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Motion for Preliminary Approval of Class Settlement
2025-11-12 9:00AM in 10C

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

16 STEPHEN PRINCE, on behalf of himself and
17 all others similarly situated and on behalf of
18 the general public,

19 Plaintiff,

20 v.

21 CHEEMA FREIGHTLINES LLC, a California
22 limited liability company, and DOES 1 through
10, inclusive,

23 Defendants.
24
25
26
27
28

Case No.: STK-CV-UOE-2023-0011625

Assigned for all purposes to:
Hon. Jayne Lee, Dept. 10C

CLASS ACTION

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

[Declarations of Anthony J. Orshansky and
Daniel F. Gaines and Proposed Order submitted
concurrently herewith]

Preliminary Approval Hearing

Date:
Time:
Dept. 10C

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

2 **NOTICE IS HEREBY GIVEN** that, on _____, 2025, at _____ a.m./p.m., or as soon
3 thereafter as the matter may be heard before the Honorable Jayne Lee in Department 10C of the
4 above-captioned court located at 180 E Weber Ave., Suite 200, Stockton, CA 95202, Plaintiff
5 Stephen Prince (“Plaintiff”), individually, and on behalf of all others similarly situated, will and
6 hereby does move this Court for an entry of an order granting preliminary approval of the parties’
7 proposed settlement pursuant to Cal. Civ. Proc. Code § 382, California Rules of Court, Rule 3.769(c)
8 and Cal. Lab. Code § 2699(g)(1):

9 1. Preliminarily certifying the proposed class of current and former non-exempt
10 employees who are or were employed by Defendant Cheema Freightlines LLC (“Defendant”) in
11 California during the Class Period¹ for purposes of settlement;

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

13 3. Preliminarily appointing CounselOne, PC and Gaines & Gaines, APLC as Class
14 Counsel for purposes of settlement;

15 4. Preliminarily approving the settlement as fair, adequate, and reasonable based upon
16 the terms set forth in the Parties’ Stipulation of Class Action and PAGA Settlement (“Settlement
17 Agreement”), including payment by Defendant of the non-reversionary Gross Settlement Amount
18 of Four Hundred and Five Thousand Dollars (\$405,000);

19 5. Preliminarily approving Class Counsel’s request for up to thirty-five percent (35%)
20 of the Gross Settlement Amount as attorneys’ fees, plus reimbursement of actual litigation costs up
21 to \$15,000;

22 6. Appointing CPT Group, Inc. as the third-party Settlement Administrator, responsible
23 for, among other tasks, mailing notices of the settlement and overall settlement administration,, and
24 approving up to \$7,500 be deducted from the Gross Settlement Amount its expenses;

25
26
27 ¹ “Class Period” is defined as the period from September 26, 2018 through the date of preliminary
28 approval, or an earlier date at Defendant’s discretion under paragraph III(D)(5) of the Settlement
Agreement. Settlement Agreement ¶ I(G).

1 7. Approving the proposed Notice of Pendency of Class and Representative Action
2 Settlement and ordering it be distributed to Class Members; and

3 8. Scheduling a hearing to consider whether the settlement should be finally approved
4 and awarding Class Counsel's Attorneys' Fees and Costs, the Class Representative Enhancement
5 Payment, Settlement Administration Costs, and payment of penalties pursuant California's Private
6 Attorneys General Act, Cal. Lab. Code § 2698 et seq., including payment to the California Labor
7 and Workforce Development Agency and to the Aggrieved Employees.

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

15
16 Dated: October 10, 2025

Respectfully submitted,

COUNSELONE, PC

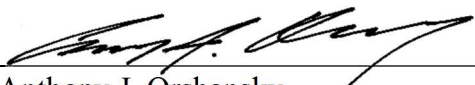
17
18 By: 
19 Anthony J. Orshansky
20 P. Bartholomew Quintans
21 Attorneys for Plaintiff and the Class
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Stephen Prince (“Plaintiff”), on behalf of himself and a putative class of current and
4 former non-exempt employees of Defendant Cheema Freightlines LLC (“Defendant”) (together
5 with Plaintiff, the “Parties”) during the applicable limitations period, seeks preliminary approval of
6 the Stipulation of Class Action and PAGA Settlement (“Settlement Agreement”) entered with
7 Defendant. If approved, the Settlement Agreement, attached as **Exhibit 1** to the Declaration of
8 Anthony J. Orshansky (“Orshansky Decl.”) filed concurrently herewith, will resolve all claims of
9 Plaintiff and participating Class Members, as well as Plaintiff’s claims for penalties under the
10 Private Attorneys General Act of 2004 (“PAGA”), Cal. Lab. Code § 2698 et seq. on behalf of
11 himself and all similarly-situated aggrieved employees and the California Labor and Workforce
12 Development Agency (“LWDA”).

13 In this wage-and-hour class and representative action, the Parties reached the proposed
14 settlement following an investigation of Plaintiff’s claims, an exchange of information and an arm’s-
15 length negotiation including a full-day mediation with the Hon. Howard R. Broadman (Ret.). The
16 settlement entails a non-reversionary payment by Defendant of Four Hundred and Five Thousand
17 Dollars (\$405,000) (“Gross Settlement Amount”). After deducting an estimated \$141,750 for Class
18 Counsel’s attorneys’ fees, an estimated \$15,000 in costs to Class Counsel, a \$5,000 enhancement
19 payment to Plaintiff, \$7,500 for Settlement Administration Costs, and \$40,000 in penalties pursuant
20 to PAGA, the remaining amount of \$195,750 will be distributed to participating Class Members
21 following the Court’s final approval thereof.

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

II. SUMMARY AND STATUS OF THE LITIGATION

Plaintiff and Class Members¹ were employed by Defendant in California as non-exempt employees. Through this lawsuit, Plaintiff alleged that Defendant: failed to pay class members minimum wages in violation of Cal. Lab. Code §§ 1194 and 1194.2; failed to provide Plaintiff and Class Members with compliant meal and/or rest periods, and failed to pay premium wages to Plaintiff and Class Members who were denied meal and/or rest periods, in violation of Cal. Lab. Code §§ 226.7 and 512, and California Industrial Welfare Commission (“IWC”) Wage Order No. 4-2001; failed to reimburse business expenses in violation of Cal. Lab. Code § 2802; failed to provide access to payroll and personnel records in violation of Cal. Lab. Code §§ 226(c) and 1198.5; failed to provide Plaintiff and Class Members with accurate itemized the requirements in violation of Cal. Lab. Code § 226(a) and (e); failed to timely pay Plaintiff and Class Members all wages due at the separation of their employment in violation of Cal. Lab. Code §§ 201-203 and 227.3; and violated California’s Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 et seq. Plaintiff additionally sought recovery of penalties under the PAGA for the foregoing Labor Code violations as to himself and similarly-situated aggrieved employees (“Aggrieved Employees”) occurring during the PAGA Period.² *See generally* First Amended Complaint (“FAC”).

A. Procedural History

On September 21, 2023, Class Counsel³ 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, and supplemented that pre-filing notice with an additional submission to the LWDA and Defendant on November 28, 2023. Orshansky

¹ The “Class” or “Class Members” are defined as all current and former non-exempt employees who worked for Defendant in California during the Class Period. *See* Settlement Agreement ¶ I(C). “Class Period” is defined as the period from September 26, 2018 through the date of preliminary approval (or an earlier date at Defendant’s discretion under paragraph III(D)(5) of the Settlement Agreement). *Id.* ¶ I(G).

² *See id.* ¶ I(B). “PAGA Period” is defined as the period from October 23, 2023 through August 15, 2025 (or an earlier date at Defendant’s discretion under paragraph III(D)(5) of the Settlement Agreement). *Id.* ¶ I(V).

³ “Class Counsel” refers to the law firms of CounselOne, PC and Gaines & Gaines, APLC.

Decl. ¶ 23 and Exh. 2. On November 6, 2023, Plaintiff filed a class and PAGA representative action complaint in San Joaquin County Superior Court. *Id.* ¶ 24. On December 13, 2023, Defendant removed the action to the United States District Court for the Eastern District of California. *Id.* On January 19, 2024, Plaintiff filed the FAC. *Id.* On March 26, 2025, the action was remanded back to San Joaquin County Superior Court pursuant to the Parties' stipulation. *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. 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. Orshansky Decl. ¶ 26.

B. Discovery and Investigation

Prior to initiating the lawsuit, Class Counsel thoroughly investigated the claims and considered the facts and circumstances underlying the pertinent issues and applicable law. 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. ¶ 22. 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.*

Counsel for the Parties agreed to attempt to resolve the matter through mediation, after exchanging extensive information and documents, including time and pay records of Class Members and relevant policy documents. Orshansky Decl. ¶ 27.

C. Mediation and Settlement

On March 7, 2025, the Parties participated in a full-day mediation session with the Hon. Howard R. Broadman (Ret.). Orshansky Decl. ¶ 28. During the mediation, the Parties exchanged further information and discussed all aspects of the case, including the risks and delays of litigation and the risk to both Parties for proceeding with a motion for class certification and liability under the claims asserted, along with the potential for PAGA penalties to be asserted. *Id.* These were contentious issues because of the factual and legal complexity of the case. *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 this proposed arm’s-length settlement. *Id.* 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 Members’ claim to the settlement award he or she will receive. Orshansky Decl. ¶ 29. Class Counsel believe that the settlement serves the best interests of Class Members and Aggrieved Employees. *Id.*

Under the terms of the settlement, Defendant agrees to pay the non-reversionary Gross Settlement Amount of Four Hundred and Five Thousand Dollars (\$405,000) to settle the claims asserted in the lawsuit. 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), the enhancement award to the Class Representative, settlement administration costs to the Settlement Administrator, CPT Group, Inc. (“CPT”), attorneys’ fees and costs to Class Counsel, and 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 ¶ I(O); Orshansky Decl. ¶ 5. The amount available for distribution to Participating Class Members is determined by deducting the following from the Gross Settlement Amount:

- Up to thirty-five (35%) of the Gross Settlement Amount in attorneys’ fees (*i.e.*, \$141,750) and up to \$15,000 in litigation costs to Class Counsel (Settlement Agreement ¶ III(D)(7)(b));
- Up to \$5,000 to Plaintiff as an enhancement payment in recognition of his service as the Class Representative (*id.* ¶ III(D)(7)(d));
- Up to \$7,500 to the Settlement Administrator to notify members of the Class and administer the settlement (*id.* ¶¶ I(CC), III(D)(7)(c)); 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 the Aggrieved Employees (*id.* ¶¶ I(R), III(D)(7)(e)).

Orshansky Decl. ¶ 6. The amount remaining after the foregoing deductions, approximately \$195,750, is called the “Net Settlement Amount.” *Id.*; Settlement Agreement ¶ I(S). The entire Net Settlement Amount will be paid out to Participating Class Members. Participating Class Members will automatically receive 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 irrespective of whether they opt out of the class settlement. Orshansky Decl. ¶ 6; Settlement Agreement ¶¶ III(D)(2), (7)(e).

A. The Settlement Provides for Reasonable Monetary Payments

If all of the approximate 57 Class Members⁴ participate (*i.e.*, do not submit a request for exclusion/opt-out), and assuming hypothetically that distribution was on an individual pro rata basis, then each individual settlement payment would be an estimated \$3,434.21 per Class Member. Orshansky Decl. ¶ 7. In actuality, each Participating Class Member will receive a proportional share of the Net Settlement Amount (“Individual Settlement Payment”) based on his or her eligible workweeks during the Class Period. *Id.* The Settlement Administrator will determine each Participating Class Member’s Individual Settlement 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. Each Class Member’s estimated workweeks worked shall be identified in the Notice. If there are any valid and timely Requests for Exclusion as to the class portion of the settlement, the Settlement Administrator shall increase the Class 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 ¶ III(D)(7)(f). In addition, each Aggrieved Employee will receive a proportional share of the 25% of

⁴ Using the estimated number of Class Members at the time of mediation.

1 the PAGA Penalties (“PAGA Settlement Payment”) based on his or her eligible pay periods during
2 the PAGA Period. Specifically, each Aggrieved Employee shall receive their PAGA Settlement
3 Payment proportionate to the number of pay periods worked by the Aggrieved Employee during the
4 PAGA Period compared to the total number of pay periods worked by all Aggrieved Employees
5 during the PAGA Period. *See* Settlement Agreement ¶ III(D)(7)(e); Orshansky Decl. ¶ 8.

6 As a result of this distribution formula, the consideration paid to each Participating Class
7 Member and Aggrieved Employee is tailored to the impact of Defendant’s alleged violations as well
8 to the claims he or she is releasing.⁵ Furthermore, a Class Members may submit a written letter to
9 the Settlement Administrator disputing the number of workweeks credited if he or she believes that
10 count is inaccurate. *See* Settlement Agreement ¶ III(D)(1). Finally, any Class Member who prefers
11 to preserve his or her right to pursue relief or seek an alternative recovery may opt out.⁶ *See id.* ¶
12 III(D)(2).

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

14 As part of the settlement, Plaintiff will apply for an enhancement payment at the time of
15 seeking final approval in the amount of \$5,000 for his services to the Class as the Class
16 Representative. *See* Settlement Agreement ¶ III(D)(7)(d); Orshansky Decl. ¶ 9. “[I]ncentive awards
17 are fairly typical in class action cases . . . and are intended to compensate class representatives for
18 work done on behalf of the class [and] to make up for financial or reputational risk undertaken in
19 bringing the action.” *In re Cellphone Fee Termination Cases*, 186 Cal. App. 4th 1380, 1393-94
20 (2010). Plaintiff’s requested enhancement payment is intended to recognize the significant benefits
21 conferred upon the Class and be proportional to the time and effort that Plaintiff expended on behalf
22 of Class Members and Aggrieved Employees, including providing factual information and
23 documents to Class Counsel, discussing the claims and theories at issue in the case with Class
24 Counsel, identifying potential witnesses and reviewing documents, and reviewing the Settlement

25
26 ⁵ The Parties agreed to allocate 20% of each individual settlement payment to wages and 80% of
27 each individual settlement payment to interest, penalties, and other non-wage damages. *See*
Settlement Agreement at 17, ¶ 7(f).

28 ⁶ Again, if approved, Aggrieved Employees will receive their PAGA Settlement Payment
irrespective of whether they opt-out of the class settlement. *See id.* ¶ III(D)(7)(e).

1 Agreement, as well as the significant risks Plaintiff undertook by agreeing to serve as named
2 plaintiff. *See* Settlement Agreement ¶ III(D)(7)(d); Orshansky Decl. ¶ 10.

3 At the time of seeking final approval, Class Counsel will apply for an attorneys' fees award
4 of up to thirty-five percent (35%) of the Gross Settlement Amount and reimbursement of litigation
5 costs in an amount up to \$15,000. *See* Settlement Agreement ¶ III(D)(7)(b); Orshansky Decl. ¶ 11.
6 The attorneys' fees award will be split between the two firms as follows: $\frac{2}{3}$ to CounselOne, PC and
7 $\frac{1}{3}$ to Gaines & Gaines, APLC. *Id.* Plaintiff has approved this fee split in writing. *Id.* Plaintiff submits
8 that the requested fee is fair compensation for undertaking complex, risky, expensive, and time-
9 consuming litigation on a purely contingent fee basis. *Id.* Class Counsel have devoted substantial
10 attorney time to pre-filing investigation; analyzing Plaintiff's claims; conducting legal research and
11 analysis; meeting and conferring over pre-mediation information and data; reviewing policies and
12 procedures regarding Defendant's timekeeping protocol, payment of wages, and provision and
13 tracking of meal and rest breaks, along with examining a sample of actual employee time records,
14 payroll information, and wage statements; interviewing Class Members; retaining a consultant and
15 building a damages model; preparing, briefing, and attending mediation; preparing and submitting
16 notices to the LWDA; negotiating and preparing the Settlement Agreement and Class Notice;
17 preparing this Motion for Preliminary Approval; and otherwise litigating the case. *Id.*; Declaration
18 of Daniel F. Gaines ("Gaines Decl.") ¶ 8. Class Counsel will also expend future attorney time in
19 attending the hearing on this Motion, overseeing the notice and administration process, drafting the
20 Final Approval Motion and supporting documents, and attending the Final Approval hearing, among
21 other tasks, such as addressing questions from Class Members. Orshansky Decl. ¶ 12.

22 Both California and federal courts have recognized that an appropriate method for awarding
23 attorneys' fees in class actions is to award a percentage of the "common fund" created as a result of
24 the settlement. *See Laffitte v. Robert Half International, Inc.*, 1 Cal. 5th 480, 506 (2016) ("the
25 percentage of fund method survives in California class action cases"); *Wershba v. Apple Computer,*
26 *Inc.*, 91 Cal. App. 4th 224, 254 (2001) (recognizing both the "percentage of recovery" and
27 "lodestar/multiplier" methods). Historically, courts have awarded percentage fees in the range of
28 20% to 50%, depending on the circumstances of the case. *See* 4 A. Conte & H. Newberg, *Newberg*

1 on *Class Actions* § 14.6 (4th Ed. 2002) (“No general rule can be articulated on what is a reasonable
2 percentage of a common fund. Usually 50% of the fund is the upper limit on a reasonable fee award
3 from a common fund in order to assure that the fees do not consume a disproportionate part of the
4 recovery obtained for the class, although somewhat larger percentages are not unprecedented.”);
5 *Banda v. Verizon California, Inc.*, L.A. Cty. Super. Court Case No. BC434587 (35% fee awarded
6 on \$15,000,000 settlement of mixed PAGA/class claims); *Birch v. Office Depot*, U.S. District Court,
7 S.D. Cal. Case No. 06-cv-1690-DMS (40% fee awarded on \$16,000,000 settlement of mixed
8 PAGA/class claims); *Zelada v. Majestic Terminal Services*, San Bernardino Cty. Super. Court Case
9 No. CIVDS1916968 (38% fee awarded on \$1,800,000 settlement of PAGA-only claims).

10 Class Counsel submit that their request for attorneys’ fees is reasonable when viewed as an
11 overall percentage of the settlement amount in light of the substantial risks and significant work
12 undertaken, the excellent results obtained for the Class Members, and the efficiency with which the
13 Parties have conducted the litigation. Orshansky Decl. ¶ 13. Assuming that the Court grants
14 preliminary approval, Class Counsel will seek an award of attorneys’ fees and litigation costs at the
15 time of seeking final approval of the settlement. *Id.*

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

17 Express judicial policy favors maintaining wage and hour actions as class actions. *Prince v.*
18 *CLS Transp., Inc.*, 118 Cal. App. 4th 1320, 1328 (2004); *Richard v. Dart Industries, Inc.*, 29 Cal.
19 3d 462 (1981) (finding that California public policy “encourages the use of the class action device”).
20 Any doubt as to the appropriateness of class treatment should be resolved in favor of class
21 certification, subject to later modification if necessary. *Id.* at 473-75. The decision to certify a class
22 is purely a procedural one, and should be based on the allegations in the operative complaint, and
23 not in the perceived factual or legal merit of the class claims. *Linder v. Thrifty Oil Co.*, 23 Cal. 4th
24 429, 439-41 (2000).

25 To certify a settlement class, the trial court must find the two primary requirements for
26 maintaining a class action: (1) there must be an ascertainable class; and (2) there must be a well-
27 defined community of interest in the questions of law and fact involving the parties to be
28 represented. *Vasquez v. Superior Court*, 4 Cal. 3d 800, 805-809 (1971); *Daar v. Yellow Cab*

1 *Company*, 67 Cal. 2d 695, 704 (1967); *Daniels v. Centennial Capital Group*, 16 Cal. App. 4th 467,
2 471 (1993); *B.W.I. Custom Kitchen v. Owens-Illinois*, 191 Cal. App. 3d 1341 (1987). These criteria
3 are met here for the reasons set forth below.

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

5 Whether a class is ascertainable is determined by examining the class definition, the size of
6 the class and the means available for identifying class members. *See Vasquez*, 4 Cal. 3d at 821-22;
7 *Reyes v. Bd. of Supervisors*, 196 Cal. App. 3d 1263, 1271 (1987); *Miller v. Woods*, 148 Cal. App.
8 3d 862, 873 (1983). Class members are “ascertainable” where they may be readily identified without
9 unreasonable expense or time.

10 Here, the class definition is “precise, objective and presently ascertainable.” *Sevidal v.*
11 *Target Corp.*, 189 Cal. App. 4th 905, 919 (2010). Class Members are comprised of all current and
12 former non-exempt employees employed by Defendant in California during the Class Period.
13 Settlement Agreement ¶ I(C). Defendant is required to and does maintain employment records of
14 such persons, including contact information and social security numbers. Documents and
15 information exchanged reflect a class of approximately 57 non-exempt employees during the
16 relevant period. Orshansky Decl. ¶ 71. As a result, the proposed Class satisfies the ascertainability
17 and numerosity requirements. *See, e.g., Rose v. City of Hayward*, 126 Cal. App. 3d 926, 934 (1981),
18 stating that “[n]o set number is required as a matter of law for the maintenance of a class action,”
19 and citing examples where classes as little as 10 (*Bowles v. Superior Court*, 44 Cal. 2d 574 (1955)),
20 and 28 (*Hebbard v. Colgrove*, 28 Cal. App. 3d 1017 (1972)) were upheld. *See also Collins v. Rocha*,
21 7 Cal. 3d 232 (1972) (finding a class of 44 farm workers sufficiently numerous).

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

23 A community of interest is established by the preponderance of common issues of law and
24 fact. *See Vasquez*, 4 Cal. 3d at 811. “The community of interest requirement involves three factors:
25 (1) predominant common questions of law or fact; (2) class representatives with claim or defenses
26 typical of the class; and (3) class representatives who can adequately represent the class.” *Linder*,
27 23 Cal. 4th at 435.

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

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

6 Here, common issues of fact and law predominate as to each of the claims alleged by Plaintiff
7 and Class Members. This litigation is predicated on uniform company policies and systemic top-
8 down business practices revolving principally around Defendant’s timekeeping and pay practices—
9 *e.g.*, off-the-clock work attributed to common job duties, unreasonable work schedule demands, and
10 failure to pay meal and rest break premiums despite records depicting non-compliance and practices
11 resulting in interruption, etc.—as well as derivative inaccurate wage statements and pay owed upon
12 separation. Orshansky Decl. ¶ 72. These allegations have given rise to the following claims: failure
13 to pay minimum wages, meal period liability, rest break liability, failure to timely pay all final wages
14 at termination of employment, failure to maintain and provide accurate itemized wage statements,
15 failure to reimburse business expenses, and derivative UCL and PAGA claims arising therefrom.
16 *Id.*

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

1 *Benton v. Telecom Network Specialists, Inc.*, 220 Cal. App. 4th 701, 726 (2013) (certifying meal
2 period claim).

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

4 The typicality requirement is satisfied where class representatives have claims that are
5 typical of the rest of the class. *B.W.I. Custom Kitchen*, 191 Cal. App. 3d at 1347. Here, Plaintiff's
6 claims are typical of those held by members of the proposed Class. Like all other Class Members,
7 Plaintiff was a non-exempt employee working for Defendant in California during the Class Period.
8 Orshansky Decl. ¶ 74. Like other Class Members, Plaintiff alleged he was not paid for all hours
9 worked due to being required to perform work off the clock (*i.e.*, pre-/post-shift duties and
10 interrupted meals) and Defendant's policy of paying only for the duration of each mile driven as
11 opposed to all time spent under Defendant's control; did not receive timely and duty-free meal and
12 rest breaks and was not paid premiums for non-compliant meal and rest breaks; did not receive
13 accurate itemized wage statements; was not paid all wages and premiums owed upon termination;
14 and incurred necessary business expenses without reimbursement. *Id.* Plaintiff was therefore
15 impacted by the same challenged policies and practices that allegedly injured the Class as a whole
16 and subject to the same defenses raised by Defendant as to the Class, and his claims therefore are
17 typical. *Id.*

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

19 The adequacy of representation requirement examines conflicts of interest between named
20 parties and the class(es) they seek to represent. *Capitol People First v. State Dep't of Developmental*
21 *Servs.*, 155 Cal. App. 4th 676, 697 (2007). Here, Plaintiff will adequately represent the settlement
22 class, as there are no conflicts between the Plaintiff and the Class he seeks to represent. Orshansky
23 Decl. ¶ 75; *see McGhee v. Bank of America*, 60 Cal.App.3d 442, 450 (1976) (finding adequacy
24 satisfied where there was no indication that plaintiff's counsel were not qualified and the named
25 plaintiff had no interests antagonistic to those of the proposed class). Class Counsel also have
26 extensive experience in wage and hour litigation, and are thus adequate to represent Plaintiff and
27 the Class. Orshansky Decl. ¶¶ 75, 65-69; Gaines Decl. ¶¶ 1-7.

28 ///

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

2 In making its class certification decision, the court must determine that a class action would
3 be superior to alternative means for the fair and efficient adjudication of the litigation. By
4 consolidating many individual actions into a single proceeding, this Court’s use of the class action
5 device enables it to manage this litigation in a manner that serves the efficiency interests of the
6 litigants and the judicial system. Absent class treatment, the only alternative would be to force
7 numerous employees to file individual actions. *Sav-On Drug Stores, Inc. v. Superior Court*, 34 Cal.
8 4th 319, 339 n.10 (2004) (stating “[t]he relevant comparison lies between the costs and benefits of
9 adjudicating plaintiffs’ claims in a class action and the costs and benefits of proceeding by numerous
10 separate actions—not between the complexity of a class suit that must accommodate some
11 individualized inquiries and the absence of any remedial proceeding whatsoever.”) (emphasis in
12 original). Finally, in the context of settlement, the superiority concerns are essentially non-existent.
13 Orshansky Decl. ¶ 76.

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

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

24 The preliminary approval of the class action settlement by the trial court is simply a
25 conditional finding that the settlement appears to be within the range of acceptable settlements. *See*,
26 *e.g.*, 4 A. Conte & H. Newberg, *Newberg on Class Actions*, § 11.25 (4th Ed. 2002); *North County*
27 *Contractor’s Assn., Inc. v. Touchstone Ins. Services*, 27 Cal. App. 4th 1085, 1094-95 (1994). Thus,
28 the preliminary approval of the class action settlement by the Court is simply a conditional finding

1 that the settlement appears to be within the range of acceptable settlements. A review of the
2 preliminary approval criteria demonstrates a substantial basis for granting the preliminary approval
3 requested by this Motion and proceeding to a full settlement hearing.

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

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

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

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

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

1 74767, at *24. As detailed at length in the accompanying declaration of counsel, the settlement is
2 the result of extensive settlement negotiations between the Parties, conducted at arm's length, and
3 informed by substantial factual and legal investigations. Orshansky Decl. ¶ 22-29.

4 **1. Negotiations Were at Arm's Length Before a Respected Mediator**

5 The Parties participated in a full-day mediation before the Hon. Howard R. Broadman (Ret.).
6 Orshansky Decl. ¶ 28. Judge Broadman is a highly experienced class action mediator. *Id.* With the
7 assistance of the mediator, and pursuant to a mediator's proposal, the Parties agreed to resolve the
8 matter and reached the terms of the proposed arm's-length settlement. *Id.*

9 **2. Investigation Was Sufficient to Allow Counsel to Act Intelligently**

10 Prior to initiating the lawsuit, Class Counsel independently and thoroughly investigated the
11 claims and considered the facts and circumstances underlying the pertinent issues and applicable
12 law. Orshansky Decl. ¶ 22. This required thorough discussions and interviews with Plaintiff and
13 other Class Members as well as research into the various legal issues involved in the case. *Id.* After
14 conducting their initial investigation, Class Counsel determined that the claims were well suited for
15 class action adjudication owing to what appeared to be a common course of conduct affecting a
16 similarly situated group of employees. *Id.* Class Counsel has devoted substantial attorney time to:
17 pre-filing investigation; analyzing Plaintiff's claims; conducting legal research and analysis;
18 propounding discovery; meeting and conferring over pre-mediation information and data; reviewing
19 policies and procedures regarding Defendant's timekeeping protocol, payment of wages, and
20 provision and tracking of meal and rest breaks, along with examining a sample of actual employee
21 time records, payroll information, and wage statements; interviewing Class Members; retaining a
22 consultant and building a damages model; preparing, briefing, and attending mediation; preparing
23 and submitting notices to the LWDA; negotiating and preparing the Settlement Agreement and Class
24 Notice; preparing and filing the original Complaint, amending the pleadings to incorporate a PAGA
25 representative action, and preparing and filing the FAC; preparing this motion for preliminary
26 approval; and otherwise litigating the case. *Id.* ¶ 11; Gaines Decl. ¶ 8.

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28 ///

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

2 Class Counsel believe that the settlement is fair and reasonable and serves the best interests
3 of the Class Members. Orshansky Decl. ¶ 28; Gaines Decl. ¶ 6. Although the recommendations of
4 counsel proposing the class settlement are not conclusive, the Court can properly take these
5 recommendations into account, particularly if counsel have been involved in litigation for some
6 period of time, appear to be competent, have experience with this type of litigation, and significant
7 discovery has been completed. *See* 4 A. Conte & H. Newberg, *Newberg on Class Actions* § 11.47
8 (4th Ed. 2002). Here, Plaintiff is represented by competent and experienced counsel who possess
9 extensive experience litigating wage and hour class actions and have been appointed as class counsel
10 in numerous cases alleging similar claims. Orshansky Decl. ¶¶ 65-69; Gaines Decl. ¶ 5, Exh. A.

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

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

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

21 Class Counsel carefully vetted the claims at issue to arrive at a comprehensive damages
22 model for Defendant’s liability. Orshansky Decl. ¶ 30. Although Plaintiff steadfastly maintains that
23 his claims are meritorious, he acknowledges that there are substantial risks and uncertainty in
24 proceeding with class certification and trial. *Id.* As explained in further detail below, Defendant
25 presented numerous defenses to Plaintiff’s claims, both on the merits and with respect to class
26 certification. *Id.* For example, Defendant defended against the minimum and overtime wage claims
27 by relying on written policies that explicitly prohibited Class Members from engaging in off-the-
28 clock work. Defendant also argued that Class Members worked in different job positions and had

1 different duties, and as a result, Defendant contended there was variation to the circumstances that
2 raises highly individualized questions of fact.

3 Most significantly, Defendant argued that Plaintiff's claims were preempted by Federal
4 Motor Carrier Safety Administration ("FMCSA") regulations. Orshansky Dec. ¶ 31. "A State may
5 not enforce a State law or regulation on commercial motor vehicle safety" that the FMCSA has
6 determined is preempted. 49 U.S.C. § 31141(a). Defendant contended that "[t]he FMCSA exercised
7 that authority when it determined, on December 28, 2018, that federal law preempts California's
8 meal and rest break rules as applied to property-carrying commercial motor vehicle drivers covered
9 by the FMCSA's hours of service regulations." *Patton v. Midwest Constr. Services, Inc.*, No. CV
10 19-8580-JFW(MAAX), 2021 WL 2982277, at *2 (C.D. Cal. June 11, 2021). While the Ninth
11 Circuit concluded that the FMSCA's regulation permissibly preempted California's meal and rest
12 break rules "as applied to drivers of property-carrying commercial vehicles," subsequent courts
13 have held that "[n]othing in the Ninth Circuit's analysis in *Teamsters* suggests, let alone holds, that
14 the FMSCA *completely preempts* state law with regards to wage and hour rules." *Lindsey v. WC*
15 *Logistics, Inc.*, 586 F. Supp. 3d 983, 990 (N.D. Cal. 2022) (emphasis in original). The preemption
16 inquiry thus presented a complicated landscape under which both Parties faced uncertainty in
17 moving forward in the case. Orshansky Dec. ¶ 31.

18 Although Plaintiff was prepared to litigate these claims through class certification and,
19 ultimately, through trial, given the substantial amount offered in settlement, Class Counsel
20 predicted that it was far from certain that Plaintiff would be able to recover a greater amount at trial,
21 particularly after considering the increased litigation costs that would accrue. Orshansky Decl. ¶ 34.
22 Thus, this factor supports preliminary approval of the settlement.

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

24 Absent settlement, the Parties would have needed to conduct substantial additional
25 discovery, such as the production of voluminous records and numerous depositions of experts and
26 percipient witnesses, and prepare the case for class certification and trial. Orshansky Decl. ¶ 32. The
27 Parties would have had to depose a number of people such as managers, supervisors, human resource
28 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. ¶ 33. Yet, class certification was by no means a foregone conclusion. *Id.* For example, 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 be 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.

1 Plaintiff estimated the settlement recovery as a reasonable percentage of possible damages
2 recoverable at trial. Based on data received before and during mediation efforts, Plaintiff's damages
3 analysis shows that the settlement reflects just under 23% of the estimated possible damages
4 recoverable at trial. Orshansky Decl. ¶ 35. Utilizing a class-wide damages study to assess the nature
5 and magnitude of the claims in question (*see Kullar*, 168 Cal. App. 4th at 123), this case clearly
6 meets the requirements that the class settlement is within the "ballpark" of reasonableness.

7 Unpaid Wages

8 Plaintiff alleged that he and other employees were subjected to uncompensated time arising
9 from pre- and post- shift duties, along with interrupted meal periods, that were worked off the clock
10 due to unreasonable workloads. Orshansky Decl. ¶ 37. For example, as a truck driver working for
11 Defendant, Plaintiff alleged that he and Class Members were not paid full wages for all time spent
12 under Defendant's control. *Id.* This includes time spent after the wheels stopped rolling, including
13 on layovers, at inspections, loading or unloading, completing paperwork, or while awaiting
14 shipments. *Id.* Plaintiff also alleged that he and Class Members were not compensated for overtime
15 in cases where completing the trip required driving more than eight hours in a single day, as under
16 Defendant's policies, practices, and protocols, Plaintiff and the Class were under Defendant's
17 control for the duration of each load, including pre- and post-trip inspections, but were only paid for
18 each mile driven. *Id.* As such, Plaintiff argues that these claims are susceptible to "substantial
19 evidence of systematic company policy to pressure or require employees to work off-the-clock."
20 *Brinker Rest. Corp. v. Sup. Ct.*, 53 Cal. 4th 1004 (2012).

21 Class Counsel analyzed the documents and data produced by Defendant, and, in conjunction
22 with interviews of Plaintiff and Class Members, determined Defendant's degree of liability and
23 amounts due in damages—specifically, the incidence and amount of purported off-the-clock
24 activity. Orshansky Decl. ¶ 38. Notwithstanding the obvious evidentiary challenge of quantifying
25 unrecorded off-the-clock hours, Plaintiff estimates that Defendant is liable for an aggregate of
26 approximately three (3) hours per workweek. *Id.* ¶ 39. At an estimated average hourly rate of \$32.61,
27 plus the additional overtime premium of \$16.3, such yields an estimated damages amount of
28 \$767,182.86. *Id.*

1 This amount, however, does not discount for risks associated with certification or merits.
2 Orshansky Decl. ¶ 40. Most significant, as discussed above in section VI(B)(1), was the potential
3 for preemption under FMSCA regulations. Defendant also contended that Plaintiff’s claim for off-
4 the-clock work is not amenable to class treatment, because employees worked in a variety of job
5 positions with different requirements, and it would require an unmanageable series of mini-trials to
6 determine how much time was spent without pay. *Id.* Further, in terms of merit defenses, Defendant
7 vigorously disagreed with Plaintiff’s theories regarding how much off-the-clock work occurred in
8 reality and the credibility of those claimed hours given Defendant’s express written policies to the
9 contrary. *Id.* Here, the failure to track all hours poses evidentiary difficulties because it is hotly
10 contested how much off-the-clock work actually occurred. *Id.* For Plaintiff to establish the quantity
11 of specific disputed and unrecorded work activities—especially over multiple job titles, at differing
12 pay rates—would have been costly, time-consuming, and daunting. *Id.*

13 Defendant further contended that any off-the-clock time is de minimis. Orshansky Decl.
14 ¶ 41. Plaintiff countered that such defense lacks viability in light of *Troester v. Starbucks Corp.*, 5
15 Cal. 5th 829 (2018) given that the California Supreme Court refused to allow the de minimis defense
16 to insulate Starbucks from having to pay employees for small amounts of work regularly performed
17 off-the-clock. What is not clear, however, is to what extent the de minimis defense would apply
18 where the uncaptured hours were associated with an occasionally recurring activity. *Id.* In light of
19 these considerations—especially the evidentiary difficulties of demonstrating off-the-clock work on
20 a class-wide basis, as well as potential FMSCA preemption—Class Counsel acknowledged that a
21 significant discount on this figure would be appropriate to incorporate the risks of non-certification
22 and being unsuccessful on the merits. *Id.*

23 Meal and Rest Period Violations

24 Plaintiff’s review of the data of employee driving logs suggests Defendant’s non-
25 compliance. Orshansky Decl. ¶ 42. Records indicate that meal periods were occasionally “missed,”
26 “short,” or “late.” *Id.* Consequently, Plaintiff alleged that Defendant violated Cal. Lab. Code §§
27 226.7 and 512, as well as the applicable IWC Wage Orders, by failing to compensate Plaintiff and
28 Class Members for short, late, interrupted, and missed meal periods. *Id.*

Defendant, however, contended that it had practices, policies, and procedures to provide meal and rest breaks every workday to their employees that fully complied with the law. Orshansky Decl. ¶ 44. Defendant vehemently argued that it complied with the requirements articulated by the California Supreme Court in *Brinker*, 53 Cal. 4th 1004. Orshansky Decl. ¶ 44. 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. *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). 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. Orshansky Decl. ¶ 44. Based upon analysis of Class Member time and payroll records, and estimating an average of three meal period violations per workweek, Plaintiff calculated the potential maximum exposure of this claim to be approximately \$511,455.24, again without taking into account associated risks to proving the claim on a class-wide basis and potential FMSCA preemption as discussed above in section VI(B)(1). *Id.* ¶ 45.

Plaintiff also alleged that he 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. ¶ 46. 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). 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. ¶ 47. 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.*

Class Counsel recognizes that, 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. ¶ 48. As such, and based on the narrative of Plaintiff, Class Counsel used half of the exposure for meal breaks, thus yielding a rest break maximum exposure of \$255,727.62. *Id.*

Wage Statement Violations

Plaintiff alleged a cause of action under Cal. Lab. Code § 226(a) for Defendant’s failure to provide accurate itemized wage statements. Orshansky Decl. ¶ 49. 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

1 if Defendant did not provide minimum and overtime wages for all hours worked, owes premiums
2 for non-compliant meal and rest breaks, unreimbursed expenses, and so forth, then the wage
3 statements were inevitably inaccurate.

4 Defendant contended, however, that Cal. Lab. Code § 226(e) penalties are not automatic.
5 Orshansky Decl. ¶ 50. Rather, the employee must show that Defendant's noncompliance was
6 "knowing and intentional." *Id.* Defendant suggested that any noncompliance was not knowing and
7 intentional. *Id.*

8 Because the damages for this cause of action are penalties, the statute of limitations is only
9 one year prior to the filing of the original complaint. *See* Cal. Civ. Proc. Code § 340. For settlement
10 purposes, and in consideration of the risks of a loss on the merits of the underlying derivative
11 claim(s) and/or good faith defense,⁷ a significant downward departure from any maximum exposure
12 was and is warranted. Orshansky Decl. ¶ 51. In reality, many of the pay periods may ultimately have
13 been found to contain no violation at all. The Parties discussed these issues and, based on the \$50
14 initial violation plus the \$100 per pay period subsequent violation rates, Plaintiff estimates the total
15 maximum wage statement exposure to be \$104,560. *Id.*

16 Unreimbursed Expenses

17 Plaintiff alleged a cause of action under Labor Code § 2802(a), which requires that an
18 employer reimburse employees for all necessary expenditures that employees incur in discharging
19 their duties. Orshansky Decl. ¶ 52. Here, Plaintiff alleged Defendant's failure to reimburse non-
20 exempt employees for necessary business expenses incurred, *i.e.*, Plaintiff and Class Members were
21 required to use their personal cell phones for job-related purposes, but were not reimbursed for such
22 use. *Id.*

23
24 ⁷ *See, e.g., Naranjo v. Spectrum Security Services, Inc.*, 15 Cal. 5th 93 (2022). In 2023, the Court of
25 Appeals, re-visiting *Naranjo* on remand, substantiated such good faith arguments because penalties
26 for missed meal rest breaks were not clearly established law until the May 2022 California Supreme
27 Court decision. *See Naranjo v. Spectrum Security Services, Inc.*, 88 Cal. App. 5th 937 (2023). On
28 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).

1 Defendant contended that it has a policy and practice of reimbursing employees for necessary
2 business-related expenses. Orshansky Decl. ¶ 53. Defendant also contended that, with respect to the
3 alleged expenses for which Plaintiff and other Class Members never requested reimbursement from
4 Defendant, Defendant did not know and had no reason to know that the alleged business-related
5 expenses were incurred. *Id.* Moreover, to the extent it occurred, Defendant asserted that this claim
6 is not suitable for class treatment as it would require individualized determinations as to whether
7 each employee used a personal cell phone for work-related purposes and, if so, how much of that
8 use was a reasonable percentage of his or her individual monthly phone bill. *Id.*

9 Defendant also argued that the California Labor Code only requires reimbursement of
10 “necessary” expenses—as opposed to any expense that is incurred in the course of performing
11 work—and argued that distinguishing a necessary expense from an unnecessary one would require
12 individualized inquiry. Orshansky Decl. ¶ 54; *see also* Cal. Lab. Code § 2802; *Gattuso v. Harte-*
13 *Hanks Shoppers, Inc.*, 42 Cal. 4th 554 (2007). Furthermore, whether an expense was necessary
14 would depend in part on the reasonableness of the employee’s choice and would thus have to be
15 established by way of extensive individual factual inquiry and/or statistical evidence. *Cochran v.*
16 *Schwan’s Home Services, Inc.*, 228 Cal. App. 4th 1137 (2014).

17 With recognition that this claim is difficult to certify class-wide and quantify in terms of
18 damages, Plaintiff assigned a de minimis value to this claim. Orshansky Decl. ¶ 55.

19 Waiting Time Violations

20 Plaintiff further asserted a cause of action against Defendant for failure to timely pay all
21 wages due employees at separation. *See* Cal. Lab. Code §§ 201-203. As with other claims,
22 Defendant vigorously disagreed that it engaged in any conduct giving rise to liability or entitlement
23 to recovery of penalties. Orshansky Decl. ¶ 56. Defendant argued that waiting time penalties are not
24 appropriate because it attempted to pay employees all final wages owed in good faith upon
25 employees’ separation, thereby precluding a finding of willfulness necessary to obtain waiting time
26 penalties. *Id.* ¶ 57. After the Parties discussed the above risks and the uncertainty of proving the
27 underlying claims (of which waiting-time penalties are derivative), Class Counsel estimated
28 \$89,220.96 to be the maximum realistic exposure value for this claim. *Id.* ¶ 58.

Derivative PAGA Penalties

The Parties exchanged sufficient data and information such that the potential liability and exposure to PAGA penalties could be analyzed. Orshansky Decl. ¶ 59. 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. ¶ 60. 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 also, 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. ¶ 60.

Under Cal. Lab. Code § 2699(f)(2), as in force at the time of this case's filing, Defendant is subject to a civil penalty of \$100 for the initial violation of the underlying Labor Code violations, and \$200 for each subsequent pay period where the violation occurred.⁸ Although, strictly speaking, class certification requirements are not required to be satisfied in order to adjudicate a PAGA claim, the state of the law with respect to the adjudication and valuation of a PAGA claim is uncertain.⁹

⁸ 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.

⁹ 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.

Orshansky Decl. ¶ 61. 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. *Id.* 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 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

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[ing] the public by augmenting the state’s enforcement capabilities, encouraging
compliance with California Labor Code provisions, and deterring noncompliance.” *O’Connor v.*
Uber Techs., Inc., 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.

1 can state a strong case that, as the court concluded in *Cotter*, its efforts to devise compliant
2 operational policies do not indicate an organization that has deliberately sought to evade the law.
3 This is a very significant risk factor. Defendant also disputed that Plaintiff could find a coherent
4 method for proving liability for various employees working in different departments and/or job
5 positions.

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

15 Establishing violations for purposes of the PAGA would be difficult in this matter. After
16 analyzing the claims, Class Counsel concluded that the value of this settlement is fair, adequate, and
17 reasonable. Here, given the challenges and risks in attempting to prove wide-scale liability as well
18 as the likelihood that any penalties imposed would be significantly discounted, Class Counsel
19 calculated a realistic estimate of \$40,000 in potential PAGA penalty exposure—of which, by statute,
20 only 25%, or \$10,000, would be recoverable by aggrieved employees. Orshansky Decl. ¶ 63.

21 Summary

22 Using the estimated figures for each of the claims described above, Class Counsel predicted
23 that approximately \$1,768,146.68 would be the maximum possible damages available to Class
24 Members. The Gross Settlement Amount of \$405,000 thus represents almost 23% of the maximum
25 realistic exposure to Defendant, while avoiding the further expense and serious risk of proceeding
26 toward class certification and trial. Orshansky Decl. ¶ 64. “The fact that a proposed settlement may
27 only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed
28 settlement is grossly inadequate and should be disapproved.” *Linney v. Cellular Alaska P’ship*, 151

1 F.3d 1234, 1242 (9th Cir. 1998) (internal quotations omitted); *see also, e.g., Altamirano v. Shaw*
2 *Industries, Inc.*, 2015 WL 4512372, at *9 (N.D. Cal. 2015) (preliminarily approving wage and hour
3 class action settlement stating, “[a]lthough 15% represents a modest fraction of the hypothetical
4 maximum recovery estimated by Plaintiff, that figure is sufficient for the Court to grant preliminary
5 approval given the merits of Plaintiff’s claims.”). Taking into account the risk of non-certification,
6 failure to prevail on the merits, and the Court’s power to reduce the civil penalties, the proposed
7 settlement falls within the realm of being fair, reasonable, and adequate.

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

9 This Court should order distribution of the Class Notice to the current and former employees
10 (*see* Orshansky Decl. ¶ 77 and Exh. 1 [Settlement Agreement] at internal Exhibit A) to the Class by
11 first class U.S. mail, postage prepaid, using the last known mailing address information provided by
12 Defendant. This manner of giving notice is the “best notice practicable” under the circumstances
13 because it provides “individual notice to all members who can be identified though reasonable
14 effort.” *Eisen v. Carlisle and Jacqueline*, 417 U.S. 156, 173 (1974). Here, Plaintiff proposes that the
15 settlement be administered by CPT, an experienced class action settlement administrator. *See*
16 Settlement Agreement ¶ I(DD). Class Members’ addresses will be ascertainable through
17 Defendant’s personnel and payroll records, which Defendant will provide to the Settlement
18 Administrator within 10 business days after preliminary approval of the settlement. *Id.* ¶ III(D). The
19 Settlement Administrator will run all addresses through the National Change of Address database
20 and, to the extent that any notices are returned, will conduct further skip traces to obtain current
21 address information. *Id.*

22 The content of the proposed notice satisfies California Rules of Court, Rule 3.766(d) because
23 it advises Class Members of the nature of the claims, basic contentions and denials of the Parties,
24 the key terms of the settlement, the uniform 45-day deadline to submit a workweek dispute, request
25 for exclusion/opt-out, or object to the settlement and the procedure by which to do so, and explains
26 the recovery formula and credited number of workweeks for each Class Member. The proposed
27 notice will also notify Class Members of the final approval hearing date, provide the contact
28 information for Class Counsel, and advise Class Members that they may enter an appearance

1 through counsel if they wish. This manner of giving notice satisfies California Rules of Court, Rule
2 3.766(e) as the best notice practicable under the circumstances. Thus, the proposed method of notice
3 is reasonably calculated to reach Class Members by the best means practicable and should be
4 approved.

5 **VIII. THE COURT SHOULD SET A FINAL APPROVAL HEARING**

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

9 **IX. CONCLUSION**

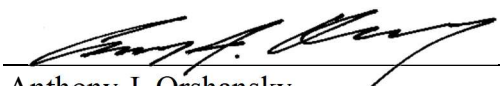
10 Based upon the foregoing, and because the proposed settlement is fair, reasonable, and
11 advantageous to the Class Members, Plaintiff respectfully requests that the Court enter an Order:

- 12 1. Preliminarily approving the Settlement Agreement as fair, reasonable, and adequate;
- 13 2. Preliminarily approving the form and content of the Class Notice;
- 14 3. Provisionally certifying the Settlement Agreement's proposed Class comprised of
15 the Class Members identified during the Class Period under Cal. Civ. Code § 382 for settlement
16 purposes only;
- 17 4. Appointing Plaintiff as the Class Representative;
- 18 5. Appointing CounselOne, PC and Gaines & Gaines, APLC as Class Counsel;
- 19 6. Appointing CPT as the Settlement Administrator;
- 20 7. Setting a date for the Final Approval Hearing; and
- 21 8. For any further relief the Court deems just and proper.

22
23 Dated: October 10, 2025

Respectfully submitted,

24 COUNSELONE, PC

25 By: 

26 Anthony J. Orshansky

27 P. Bartholomew Quintans

28 Attorneys for Plaintiff and the Class