minimal and [the employer] attempted full compliance with California's meal period requirements." In *Fleming v. Covidien, Inc.*, No. EDCV-10-01487-RGK-OP, 2011 U.S. Dist. LEXIS 154590, at *9 (C.D. Cal. Aug. 12, 2011), a

[7] PAGA was recently amended to modify, and in many instances, significantly reduce, the penalties available to aggrieved employees, making the proposed settlement even more substantial. However, these amendments are not retroactive; they apply only to LWDA letters and PAGA civil actions filed on or after June 19, 2024. *See* Cal. Lab. Code § 2699(v). The analysis in this Motion therefore applies the pre-amendment standards for PAGA penalty and settlement analysis.

[8] Instead, what is clear is that the purpose of the PAGA is not to generate revenue for the State but rather to facilitate the enforcement of the labor laws. *See*, *e.g.*, *Williams v. Superior Court*, 3 Cal. 5th 531, 546 (2017); *Arias v. Superior Court*, 46 Cal. 4th 969, 986 (2009); Cal. Lab. Code § 2699(i). In assessing the adequacy of the recovery under a PAGA claim, the focus is not the amount which the LWDA and the aggrieved employees are to receive formally in the form of monetary civil penalties but instead whether the total settlement amount achieves the PAGA's objectives. When PAGA claims are settled, courts "consider whether the proposed PAGA settlement is fair and adequate in view of the purposes and policies of the statute[]," and those "purposes and policies include benefit[ting] the public by augmenting the state's enforcement capabilities, encouraging compliance with California Labor Code provisions, and deterring noncompliance." *O'Connor v. Uber Techs., Inc.*, 201 F. Supp. 3d 1110, 1132-33, 1134 (N.D. Cal. 2016). A "[c]ourt does not review the PAGA allocation in isolation, but rather reviews the settlement as a whole, to determine whether it is fundamentally fair, reasonable and adequate, with primary consideration for the interests of absent class members." *O'Connor v. Uber Techs., Inc.*, No. 13-CV-03826-EMC, LWDA's Comments on Proposed PAGA Settlement, ECF No. 736 at 4:17-19 (N.D. Cal. July 29, 2016). "PAGA penalties must be evaluated in terms of their public policy objective and not just through the prism of what private relief has been sought or obtained." *Id.* at 4:14-16.

federal court reduced PAGA penalties from $2,800,000 to $500,000, a reduction of over 80%, because the court found maximum penalties "unjust," finding the employees had suffered no injuries. Some trial courts have actually awarded ***no*** civil penalties, even when Labor Code violations were established. *See Makabi v. Gedalia*, No. B261005, 2016 Cal. App. Unpub. LEXIS 1489, at *5-7 (Mar. 2, 2016) (no PAGA penalties were awarded by the Los Angeles County Superior Court); *In re Taco Bell Wage & Hour Actions*, No. 1:07-cv-01314-SAB, 2016 U.S. Dist. LEXIS 48557, at *40-43 (E.D. Cal. Apr. 8, 2016) (PAGA penalties denied after trial). In *Cotter v. Lyft, Inc.*, 176 F. Supp. 3d 930, 941 (N.D. Cal. 2017), the court found a significant reduction of the PAGA claim would be appropriate because "[t]his does not appear to be a case where a company has deliberately sought to evade the law." Here, Defendant can state a strong case that, as the court concluded in *Cotter*, its efforts to devise compliant operational policies do not indicate an organization that has deliberately sought to evade the law. Orshansky Decl. ¶ 66. This is a significant risk factor for Plaintiff. Defendant also disputed that Plaintiff could find a coherent method for proving liability for various employees working in different departments and/or job positions. *Id.*

Moreover, the LWDA has released data on PAGA settlement amounts, showing that the settlement secured by Plaintiff here is greater than other PAGA penalty awards approved by California state courts. These settlements often range between $7,500 and $15,000 for PAGA claims impacting hundreds or thousands of individuals, resulting in much lower PAGA penalty payments on a per capita basis. *See, e.g.*, *Penaloza v. PPG Industries Inc.*, No. BC471369, 2013 WL 2917624, at *2 (Super. Ct. L.A. County May 20, 2013) (approving PAGA penalties of $5,000.00 to class of 667 members); *Cabrera v. Advantage Sale & Marketing, LLC*, No. BC485259, 2013 WL 1182822 (Super. Ct. L.A. County March 12, 2013) (approving PAGA penalties of $10,000.00 for class of approximately 3,000 members).

Thus, Class Counsel applied discounts for the risks in manageably trying the PAGA claims, possible bifurcation of discovery and/or trial, the risks regarding success on the merits and establishing liability, and the risks with proving the extent of penalties that are warranted and possible discretionary reduction of penalties by the Court. Orshansky Decl. ¶ 68. Given the challenges and risks in attempting to prove wide-scale liability as well as the likelihood that any penalties imposed would be significantly discounted, Class Counsel calculated a realistic estimate of $40,000 in potential PAGA penalty exposure—of which, by statute, only 25%, or $10,000, would be recoverable by PAGA Members. *Id.*

Summary

Using the estimated figures for each of the claims described above, Class Counsel predicted that approximately $1,751,335 would be the maximum possible damages available to Class Members. The Gross Settlement Amount of $375,000 thus represents 21.4% of the maximum realistic exposure to Defendant, while avoiding the further expense and serious risk of proceeding toward class certification and trial. Orshansky Decl. ¶ 69. "The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved." *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1242 (9th Cir. 1998) (internal quotations omitted); *see also, e.g.*, *Altamirano v. Shaw Industries, Inc.*, 2015 WL 4512372, at *9 (N.D. Cal. 2015) (preliminarily approving wage and hour class action settlement stating, "[a]lthough 15% represents a modest fraction of the hypothetical maximum recovery estimated by Plaintiff, that figure is sufficient for the Court to grant preliminary approval given the merits of Plaintiff's claims."). Taking into account the risk of non-certification, failure to prevail on the merits, and the Court's power to reduce the civil penalties, the proposed settlement falls within the realm of being fair, reasonable, and adequate.

VII. PROPOSED NOTICE PROVIDES ADEQUATE NOTICE TO THE CLASS

This Court should order distribution of the Class Notice (*see* Orshansky Decl. ¶ 82 and Exh. 1 [Settlement Agreement] at internal Exhibit A) to the Class by first class U.S. mail, postage prepaid, using the last known mailing address information provided by Defendant. This manner of giving notice is the "best notice practicable" under the circumstances because it provides "individual notice to all members who can be identified though reasonable effort." *Eisen v. Carlisle and Jacqueline*, 417 U.S. 156, 173 (1974). Here, the Parties jointly propose that the settlement be administered by CPT, an experienced class action settlement administrator. *See* Settlement Agreement ¶ 7.1; Orshansky Decl. ¶ 83. Class Members' addresses will be ascertainable through Defendant's personnel and payroll records, which Defendant will provide to the Administrator within 15 calendar days after preliminary approval of the settlement. Settlement Agreement ¶ 4.2. The Administrator will run all addresses through the National Change of Address database and, to the extent that any notices are returned, will conduct further skip traces to obtain current address information. *Id.*

The content of the proposed notice satisfies California Rules of Court, Rule 3.766(d) because it advises Class Members and Aggrieved Employees of the nature of the claims, basic contentions and denials of the Parties, the key terms of the settlement, the uniform 45-day deadline (plus an additional 14 days for those whose notices are re-mailed) to submit a workweek dispute, or request for exclusion/opt-out or object to the class settlement, and the procedure by which to do so, and explains the recovery formula and credited number of workweeks and pay periods for each Class Member and Aggrieved Employee. The proposed notice will also notify Class Members of the final approval hearing date, provide the contact information for Class Counsel, and advise Class Members that they may enter an appearance through counsel if they wish. This manner of giving notice satisfies California Rules of Court, Rule 3.766(e) as the best notice practicable under the circumstances. Thus, the proposed method of notice is reasonably calculated to reach Class Members by the best means practicable and should be approved.

VIII. THE COURT SHOULD SET A FINAL APPROVAL HEARING

Finally, this Court should set a hearing for final approval of the settlement on a date appropriately scheduled to follow the deadline by which Class Members must opt-out or object to the settlement. *See* California Rules of Court, Rule 3.769.

IX. CONCLUSION

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

1. Preliminarily approving the Settlement Agreement as fair, reasonable, and adequate;
2. Preliminarily approving the form and content of the Class Notice;
3. Provisionally certifying the Settlement Agreement's proposed Class comprised of the Class Members identified during the Class Period under Cal. Civ. Code § 382 for settlement purposes only;

4. Appointing Plaintiff as the Class Representative;

5. Appointing CounselOne, PC and Lawyers *for* Justice, PC as Class Counsel;

6. Appointing CPT as the Administrator;

7. Setting a date for the Final Approval Hearing; and

8. For any further relief the Court deems just and proper.

Dated: November 26, 2025

Respectfully submitted,

COUNSELONE, PC

By: ______________________________

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