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12
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 FOR THE COUNTY OF SANTA CLARA

15 ANDREW TREJO BACA; CHRISTOPHER
16 FRANCESCHI, on behalf of themselves and all
17 others similarly situated, and the general public,

18 *Plaintiffs,*

19 v.

20 AIRPORT APPLIANCE, INC., a California
21 corporation; AIRPORT HOME APPLIANCE, a
22 business entity of unknown form; and DOES 1
through 50, inclusive,

23 *Defendants.*

Case No. 23CV421926

[Assigned for all purposes to the Hon.
Theodore C. Zayner, Dept. 19]

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

Date: July 30, 2025

Time: 1:30 p.m.

Dept: 19

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1 **TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on July 30, 2025, at 1:30 p.m., or as soon thereafter as
3 the matter may be heard in Department 19 of the above-entitled court, located at 161 North First
4 Street, San Jose, California 95113, Plaintiffs Christopher Franceschi and Andrew Trejo Baca
5 (“Plaintiffs”) will hereby move the Court for an order granting Plaintiffs’ Motion for Preliminary
6 Approval of Class Action Settlement. In this unopposed motion, Plaintiffs seek the entry of an
7 order to: (1) preliminarily approve the proposed settlement of this class action; (2) certify a class
8 for settlement purposes only and appoint Bartz Law Group, APC, United Employees Law Group,
9 P.C., and D.Law, Inc. as class counsel for settlement purposes only (hereinafter “Class
10 Counsel”); (3) approve the substance, form, and method to provide class-wide notice; (4) direct
11 that notice of the proposed settlement be given to all Class Members; and (5) schedule a hearing
12 at which time the following will be considered: (i) the request for final approval of the proposed
13 settlement; (ii) the entry of the Final Judgment; and (iii) approval of Class Counsel’s motion for
14 attorneys’ fees and costs, and Plaintiffs’ enhancement awards.

15 This Motion is based upon this Notice, the attached Memorandum of Points and
16 Authorities, the Declarations of Aaron Bartz, Walter Haines, David Keledjian, Christopher
17 Franceschi, Andrew Trejo Baca, and Jonathan Paul, all documents and records on file in this
18 action, and on such other further oral and documentary evidence as may be given at the hearing
19 on this Motion.

20 Dated: March 4, 2025

BARTZ LAW GROUP, APC
UNITED EMPLOYEES LAW GROUP, P.C.

21 /s/Aaron A. Bartz

22 AARON A. BARTZ

23 Attorneys for Plaintiff CHRISTOPHER
24 FRANCESCHI and all others similarly
25 situated
26
27
28

1 Dated: March 4, 2025

D.LAW, INC.

2
3 /s/ David Keledjian

4 Emil Davtyan

5 David Yeremian

6 David Keledjian

7 David Arakelyan

8 Attorneys for Plaintiff

9 ANDREW TREJO BACA, and the putative
10 class

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Cases

Amaral v. Cintas Corp. No. 2

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Ansari v. New York Univ.

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

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

Bell v. Farmers Ins. Exch.

(2004) 115 Cal. App. 4th 715 20

Bernstein v. Virgin America, Inc.

(9th Cir. 2021) 3 F.4th 1127 10

Bluford v. Safeway, Inc.

(2013) 216 Cal.App.4th 864 8

Brinker Restaurant Corp. v. Superior Court

(2012) 53 Cal. 4th 1004 7

Cartt v. Superior Court

(1975) 50 Cal. App. 3d 960 21

Cicairos v. Summit Logistics, Inc.

(2005) 133 Cal. App. 4th 949 7

Classen v. Weller

(1983) 145 Cal.App.3d 27 15

Clothesrigger, Inc. v. GTE Corp.

(1987) 191 Cal.App.3d 605 14

Cochran v. Schwan's Home Serv., Inc.

(2014) 228 Cal. App. 4th 1137 11

Collins v. Rocha

(1972) 7 Cal.3d 232 15

Dilts v. Penske Logistics, LLC

(S.D. Cal. 2010) 267 F.R.D. 625 7

Donohue v. AMN Services

(Cal. 2021) 11 Cal.5th 58 7

Dunk v. Ford Motor Co.

(1996) 48 Cal.App.4th 1794 5, 16, 17

EEOC v. Printing Indus., Inc.

(D.D.C. 1981) 92 F.R.D. 51 14

Ferra v. Loews Hollywood Hotel, LLC

(2021) 11 Cal.5th 858 9

Fleming v. Covidien, Inc.

(C.D. Cal. 2011) 2011 WL 7563047 12

Gattuso v. Harte-Hanks Shoppers, Inc.

(2007) 42 Cal.4th 554 11

Gautreaux v. Pierce

(7th Cir. 1982) 690 F.2d 616 16

Glass v. UBS Fin. Servs.

(N.D. Cal. 2007) 2007 WL 221862 18

Hanlon v. Chrysler Com.

(9th Cir. 1998) 150 F.3d 1011 19

Harris v. Vector Mktg. Corp.

(2009) 656 F.Supp.2d 1128 10

Hurst v. Buczek Enters., LLC

(N.D. Cal. 2012) 870 F.Supp.2d 810 10

In re Ampicillin Antitrust Litigation

(D.D.C. 1981) 526 F.Supp. 494 20

In re Cellphone Fee Termination Cases

(2010) 186 Cal. App. 4th 1380 20

In re Kirschner Med. Corp. Sec. Litig.

(D. Md. 1991) 139 F.R.D. 74 14

In re Tea Station Inv.

(C.D. Cal. 2021) 2021 Bankr. LEXIS 2985, at *22. 9

In re Wash. Public Power Supply System Sec. Litig.

(D. AZ 1989) 720 F. Supp. 1379 18

Jaimez v. DAIOHS USA, Inc.

(2010) 181 Cal. App. 4th 1286 7

Kullar v. Footlocker Retail Inc.

(2008) 168 Cal.App.4th 116 5

L.A. Fire & Police Protective League

(1972) 23 Cal.App.3d 67 15

Linder v. Thrifty Oil Co.

(2000) 23 Cal. 4th 429 13, 14

1	<i>Naranjo v. Spectrum Security Servs., Inc.,</i>	
2	(2022) 13 Cal.5th 93	10, 11, 12
3	<i>Officers for Justice v. Civil Service Com’n</i>	
4	(9th Cir. 1982) 688 F.2d 615	16, 17
5	<i>Philadelphia Housing Authority v. American Radiator & Standard Sanitary Corp.</i>	
6	(E.D. Pa. 1970) 323 F.Supp. 364.....	16, 21
7	<i>Richmond v. Dart Industries</i>	
8	(1981) 29 Cal.3d 462	13, 14
9	<i>Sav-On Drug Stores, Inc. v. Superior Court</i>	
10	(2004) 34 Cal.4th 319	14, 15
11	<i>Serrano v. Priest</i>	
12	(1977) 20 Cal.3d 25	20
13	<i>Slaven v. BP America, Inc.</i>	
14	(C.D. Cal. 2000) 190 F.R.D. 649.....	14
15	<i>Stephens v. Montgomery Ward & Co., Inc.</i>	
16	(1987) 193 Cal.App.3d 411	15
17	<i>Thurman v. Bayshore Transit Mgmt., Inc.</i>	
18	(2012) 203 Cal.App.4 th 1112	12
19	<i>Vaquero v. Stoneledge Furniture LLC</i>	
20	(2017) 9 Cal.App.5th 98	8
21	<i>Vincent v. Hughes Air West, Inc.</i>	
22	(9th Cir. 1977) 557 F.2d 759	20
23	<i>Wershba v. Apple Computer, Inc.</i>	
24	(2001) 91 Cal. App. 4th 224	17

Statutes

California Code of Civil Procedure § 382	13
California Labor Code § 201	11
California Labor Code § 202	11
California Labor Code § 203	11
California Labor Code § 226	8, 9, 10, 12
California Labor Code § 510	6, 9
California Labor Code § 512	7, 12
California Labor Code § 1194	6, 12
California Labor Code § 2699	5, 12
California Labor Code § 2802	11

Other Authorities

DLSE 2002 Enforcement Policies & Interpretations Manual.....	6
H. Newberg & A. Conte, <i>Newberg on Class Actions</i> (3d ed. 1992).....	16, 17, 20
J. Moore, <i>Moore's Federal Practice</i> (2003).....	17
<i>Manual for Complex Litigation</i> , Fourth (2004)	16, 20
<i>Manual of Complex Litigation</i> , Second (1985).....	17
Matthew Bender, <i>Moore's Federal Practice</i> (3d ed. 1999).....	14

Federal Rules

Fed. R. Civ. Proc. 23.....	17
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1 **I. INTRODUCTION**

2 This class action and PAGA settlement is sought on behalf of approximately 555 current
3 and former non-exempt hourly employees who worked in California for Defendant Airport
4 Appliance, Inc. (“Defendant”), between September 5, 2019 and November 22, 2024.

5 The case arises out of Plaintiffs’ allegations that Defendant violated California’s wage
6 and hour laws, including failing to pay all wages owed and overtime, failing to authorize and
7 permit meal and rest periods, failing to pay Plaintiffs and the class members at the regular rate of
8 pay for overtime, meal and rest period premiums, failing to reimburse class members for
9 necessary business expenses, and failing to properly maintain and submit wage statements.

10 After conducting formal and informal discovery since 2023, and attending an all-day
11 Mediation, the parties have agreed to a non-reversionary, all-in common fund settlement of **\$1.8**
12 **million**. (See Declaration of Aaron A. Bartz (“Bartz Decl.”), **Exhibit A**.) The net amount to be
13 paid to class members (after payment of class counsel fees and expenses, settlement
14 administration costs, Private Attorneys General Act (“PAGA”) penalties to the LWDA, and
15 Plaintiffs’ enhancement awards), is approximately **\$1.01 million**. Each class member’s share of
16 the settlement is based on each of their eligible number of workweeks, and shall receive, on
17 average, approximately \$1,819. So long as the class members do not opt out of the settlement,
18 they will receive a settlement payment. For purposes of this settlement only, the parties agree
19 that the proposed Settlement Class satisfies each of the requirements of Code of Civil Procedure
20 section 382. The settlement is fair, reasonable, and confers a substantial monetary benefit to the
21 entire class. Accordingly, Plaintiffs request that the court grant preliminary approval of the Joint
22 Stipulation of Class Action and PAGA Settlement and Release (“Settlement Agreement”)
23 submitted herewith (see Bartz Decl., Exhibit A) conditionally certify the Settlement Class,
24 approve the proposed Notice of Pendency of Class Action Settlement and Final Hearing, and set
25 a hearing date for final settlement approval.

26 **II. PRE-TRIAL PROCEEDINGS AND SETTLEMENT**

27 **A. Procedural History**

28 Plaintiff Christopher Franceschi (“Franceschi”) worked for Defendant as a salesperson
between 2020 and 2023. Plaintiff Andrew Trejo Baca (“Baca”) worked for Defendant in 2022 as
a forklift operator.

1 On July 3, 2023, Plaintiff Franceschi, on behalf of himself and all other aggrieved
2 employees of Defendant, served a Private Attorneys General Act (PAGA) letter, alleging various
3 Labor Code violations, including: (1) failure to pay all wages, including minimum wages,
4 straight time wages, and overtime compensation; (2) failure to provide meal periods; (3) failure
5 to authorize and permit rest periods or provide compensation in lieu thereof; (4) failure to timely
6 pay all wages owed; (5) waiting time penalties; (6) failure to reimburse expenses; and (7) failure
7 to properly maintain and submit accurate itemized wage statements. (Attached as **Exhibit B** to
8 the Bartz Decl. is a true and correct copy of the PAGA letter served on July 3, 2023.) On
9 September 19, 2023, Plaintiff Franceschi filed a class action Complaint in the Alameda Superior
10 Court alleging similar claims as alleged in his PAGA letter.

11 On September 5, 2023, Plaintiff Baca filed a class action Complaint in this Court for
12 Failure to Indemnify and a claim under the Unfair Competition Law, and thereafter on
13 November 9, 2023, Plaintiff Baca filed a First Amended Complaint adding claims under the
14 PAGA against Defendant.

15 On December 9, 2024, the parties filed a Stipulation and Order to file a Second Amended
16 Class and Representative Action Complaint, and later filed the operative Second Amended Class
17 and Representative Action Complaint on December 19, 2024. (Attached as **Exhibit C** to the
18 Bartz Decl. is a true and correct copy of Plaintiffs' Second Amended Class and Representative
19 Action Complaint.)

20 **B. Investigation and Discovery**

21 After filing their cases, Plaintiffs served formal discovery on Defendant, and Defendant
22 produced a 40% representative sampling of class payroll and timekeeping records. Thereafter,
23 the parties agreed to attend Mediation, and Defendant produced additional class and PAGA
24 discovery responsive to Plaintiffs' discovery requests.

25 Plaintiffs also hired wage and hour damages consultants at EconOne to analyze
26 voluminous payroll and related wage data and create a damages model for the various claims
27 alleged in the case. Based upon the analysis of the time records and payroll data, EconOne and
28 Class Counsel were able to calculate damage estimates on a class-wide basis.

The parties did not attend Mediation in this matter until more than one year into the
litigation, and the above discovery had been completed. In advance of Mediation, Defendant
produced detailed spreadsheets showing, among other things, the total number of putative class

1 members, the total number of former employees, their dates of employment, their average rates
2 of pay, the total number of workweeks year by year, time records for putative class members, all
3 meal and rest break premiums paid to the putative class members, and the corresponding rates of
4 pay for the premiums. Class Counsel thoroughly reviewed, investigated, and analyzed this
5 information in collaboration with their expert consultants at EconOne. This informal discovery
6 process occurred over a period of several months and involved extensive meet and confer efforts
7 between counsel for the parties.

8 On September 25, 2024, the parties attended a full-day Mediation before the Hon. Brian
9 C. Walsh (Ret.), and did not settle until late in the evening on the day of the Mediation, after
10 many hours of tense and hard-fought negotiations. Several more months were necessary to
11 negotiate the specific long form Settlement Agreement, which was finalized and entered into in
12 December 2024.

13 **C. The Operative Settlement Terms And Plan of Allocation**

14 The class members entitled to the settlement fund are grouped into two categories: (1) all
15 current and former non-exempt salespersons working for Defendant (“Salesperson Group”); (2)
16 all current and former non-exempt employees who worked for Defendant excluding those
17 employees within the Salesperson Group (“Non-Exempt Employee Group”). The Class Period is
18 between September 5, 2019 and November 22, 2024. There are approximately 555 class
19 members according to Defendant’s employment records.

20 The settlement fund is all in (except for the employer’s share of payroll taxes, which
21 Defendant shall pay in addition to the \$1.8 million settlement), there is no claim form
22 requirement, and no residual will revert to Defendant. Class members will be paid as long as they
23 do not opt out of the settlement. If a Class Member opts out, their share of the Net Settlement
24 Amount will be allocated to other members of the Settlement Class. In the event a class member
25 does not negotiate his or her settlement check, the claims administrator will forward the monies
26 to Legal Aid at Work, thereby leaving no “unpaid residue” subject to the requirements of Code
27 of Civil Procedure section 384, subd. (b).

28 The payment to the Class Members will be characterized eighty percent (80%) interest
and penalties, and twenty percent (20%) wages. The class administrator will issue W-2
statements for the wage portion of the settlement, and a form 1099 for all amounts paid as
penalties and interest.

1 Based upon Class Counsel's independent analysis and investigation in this matter, the
2 Settlement Class will be compensated based on each member's respective number of workweeks
3 during the Class Period.¹

4 Based on the settlement terms, there will be an approximate net settlement fund of
5 **\$1,010,000**. Subject to Defendant's review and calculation of precise class member data after
6 preliminary approval, the class member payouts are, on average, approximately as follows: (1)
7 \$3,074 to each member of the Salesperson Group; and (2) \$932 to each member of the Non-
8 Exempt Employee Group, with the overall average recovery of approximately \$1,819 per class
9 member. In exchange for their payment, the class members will release Defendant from any and
10 all claims, known or unknown, contingent or accrued, arising out of the operative facts alleged in
11 the lawsuit. The named Plaintiffs will, in addition to releasing claims alleged in the lawsuit, give
12 a general release of all claims pursuant to Civil Code section 1542.

13 The parties further agree to appoint an experienced claims administrator, Xpand Legal
14 Consulting, LLC, to prepare and send notice to the class, receive and process objections, and
15 prepare and mail settlement checks to Settlement Class Members. The claims administrator will
16 conduct skip-tracing for any Settlement Class Member whose address cannot be found.

17 The all-in settlement fund will also include all of the attorneys' fees and costs allowed by
18 this Court. The attorneys' fees shall not exceed thirty-five percent of the \$1.8 million settlement
19 fund, or \$630,000. Defendant will also pay class counsel's costs, not to exceed \$30,000.00, as
20 well as settlement administration costs not to exceed \$15,000, out of the common fund.

21 The PAGA allocation of the settlement is \$90,000, of which \$67,500 (75%) will be
22 distributed to the Labor Workforce and Development Agency (LWDA), with the remaining
23 portion - \$22,500 (25%) - going to PAGA Members (all allegedly aggrieved persons who
24

25 ¹ The parties have allocated the settlement such that the Salesperson Group
26 receives 70% of the Net Settlement Amount, the Non-Exempt Employee Group receives 30% of
27 the Net Settlement Amount. This allocation is justified because the Salesperson Group had
28 "regular rate" and failure to pay rest period premiums based on their commission agreements,
which were not at issue with the Non-Exempt Employee Group. The Salesperson Group's
average hourly wage was also higher than the Non-Exempt Employee Group because they
received commissions. (See Bartz Decl., ¶ 14.)

1 worked for Defendant as non-exempt employees in California, at any time from July 3, 2022
2 through November 22, 2024).

3 The settlement also includes Plaintiffs' class representative enhancements. Based on
4 Plaintiffs' work in connection with this case, including connecting Class Counsel with other
5 witnesses, meeting and conferring with Class Counsel regarding legal strategies, and assisting
6 with developing the claims and theories in this case, and attending Mediation, Plaintiffs seek a
total of \$25,000: Franceschi seeks \$15,000, and Plaintiff Baca seeks \$10,000.

7 **In summary, the settlement fund is allocated as follows:**

- 8 (1) Class member compensation totaling approximately \$1,010,000;
9 (2) Attorney's fees and costs: \$630,000 in attorneys' fees and up to \$30,000 in
10 costs.
11 (3) Settlement administrator expenses not to exceed \$15,000.
12 (4) PAGA payment to the LWDA: \$90,000.
13 (5) Class representative enhancements of \$25,000 for the named Plaintiffs.

14 **III. FACTUAL AND LEGAL BACKGROUND**

15 Plaintiffs' Second Amended Class and Representative Action Complaint alleges claims
16 for 1) Failure to Pay All Wages; 2) Failure to Provide Meal Periods; 3) Failure to Authorize and
17 Permit Proper Rest Periods; 4) Failure to Pay Meal and Rest Break Premiums at the Proper
18 Regular Rate of Pay; 5) Failure to Properly Maintain and Submit Itemized Wage Statements;
19 6)Waiting Time Penalties; 7) Unfair Business Practices; 8) Failure to Reimburse Expenses; and
20 8) Violation of Labor Code § 2699 (PAGA). Plaintiffs further allege that they and the Class are
entitled to damages, restitution, wages, attorneys' fees, and interest, among other remedies.

21 Pursuant to *Kullar v. Footlocker Retail Inc.*, 168 Cal.App.4th 116 (2008) and *Dunk v.*
22 *Ford Motor Co.*, 48 Cal.App.4th 1794 (1996), the following describes the settlement's
23 reasonableness. Plaintiffs recognize the expense and length of continued proceedings necessary
24 to continue the litigation against Defendant through trial and through any possible appeals.
25 Plaintiffs have also taken into account the uncertainty and risk of denial of motion for class
26 certification and the uncertain outcomes resulting from further litigation, and the difficulties and
27 delays inherent in such litigation. Plaintiffs are also aware of the burdens of proof necessary to
28 establish liability for the claims asserted in this case, Defendant's defenses thereto, and the
difficulties in establishing damages for the Plaintiffs and Class Members.

1 Based on the foregoing, Plaintiffs have determined that the settlement is a fair, adequate
2 and reasonable settlement and is in the best interests of the Class Members. The reasonable
3 exposure and the reasonable settlement value for each of the alleged claims are as follows:

4 **1. Unpaid Wages**

5 Plaintiffs allege that Defendant failed to pay employees for all overtime hours worked
6 based on Defendant's failure to pay the regular rate of pay to salespersons for commissions
7 earned. California Labor Code § 510(a) and the IWC Wage Orders regulating payment of wages
8 in the state of California, provide that eight (8) hours of labor constitutes a day's work and any
9 work in excess of eight (8) hours in one (1) workday and any work in excess of forty (40) hours
10 in any one workweek shall be compensated at the rate of no less than one and one-half times the
11 regular rate of pay for each employee and any work in excess of twelve (12) hours in any one
12 workday shall be compensated at the rate of no less than twice the regular rate of pay for each
13 employee. Plaintiffs contend that Defendant miscalculates the regular rate, by among other
14 things, failing to properly include items of remuneration when determining the employees'
15 regular rate. Plaintiff contends that Defendant is therefore in violation of Labor Code § 510 and
16 1194, and the relevant California Industrial Welfare Commission Orders. Pursuant to California
17 law, a commission paid on a weekly basis is added to the employee's other earnings for that
18 workweek and the total is divided by the total number of hours worked in the workweek to
19 obtain the employee's regular hourly rate for the particular workweek. (29 CFR § 778.118; see
20 also DLSE 2002 Enforcement Policies & Interpretations Manual, §§ 49.1.2-49.2.1.3).

21 Defendant disputes Plaintiffs' claims, alleging that it paid the proper regular rate of pay,
22 and that in any event, salespersons employed regularly earned at least 50% of their pay through
23 commissions, and were therefore exempt from overtime.

24 Plaintiffs and their expert analyzed payroll and time records for the class members and
25 calculated that the regular rate claim is worth approximately **\$604,000**. This claim only affected
26 the Salesperson Group, and in arriving at the damages calculation, Plaintiffs' expert reviewed
27 payroll records for the Salesperson Group, including pay period counts per year, commissions
28 earned, and a weighted average of rate of pay. Based on Defendant's defenses, including that
salespersons may be exempt in pay periods where they earned at least 50% of their pay due to
commissions, the Plaintiffs placed a reasonable settlement value of the unpaid wages claim at
sixty percent of the total verdict value, or **\$362,400**. This valuation takes into consideration

1 Plaintiffs' counsels' analysis of the law, and evidence produced by the Defendant. (Bartz Decl.,
2 ¶ 21.a.).

3 **2. Meal and Rest Period Claims**

4 a. Meal period liability and damages

5 Plaintiffs contend that Defendant fails to provide duty-free meal periods to Plaintiffs and
6 the class members, who suffered short, late and missed meal periods on a regular basis.

7 Plaintiffs' expert analyzed each pay period for any meal violation (i.e. short, late, missed) and
8 calculated 28.5% violation rate on shifts with at least one (1) violation.

9 In *Brinker Restaurant Corp. v. Superior Court*, 53 Cal. 4th 1004 (2012), the California
10 Supreme Court held that "under ... Labor Code section 512, subdivision (a), an employer must
11 relieve the employee of all duty for the designated period but need not ensure that the employee
12 does no work" during the meal period. *Brinker*, 53 Cal. 4th at 1034. However, "...an employer
13 may not undermine a formal policy of providing meal breaks by pressuring employees to
14 perform their duties in ways that omit breaks. *Cicairos v. Summit Logistics, Inc.*, 133 Cal. App.
15 4th 949, 962–963 (2005); *see also Jaimez v. DAIOHS USA, Inc.*, 181 Cal. App. 4th 1286, 1304–
16 1305 (2010) [proof of common scheduling policy that made taking breaks extremely difficult
17 would show violation]; *Dilts v. Penske Logistics, LLC*, 267 F.R.D. 625, 638 (S.D.Cal.2010)
18 [indicating informal anti-meal-break policy "enforced through 'ridicule' or 'reprimand' " would
19 be illegal].) The wage orders and governing statute do not countenance an employer's exerting
20 coercion against the taking of, creating incentives to forego, or otherwise encouraging the
21 skipping of legally protected breaks." *Brinker*, 53 Cal. 4th at 1040.

22 Moreover, in *Donohue, supra*, the Court held that at both the class certification and
23 summary judgment stage, when time records show short, missed, and late meal periods, there is a
24 presumption that an employer violated California's meal period requirements. *See Donohue,*
25 *supra*, 11 Cal.5th at 78 ("If time records show noncompliant meal periods, then a rebuttable
26 presumption of liability arises.")

27 Plaintiffs allege that the failure to provide meal periods here was particularly acute, given
28 that there was no evidence that Defendant paid meal period premiums at all during the class
period.

Defendant, on the other hand, contends that it has fully compliant meal period policies,
and that its objective records reflect strict compliance with California's meal period

1 requirements. Further, Defendant believes that the meal period claim cannot be certified because
2 of the existence of individualized issues as to the why meal periods were not taken, among other
3 reasons.

4 Class Counsel and their expert calculated the maximum verdict value of the meal break
5 claims to be approximately **\$1 million**. This calculation is based on the assumption that each
6 late, missed or short meal period was the result of Defendant's interference with Plaintiffs' and
7 the class members abilities to take duty-free meal periods. Accordingly, Class Counsel and their
8 expert determined a total violation rate for the class members, and average rate of pay based on
9 the payroll data for the class. Based on discussions with Plaintiffs and interviews of other class
10 members, and the fact that Defendant has facially compliant meal period policies, Plaintiffs
11 believe they had a fifty percent probability of recovering all of these damages. Accordingly,
12 Plaintiffs contend the reasonable exposure of the meal break claim is approximately **\$500,000**.
(Bartz Decl., ¶ 21.b.i.).

13 b. Rest period liability and damages

14 *Labor Code* § 226.7(b) provides that "[a]n employer shall not require an employee to
15 work during a meal or rest or recovery period mandated under an applicable statute, or applicable
16 regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and
17 Health Standards Board, or the Division of Occupational Safety and Health."

18 Section 12(A) of the IWC Wage Order(s) states: "Every employer shall authorize and
19 permit all employees to take rest periods, which insofar as practicable shall be in the middle of
20 each work period. The authorized rest period time shall be based on the total hours worked daily
21 at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However,
22 a rest period need not be authorized for employees whose total daily work time is less than three
23 and one-half (3½) hours. Authorized rest period time shall be counted as hours worked for which
24 there shall be no deduction from wages."

25 Plaintiffs' theory on the rest break claim is that Plaintiff Franceschi and other salespeople
26 were not separately compensated for their rest periods, because Defendant's commission plans
27 did not account for them. *See, e.g., Bluford v. Safeway, Inc.*, 216 Cal.App.4th 864, 871-872
28 (2013); *Vaquero v. Stoneledge Furniture LLC*, 9 Cal.App.5th 98, 110-111 (2017). Plaintiffs
further allege that Plaintiffs and other non-exempt employees were not able to take duty-free rest
periods, because they were always on-call and unable to take their rest periods. Moreover, like

1 the meal period claim, there was no evidence that any premium payments were attributed to any
2 rest period violations. Plaintiffs contend that a complete lack of premium pay “would require
3 perfection or, more likely, a ‘deep, system-wide error’ in failing to pay such premiums.” *In re*
4 *Tea Station Inv.*, 2021 Bankr. LEXIS 2985, at *22 (C.D. Cal. Oct. 26, 2021).

5 Defendant contends, on the other hand, that liability is tenuous at best because Defendant
6 had a compliant rest period policy, and that Plaintiffs would not be able to succeed on this claim
7 because of numerous individual issues regarding why rest periods were not taken.

8 Plaintiffs’ expert calculated total violations across the class, multiplied by an average rate
9 of pay for the class members. As such, Class Counsel and their expert calculated the maximum
10 verdict value of the rest period claims to be **\$1.1 million**. Based on the difficulty of proving rest
11 period violations on a classwide basis, and the lack of objective evidence proving such
12 violations, Plaintiffs believe they had a forty percent chance of recovering all of the rest period
13 damages. As such, Plaintiffs believe the reasonable exposure of the rest break claim is
14 approximately **\$440,000**. (Bartz Decl., ¶ 21.b.ii.).

15 **3. Failure to Pay Meal and Rest Period Premiums At The Regular Rate**

16 Plaintiffs contend that Defendant failed to pay for missed meal and missed rest periods at
17 the regular rate of pay. *See Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal.5th 858, 878 (2021)
18 (finding that “regular rate of compensation” in section 226.7(c) “has the same meaning as
19 ‘regular rate of pay’ in section 510(a) and encompasses not only hourly wages but all
20 nondiscretionary payments for work performed by the employee.”). Based on Plaintiffs’
21 investigation and discovery, however, Defendant failed to pay any meal and rest period
22 premiums whatsoever. As such, the meal and rest period analysis above reflects the proper
23 exposure for this claim, and there is no separate damages exposure here. (Bartz Decl., ¶ 21.c.).

24 **4. Wage Statement Claim**

25 *Labor Code* §226(a) states in pertinent part: “Every employer shall, semimonthly or at
26 the time of each payment of wages, furnish each of his or her employees, either as a detachable
27 part of the check, draft, or voucher paying the employee’s wages, or separately when wages are
28 paid by personal check or cash, an accurate itemized statement in writing showing (1) gross
wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned
and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, ...
(5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the

1 name of the employee and only the last four digits of his or her social security number or an
2 employee identification number other than a social security number, (8) the name and address of
3 the legal entity that is the employer..., and (9) all applicable hourly rates in effect during the pay
4 period and the corresponding number of hours worked at each hourly rate by the employee... .”

5 Plaintiffs’ theory of liability with respect to the paystub claim is twofold. **First**, Plaintiffs
6 allege that Defendant fails to set forth the proper regular rate when calculating overtime when
7 bonuses and other non-discretionary compensation is paid. **Second**, Plaintiffs allege that
8 Defendant failed to set forth all premium payments for meal and rest period violations. In
9 *Naranjo v. Spectrum Security Servs., Inc.*, 13 Cal.5th 93 (2022), the Court held that an
10 employer’s obligation to report wages includes an obligation to report premium pay for meal and
11 rest break violations. Plaintiffs therefore contend that any time Defendant failed to do so here
12 should result in paystub penalties.

13 Defendant argues that, even assuming there are any violations, which it denies,
14 Defendant presents evidence of a good faith dispute as to any violation. *Hurst v. Buczek Enters.,*
15 *LLC*, 870 F.Supp.2d 810, 829 (N.D. Cal. 2012) (no section 226 violation where the employer
16 "makes a good faith claim" in its defense); *Harris v. Vector Mktg. Corp.*, 656 F.Supp.2d 1128,
17 1146 (2009) (the "employer did not knowingly and intentionally fail to provide itemized wage
18 statements" where there was a "good faith dispute").

19 Pursuant to Labor Code section 226, subd. (e)(1), employees are entitled to \$50 for the
20 initial pay period in which a violation occurs, and \$100 per pay period for subsequent violations.
21 Nevertheless, pursuant to *Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1209 (2008), the
22 heightened penalty amount is not recoverable unless there is a showing of a prior citation or in
23 the absence of a good faith dispute. *See also Bernstein v. Virgin America, Inc.*, 3 F.4th 1127,
24 1144 (9th Cir. 2021). Because there is no evidence here that Defendant has previously been cited
25 with Labor Code violations, Class Counsel believes the \$50 penalty to be applicable for all
26 violations.

27 Based on the pay periods at issue here, Plaintiffs and their expert calculated wage
28 statement penalties by multiplying the total employee count during the statutory period by the
total number of pay periods during that period. The maximum verdict value of the paystub
penalties are approximately **\$724,000**. Because this claim is derivative of the wage and meal and
rest period claims above, Plaintiffs believe they have a fifty percent chance of recovering all of

those penalties, or **\$362,000**, based on the risks set forth above and Defendant's defenses. (Bartz Decl., ¶ 21.d.).

5. Waiting Time Penalties

Labor Code § 203 provides that if an employer willfully fails to pay, without abatement or reduction, in accordance with *Labor Code* §§ 201 and 202, any wages of an employee who is discharged or who quits, the wages of the employee shall continue at the same rate, for up to thirty (30) days from the due date thereof, until paid or until an action therefore is commenced.

In *Naranjo, supra*, the Court held that failing to pay meal and rest period premium payments constituted "wages" for purposes of waiting time penalties. *Naranjo, supra*, 13 Cal.5th at 117. Defendant denies any violations whatsoever, and that even if such violations are proven, that Defendant has a good faith dispute regarding whether such wages are owed.

Plaintiffs and their expert determined that the total verdict value of this claim is approximately **\$1.15 million**, based on termination counts provided, multiplied by the average daily rate per terminated employee and the maximum 30-day waiting time period. Class Counsel believes the reasonable settlement value is far less than the maximum amount because of the willfulness standard for proving such penalties. Plaintiffs believe they have a forty percent possibility of proving all such penalties. As such, Plaintiffs believe the realistic value of the waiting time penalties are **\$460,000**. (Bartz Decl., ¶ 21.e.).

6. Failure to Reimburse Expenses

Labor Code section 2802 provides, in pertinent part: "An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer. . . ." The purpose of section 2802 is "to prevent employers from passing their operating expenses on to their employees." *Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal.4th 554, 562 (2007).

Plaintiffs allege that they and the class members were required to use their own personal cell phones for their work, reimbursement was required. *See Cochran v. Schwan's Home Serv., Inc.*, 228 Cal. App. 4th 1137, 1144 (2014) (finding that reimbursement for personal cell phone usage required when mandatory for performing one's job). Additionally, Plaintiffs allege that certain non-exempt employees were required to purchase steel toe boots and maintain their protective gear consisting of a safety jacket and a vest.

1 Defendant contends that Plaintiffs were paid for all of their expenses, and that they were
2 not required to use their cell phone for work purposes, and any other expenses incurred were
3 appropriately reimbursed.

4 Based on testimony from Plaintiffs and the class members, Plaintiffs allocate \$15 per pay
5 period for the reimbursement claim. As such, the value of this claim as calculated by Plaintiffs'
6 expert is approximately \$370,000. Based on the Defendant's defenses, and issues in proving the
7 reimbursement claim on a classwide basis, Plaintiffs allege they had a thirty percent chance of
8 recovery here, and the realistic value of the reimbursement claim is therefore **\$111,000**. (Bartz
Decl., ¶ 21.f.).

9 **7. PAGA**

10 Plaintiffs contend that PAGA penalties are owed based on the numerous alleged Labor
11 Code violations identified above. Once a PAGA violation is found, a court must award civil
12 penalties. *See Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1211-1213 (2008).
13 Nevertheless, a court has discretion to reduce the award of civil penalties if it finds that "based
14 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." Cal. Lab. Code § 2699(e)(2).

15 Significantly, however, the California Supreme Court recently ruled that penalties may
16 not accrue during a time when the law was unsettled, which it was in part during the pendency of
17 this case. *See Naranjo v. Spectrum Security Services, Inc.*, 15 Cal.5th 1056 (2024) ("*Naranjo II*")
18 (finding that employer's reasonable, good faith dispute precluded penalties from being awarded
19 for failure to report meal and rest period payments on wage statements). As such, there is a very
20 real possibility that a court would substantially reduce the PAGA penalties, even if they are
21 proven. *See, e.g., Fleming v. Covidien, Inc.*, 2011 WL 7563047, *3-4 (C.D. Cal. 2011) (reducing
22 penalties from \$2.8 million to \$500,000 based on wage statement violations because to assess
23 full penalties would be unjust and arbitrary); *Thurman v. Bayshore Transit Mgmt., Inc.*, 203
Cal.App.4th 1112, 1134 (2012) (reduction of PAGA penalties by 30% affirmed on appeal).

24 Plaintiffs and their expert calculated the maximum verdict value of the PAGA penalties
25 **\$17 million**, based on assumed violations of Labor Code sections 1194, 512, 226.7 and 226,
26 violations for each and every pay period at issue, stacking of penalties, heightened subsequent
27 penalties, and a 100% violation rate. Plaintiffs believe recovering all of these penalties is highly
28 unlikely, and based on a Court's discretion to reduce such penalties, Plaintiffs believe they had a

ten percent chance of recovering those penalties. As such, Plaintiffs value the claim at **\$1.7 million**. (Bartz Decl., ¶ 21.g.).

8. Total Damages Exposure²

Plaintiffs believe that the **\$1.8 million** settlement achieved in this case is excellent for the class members. Based upon a realistic exposure of **\$3.94 million**, the settlement represents approximately 46% of that total value. Given the many defenses raised, the uncertainty of the certifiability of any class, and the difficulty in proving the claims, Class Counsel believe this settlement is an excellent result for all of the class members. (Bartz Decl., ¶ 21.h.).

IV. CONDITIONAL CERTIFICATION OF THE CLASS

A. Class Certification Is Appropriate in this Case

The proposed settlement seeks conditional certification of the Class. The Class is defined as follows:

All current and former non-exempt employees who worked in California for Defendant during the Class Period (September 5, 2019 through November 22, 2024).

The certification of the Class is essential to the settlement. California public policy favors the use of the class action device. *Richmond v. Dart Industries* (1981) 29 Cal.3d 462, 469. California Code of Civil Procedure section 382 authorizes class action suits in California when “the question is one of the common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the courts, one or more may sue or defend for the benefit of all.” To obtain certification, a party must establish the existence of both an ascertainable class and a well-defined community of interest among class members. *Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 435. The “community of interest” requirement depends on three factors: (1) whether common issues of law or fact predominate; (2) whether the class representatives have claims that are typical of the class; and (3) whether

² The Unfair Competition claim is subsumed into the *Kullar* analysis above. The Unfair Competition claim is based upon the wage and hour violations, and adds an extra year of damages, and is included within the above analysis.

1 the class representatives will adequately represent the class. *Richmond, supra*, 29 Cal.3d at 470.
2 Because the policy of favoring use of class actions is so strong, any doubts as to the
3 appropriateness of class treatment must be resolved in favor of certification, subject to later
4 modification. *Richmond, supra*, 29 Cal.3d at 473-75. Except in extraordinary circumstances not
5 present here, the trial court does not weigh the merits of the claims in ruling on a motion for
6 class certification. *Linder, supra*, 23 Cal.4th at 443. The seminal California Supreme Court
7 decision of *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326 has
8 reemphasized the procedural nature of the certification motion.

9 **B. The Proposed Class Is Ascertainable and Numerous**

10 For a class to exist, the class description must be sufficiently definite so that it is
11 administratively feasible for the court to determine whether a particular individual is a member
12 of the proposed Class by reference to objective criteria. The class definition, as set forth in the
13 parties Settlement Agreement and reiterated above, is sufficiently specific to enable potential
14 Class Members, and the court, to readily determine the parameters of the class. (*See*
15 *Clothesrigger, Inc. v. GTE Corp.* (1987) 191 Cal.App.3d 605, 617.)

16 Here, there are approximately 555 Class Members, all of whom have been identified by
17 Defendant's employment and payroll records (*See* Bartz Decl., ¶ 22). This is sufficient to satisfy
18 numerosity requirements. As a general matter, courts have found that numerosity is satisfied
19 when class size exceeds 40 members, but not satisfied when membership dips below 21. *See*
20 *Ansari v. New York Univ.*, 179 F.R.D. 112, 114 (S.D.N.Y. 1998) (citing a thorough review of
21 cases in 5 MOORE'S FEDERAL PRACTICE §23.22[3][a] (Matthew Bender 3d ed. 1999)). The
22 Ninth Circuit has not offered a precise numerical standard; other District Courts have, however,
23 enacted presumptions that the numerosity requirement is satisfied by a showing of 25-30
24 members. *See, e.g., In re Kirschner Med. Corp. Sec. Litig.*, 139 F.R.D. 74, 78 (D. Md.
25 1991); *EEOC v. Printing Indus., Inc.*, 92 F.R.D. 51, 53 (D.D.C. 1981), *Slaven v. BP America,*
26 *Inc.*, 190 F.R.D. 649, 654 (C.D. Cal. 2000).

27 **C. Common Issues of Law or Fact Predominate**

28 Common questions of law and fact predominate here for purposes of settlement, as the

1 main issues involve the legality of Defendant's policies regarding the failure to pay all wages,
2 failure to provide all legally compliant off duty and uninterrupted meal periods, the failure to
3 provide all legally compliant off duty and uninterrupted paid rest periods, failure to timely
4 furnish accurate itemized wage statements, and failure to timely pay all former employees all
5 wages owed. (*See* Bartz Decl., ¶ 24). Whether each member of the Class might be required to
6 ultimately justify an individual claim does not preclude maintenance of a class action (see, e.g.
7 *Collins v. Rocha* (1972) 7 Cal.3d 232, 238). Plaintiffs contend that these are all pay policy
8 questions that are uniform and can be proven by common objective evidence. The evidence to
9 support these claims consists of pay policies, payroll records, time records and pay stubs given to
10 all Class Members. (*See* Bartz Decl., ¶ 25). In assessing whether common issues predominate
11 over individual issues, it is not necessary that the Class Members' claims or their circumstances
12 be identical. *L.A. Fire & Police Protective League* (1972) 23 Cal.App.3d 67, 74 (in an overtime
13 action, the fact that there were 19 different subgroups of employees did not preclude finding that
14 common issues predominated.) California law specifically authorizes class actions when a
15 defendant's corporate policies result in injury to a group of plaintiffs. In *Stephens v. Montgomery*
16 *Ward & Co., Inc.* (1987) 193 Cal.App.3d 411, 421, the court held that testimony from the class
17 representative, coupled with proof of company-wide policies and practices, was sufficient to
18 prove that common issues affecting the class of employees as a whole predominated over
19 individual issues. See *Sav-On, supra*, 34 Cal.4th 319.

20 **D. Plaintiff's Claims Are Typical of the Class Claims**

21 Typicality simply means that the representative's claims be similar to those of Class
22 Members. The interests of the class representatives need not be identical to those of other Class
23 Members; the class representatives must simply be similarly situated. *B.W.I. Custom Kitchen v.*
24 *Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1347; *Classen v. Weller* (1983) 145
25 Cal.App.3d 27, 46. Here, the class representatives worked for Defendant in California as hourly,
26 non-exempt employees who worked during the Class Period and worked pursuant to Defendant's
27 uniform pay, meal, and rest policies applicable to all hourly employees working within
28 California (*See* Bartz Decl., ¶ 26).

1 **E. Adequacy of Representation**

2 Adequacy of representation depends on whether Plaintiff class representatives and
3 Plaintiffs’ attorneys are qualified to conduct the proposed litigation and whether the
4 representative Plaintiffs’ interests are antagonistic to those of the Class. In this case, the
5 representative Plaintiffs have the same injuries and damages similar to those of the Class they
6 seek to represent, they have agreed to act as class representatives and in the best interests of the
7 class, and Plaintiffs have no claims that are antagonistic to the Class. (*See generally* Class Rep.
8 Decls.). Plaintiffs’ counsel are also very experienced and qualified, and have been approved to
9 act as class counsel in numerous class and representative actions. (*See* Bartz Decl., ¶¶ 27-29;
10 Declaration of Walter Haines (“Haines Decl.”), ¶¶ 3-6; Declaration of David Keledjian
11 (“Keledjian Decl.”), ¶¶ 3-9).

12
13 **V. THE CLASS ACTION SETTLEMENT MEETS THE REQUIREMENTS FOR**
14 **PRELIMINARY APPROVAL**

15 When a proposed class action settlement is reached, the settlement must be submitted to
16 the court for approval. H. Newberg & A. Conte, *Newberg on Class Actions* at § 11.41, p. 11-87
17 (3d ed. 1992). Review of a proposed class action settlement involves two hearings. First, the
18 settlement must be preliminarily approved by the court. Second, a final settlement approval
19 hearing is set, where evidence and argument are submitted concerning the fairness, adequacy,
20 and reasonableness of the settlement, and class members may be heard regarding the settlement.
21 *See* Manual for Complex Litigation, Fourth §§ 21.632-21.633 (2004).

22 The question presented on a motion for preliminary approval of a proposed class action
23 settlement is whether the proposed settlement is “within the range of possible approval.”
24 *Manual for Complex Litigation*, Fourth, § 21.632 at 321; *Gautreaux v. Pierce*, 690 F.2d 616, 621
25 n.3 (7th Cir. 1982). Preliminary approval is merely the prerequisite to giving notice so that “the
26 proposed settlement...may be submitted to members of the prospective Class for their acceptance
27 or rejection.” *Philadelphia Housing Authority v. American Radiator & Standard Sanitary Corp.*,
28 323 F.Supp. 364, 372 (E.D. Pa. 1970). The court must determine whether the settlement is fair,
adequate, and reasonable. *See Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996)
citing Officers for Justice v. Civil Service Com’n, 688 F.2d 615, 625 (9th Cir. 1982) and Fed. R.

1 Civ. Proc. 23(e). There is an initial presumption of fairness when a proposed settlement, which
2 was negotiated at arm's length by counsel for the Class, is presented for court approval.
3 *Newberg, supra*, §11.41, p. 11-88. However, the ultimate question of whether the proposed
4 settlement is fair, reasonable and adequate is made after notice of the settlement is given to the
5 class members and a final settlement hearing is held by the court.

6 **A. The Role Of The Court In Preliminary Approval Of A Class Action**
7 **Settlement**

8 The approval of a proposed settlement of a class action suit is a matter within the broad
9 discretion of the trial court. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 234-235
10 (2001); *Dunk*, 48 Cal. App. 4th at 1801. Preliminary approval does not require the trial court to
11 answer the ultimate question of whether a proposed settlement is fair, reasonable and adequate.
12 That determination is made only after notice of the settlement has been given to the class
13 members and after they have been given an opportunity to voice their views of the settlement or
14 to be excluded from the settlement. *See, e.g.*, J. Moore, Moore's Federal Practice §§ 23.80-23.85
15 (2003). With regard to class action settlements, the opinions of counsel should be given
16 considerable weight both because of counsel's familiarity with the litigation and previous
17 experience with cases such as these. *See Officers for Justice, supra*, 688 F.2d at 625.

18 **B. Factors To Consider In Granting Preliminary Approval**

19 A number of factors are to be considered in evaluating a settlement for purposes of
20 preliminary approval. No one factor should be determinative, but rather all factors should be
21 considered. These criteria have been summarized as follows:

22 If the proposed settlement is the product of serious, informed, noncollusive negotiations,
23 has no obvious deficiencies, does not improperly grant preferential treatment to class
24 representatives or segments of the class, and falls within the range of possible approval, the court
25 should direct notice to be given to the class members of a formal fairness hearing, at which
26 evidence may be presented in support of and in opposition to the settlement.

27 *Manual of Complex Litigation*, Second §30.44, at 229. This settlement meets all of
28 these criteria.

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1. **The settlement is the product of serious, informed, and non-collusive negotiations**

This settlement is the result of extensive and hard-fought negotiations. Defendant has denied and continues to deny all of the claims and contentions alleged in this case. Nonetheless, Defendant has agreed to settle this case in the manner and upon the terms and conditions set forth in the Settlement Agreement in order to avoid the expense, inconvenience, and burden of further legal proceedings, and the uncertainties of trial and appeals.

Plaintiffs and Class Counsel recognize the expense of continuing to litigate and trying this case against Defendant through possible appeals which could take several years. When this case began in September 2023, there was a substantial risk of this case even moving forward on a class action basis. Defendant moved to compel arbitration of Plaintiffs' claims, and Plaintiff Franceschi defeated that motion. Class Counsel are also mindful of and recognize the inherent problems of proof under, and alleged defenses to, the claims asserted in the case. Based upon their evaluation, Plaintiffs and Class Counsel have determined that the settlement set forth in the Settlement Agreement is in the best interest of the Class Members.

Here, the litigation has been hard fought and displayed capable and experienced advocacy on both sides. "There is likewise every reason to conclude that settlement negotiations were vigorously conducted at arm's length and without any suggestion of undue influence." *In re Wash. Public Power Supply System Sec. Litig.*, 720 F. Supp. 1379, 1392 (D. AZ 1989).

2. **The settlement has no "obvious deficiencies" and falls within the range for approval**

The proposed settlement herein also has "no obvious deficiencies" and is well within the range of permissible compromise. This settlement, which represents approximately 39% of the claimed exposure faced by Defendant, is entitled to preliminary approval. *See, e.g., Glass v. UBS Fin. Servs.*, 2007 WL 221862, *4 (N.D. Cal. Jan. 26, 2007) (approving settlement of unpaid overtime wages where the settlement amount constituted approximately 25- 35% of the estimated actual loss to the class). Each Settlement Class Member will receive the same opportunity to participate in and receive payment. Clearly, the goal of this litigation, to seek redress for the Class, has been met.

Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v. Chrysler Com.*, 150 F.3D 1011, 1026 (9th Cir. 1998). Here, Defendant has maintained that its wage and hour policies comply with California law. Notwithstanding the risk of continuing to litigate this case, after vigorous, arms-length negotiations that included an all day mediation, the parties reached a proposed settlement of \$1.8 million, where each member of the Class will receive payment unless the class member opts out of the settlement.

3. No preferential treatment is given to the class representatives or other members of the class

All of the class members will share in the settlement according to the number of workweeks worked during their employment with Defendant. Class Counsel allocated the settlement amounts to account for certain pay disparities between the classes, for instance, the Salesperson Group includes only salespeople, who are, on average, more highly compensated than other non-exempt employees, and subject to certain regular rate claims that other non-exempt employees are not subject to. The compensation formula is objective, justified, and reasonable in this case, and does not improperly grant preferential treatment to any class member.

4. The parties engaged in adequate discovery prior to settlement

The agreement to settle did not occur until Class Counsel possessed sufficient information to make an informed judgment regarding the likelihood of success on the merits and the results that could be obtained through further litigation. Class Counsel developed strong legal theories for their case, and aggressively pursued formal and informal discovery, including reviewing and analyzing thousands of pages of documents, including payroll records, employment policies and manuals, and related documentation produced by Defendant.

Based on the foregoing data and their own independent investigation and evaluation, Class Counsel is of the opinion that the settlement with Defendant for the consideration and on the terms set forth in the Settlement Agreement is fair, reasonable, and adequate and is in the best interest of the class in light of all known facts and circumstances, including the risk of significant delay, defenses asserted by Defendant, and numerous issues that could be raised on appeal and potential appeals down the road. Defendant and its counsel also agree that the settlement is fair and in the best interest of the Settlement Class Members.

5. The class representatives' service payments are reasonable

1 The class representatives collectively have spent many hours reviewing documents
2 produced by Defendant, conferring with Class Counsel, and attending mediation, to achieve the
3 result herein. But for the class representatives, this settlement would not have been reached.
4 The proposed class representative service award payments for Plaintiffs are intended to
5 recognize their initiative, risk, and efforts on behalf of the Settlement Class. Courts routinely
6 approve class representative service payments, also known as incentive awards, to compensate
7 named plaintiffs for the services they provide and the risks they incur during class action
8 litigation. *See In re Cellphone Fee Termination Cases*, 186 Cal. App. 4th 1380, 1393 (2010); *see*
9 *also Bell v. Farmers Ins. Exch.*, 115 Cal. App. 4th 715, 726 (2004) (upholding “service
10 payments” to named plaintiffs for efforts in bringing the case); *Manual for Complex Litigation*, §
11 21.62, n. 971 (noting that such awards “may sometimes be warranted for time spent meeting with
12 Class Members, monitoring cases, or responding to discovery”).

12 **6. Plaintiffs’ counsel’s attorney’s fees and costs are reasonable**

13 California courts have recognized that an appropriate method for determining an award of
14 attorneys’ fees is based on a percentage of the total value of benefits to class members by the
15 settlement. *Serrano v. Priest*, 20 Cal.3d 25, 34 (1977); *Vincent v. Hughes Air West, Inc.*, 557
16 F.2d 759, 769 (9th Cir. 1977). The purpose of this equitable doctrine is to avoid unjust
17 enrichment of counsel and to “spread litigation costs proportionally among all the beneficiaries
18 so that the active beneficiary does not bear the entire burden alone.” *Vincent*, 557 F.2d at 769.

19 Class Counsel has extensive experience in employment litigation and has successfully
20 handled wage and hour class actions. Class Counsel seeks up to thirty-five percent of the
21 Settlement Amount for attorney’s fees. Such a percentage is regularly granted in wage and hour
22 class actions. (*See, e.g.*, Rubinstein, Conte and Newberg, *Newberg on Class Actions* at § 14:6
23 [surveying cases, and finding that 30-50% of fees awarded in cases in which the common fund is
24 relatively small]; *see also In re Ampicillin Antitrust Litigation* (D.D.C. 1981) 526 F.Supp. 494
[court approved attorney fee award equal to 45% of the settlement fund].)

25 Moreover, Class Counsel seeks costs not to exceed \$30,000, plus class administrator
26 expenses not to exceed \$15,000, which Defendant has agreed to pay out of the settlement
27 amount. All such costs, as well as the class administrator’s expenses to oversee the class notice
28 procedure and remit the settlement fund to the class, are reasonably necessary in prosecuting this
action.

1 **VI. THE PROPOSED CLASS NOTICE IS FAIR AND APPROPRIATE**

2 The method and content of a Notice of Settlement to class members should be designed
3 to fairly apprise them of the terms of the proposed settlement and options available to them. *See*
4 *Philadelphia Housing Authority v. American Radiators & Standard Sanitary Corp.*, 323 F. Supp.
5 364, 378 (E.D. Pa. 1970). An appropriate notice is one which has a reasonable chance of
6 reaching a substantial percentage of the class members. *See Cartt v. Superior Court*, 50 Cal.
App. 3d 960, 974 (1975).

7 The proposed Notice of Class Settlement is fair and reasonable in this case. It describes
8 the nature of the lawsuit, the Settlement Class, the settlement amount, the proposed plan of
9 allocation of the settlement amount, and the attorneys' fees that Class Counsel may receive. The
10 proposed notice also describes the Settlement Agreement in sufficient detail to allow the
11 Settlement Class Members to make an informed choice to accept or reject it. The proposed
12 Notice also contains information on opting out of the Class, objecting to the settlement, and sets
13 forth the schedule for the final approval hearing.

14 Moreover, the parties propose that the Notice be mailed by the Claims Administrator to
15 all Class members at the last known address maintained by Defendant, and updated by the
16 Claims Administrator, if necessary, after accessing the National Change of Address database. In
17 the event the Notice of Settlement is returned as undeliverable, the Claims Administrator will
18 perform a skip-trace procedure, and if such procedure reveals a new address, the Claims
Administrator will re-mail the Notice within five days.

19 In summary, the proposed notice here describes the proposed settlement with enough
20 specificity to permit class members to make an informed decision whether to participate in the
21 settlement.

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1 **VII. CONCLUSION**

2 Based on the foregoing, Plaintiffs respectfully request that this Court preliminarily
3 approve the Settlement, approve the Notice of Settlement, and set the date and time for the Final
4 Approval Hearing.

5 Dated: March 4, 2025

BARTZ LAW GROUP, APC
UNITED EMPLOYEES LAW GROUP, P.C.

7
8 /s/Aaron A. Bartz

AARON A. BARTZ

9 Attorneys for Plaintiff CHRISTOPHER
10 FRANCESCHI and all others similarly
11 situated

12 Dated: March 4, 2025

D.LAW, INC.

13 /s/ David Keledjian

14 Emil Davtyan

15 David Yeremian

16 David Keledjian

David Arakelyan

Attorneys for Plaintiff

17 ANDREW TREJO BACA, and the putative
18 class
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