

1 Tae Kim (SBN 210465)
Dawn Collins (SBN 193447)
2 **COLLINS KIM LLP**
8383 Wilshire Blvd., Suite 800
3 Beverly Hills, CA 90211
Tel: (213) 341-0238 / Fax: (213) 341-0239

4 *Attorneys for Plaintiffs*
Adam Badis and Angelica Reyes

5
6 *[Additional counsel listed on next page]*

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **FOR THE COUNTY OF RIVERSIDE**

9 ADAM BADIS, ANGELICA REYES, and
MONICA MELISSA GUTIERREZ,
10 individually, and on behalf of other members
of the general public similarly situated;

11 Plaintiffs,

12 vs.

13 COPAN DIAGNOSTICS INC., a New York
corporation; and DOES 1 through 100,
14 inclusive,

15 Defendants.
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Case No.: CVRI2203991

[Assigned for all purposes to the Hon. Harold
W. Hopp, Dept. 1]

**PLAINTIFFS' NOTICE OF MOTION AND
MOTION FOR PRELIMINARY
APPROVAL OF CLASS AND
REPRESENTATIVE ACTION
SETTLEMENT**

Date: December 5, 2024
Time: 8:30 a.m.
Dept: 1

Additional Counsel

Edwin Aiwazian (SBN 232943)
Vartan S. Madoyan (SBN 279015)
LAWYERS for JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203
Tel: (818) 265-1020 / Fax: (818) 265-1021

Attorneys for Adam Badis and Angelica Reyes, Plaintiffs

JAMES HAWKINS APLC
James R. Hawkins, Esq. (#192925)
Gregory Mauro, Esq. (#222239)
Michael Calvo, Esq. (#314986)
Lauren Falk, Esq. (#316893)
Ava Issary, Esq. (#342252)
9880 Research Drive, Suite 200
Irvine, CA 92618
Tel.: (949) 387-7200
Fax: (949) 387-6676
Email: James@jameshawkinsaplc.com
Email: Greg@jameshawkinsaplc.com
Email: Michael@jameshawkinsaplc.com
Email: Lauren@jameshawkinsaplc.com
Email: Ava@jameshawkinsaplc.com

Attorneys for Plaintiff MONICA MELISSA GUTIERREZ,
Individually and on behalf of all others similarly situated

1
2 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD, PLEASE TAKE**
3 **NOTICE** that on December 5, 2024, or as soon thereafter as the matter may be heard in
4 Department 1 of the above-entitled Court located at 4050 Main Street, Riverside, CA 92501,
5 Plaintiffs Adam Badis, Angelica Reyes, and Monica Melissa Gutierrez, on behalf of themselves
6 and a class of similarly situated class members, will apply to this Court for an Order:

- 7 1. Granting preliminary approval of the Joint Stipulation of Class Action Settlement
8 (“Stipulation”);
9 2. Approving the Notice of Class Action Settlement;
10 3. Provisionally certifying the class for settlement purposes only;
11 4. Appointing CPT as the Settlement Administrator; and
12 5. Scheduling a final approval hearing.

13 Good cause exists to grant this motion as the proposed Settlement is fair, adequate,
14 and reasonable. Additionally, the proposed Notice complies with California Rules of Court,
15 Rules 3.766 and 3.769, and mailing the Notice to the Class Members’ last known addresses is
16 an appropriate form of giving notice. Finally, provisional certification of the class is
17 appropriate because the proposed class is ascertainable, common questions of law and fact
18 predominate over any individualized questions, Plaintiffs’ claims are typical of those of the Class
19 Members, Plaintiffs and their counsel have adequately represented, and will continue to adequately
20 represent, the class, and proceeding as a class action is a superior means of resolving this dispute.

21 This Motion is based upon the accompanying Memorandum of Points and Authorities, the
22 Declarations of Tae Kim, Vartan Madoyan, and James Hawkins, Monica Melissa Gutierrez,
23 Adam Badis, and Angelica Reyes, and exhibits thereto, and such other oral arguments and
24 documentary evidence as may be presented to the Court at the hearing of this motion.

25 Dated: November 4, 2024

COLLINS KIM LLP

26 By:  _____

27 Tae Kim
28 *Attorneys for Plaintiffs*
Adam Badis and Angelica Reyes

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Adam Badis (“Badis”), Angelica Reyes (“Reyes”), and Monica Gutierrez (“Gutierrez”) (collectively “Plaintiffs”) seek preliminary approval of a proposed \$1,235,000.00 non-reversionary, wage and hour class action and Private Attorneys General Act settlement with Defendant Copan Diagnostics Inc. (“Defendant” or “Copan”). A presumption of fairness exists as the Settlement was reached through extensive, mediated arm’s length negotiations, Plaintiffs conducted sufficient investigation and discovery, which provided counsel with the opportunity to properly investigate and assess the claims, and Plaintiffs’ counsels are experienced in similar wage-and-hour class litigation. Preliminary settlement approval also is appropriate as the proposed Settlement is within the “ballpark” of reasonableness and is fair, adequate, and reasonable to the Class Members.

As the proposed Settlement is fair, adequate and reasonable, the Court should authorize the mailing of the Notice of Class Action Settlement (“Notice”) to the Class Members. The Notice complies with California Rules of Court, Rules 3.766 and 3.769, and mailing the Notice to the Class Members’ last known addresses is an appropriate form of giving notice.

Finally, provisional certification of the class is appropriate because the proposed class is ascertainable, common questions of law and fact predominate over any individualized questions, Plaintiffs’ claims are typical of those of the Class Members, Plaintiffs and their counsel have adequately represented, and will continue to adequately represent, the class, and proceeding as a class action is a superior means of resolving this dispute.

Accordingly, Plaintiffs request the Court grant preliminary approval of the Settlement, authorize the mailing of the Notice Packet to Class Members, provisionally certify the class for settlement purposes only, and set a hearing to consider whether to grant final approval of the Settlement and to consider the requests for attorneys’ fees, costs, and a Class Representative Enhancement Payments.

1 **II. SUMMARY OF LITIGATION**

2 **A. Plaintiffs' Claims**

3 Defendant is a medical supply company that manufactures medical supply packaging,
4 such as the vials contained in COVID-19 test kits. It has manufacturing and packing plants in
5 Riverside and San Diego counties. Plaintiff Badis worked for Defendant in manufacturing from
6 May 2019 through June 26, 2020; Reyes worked for Defendant in production from November
7 2020 through July 2022, and Plaintiff Gutierrez worked in administration. Declarations of Adam
8 Badis ("Badis Decl."), ¶ 2, Angelica Reyes ("Reyes Decl."), ¶ 2, and Monica Gutierrez
9 (Gutierrez Decl.") ¶¶ 2-3.

10 Plaintiffs Badis and Reyes allege that due to production demands, they were not provided
11 with their meal and rest breaks. They further allege that they were not paid overtime. Kim
12 Decl., ¶ 8. Plaintiff Gutierrez was employed as an Accounting Specialist at Defendant's
13 Murrieta, California location. Plaintiff Gutierrez suffered the same damages as other employees.
14 These included not being paid all wages, not provided accurate wage statements, not being
15 provided with meal and rest periods, not being paid timely during her employment, not being
16 reimbursed for necessary business expenses, not being paid for vacation pay, and not being
17 timely paid wages during and upon her separation from Defendant's employ all in accordance
18 with California law. Gutierrez Decl., ¶¶ 2-3.

19 On October 14, 2022, Plaintiff Badis filed a class and representative action against
20 Defendant alleging various wage and hour violations. Declaration of Tae Kim ("Kim Decl.") ¶ 2.
21 On December 15, 2023, Plaintiff Badis filed a Second Amended Complaint, adding Plaintiff
22 Reyes as an additional class representative. Kim Decl., ¶ 2. The operative complaint alleges:
23 Defendant failed to provide required meal and rest periods, failed to pay minimum and overtime
24 wages, and failed to pay wages on separation of employment. Kim Decl., ¶ 2. Plaintiffs Badis
25 and Reyes further allege that Defendant's practices violated California's Unfair Competition
26 Law ("UCL"). Kim Decl., ¶ 2. On October 24, 2023 Plaintiff Gutierrez filed her class action
27 complaint and, on December 12, 2023, Plaintiff Gutierrez filed her representative action under
28 PAGA. On or about September 16, 2024, Class Counsels filed a joint stipulation to consolidate

1 the Gutierrez actions with the Badis and Reyes actions, and to permit filing of a Third Amended
2 consolidated complaint. Kim Decl., ¶ 2.

3 Class Counsels are not aware of any other related claims with similar allegations. Kim
4 Decl., ¶16; Declaration of Vartan Madoyan (“Madoyan Decl.”) ¶ 13; Declaration of James
5 Hawkins (“Hawkins Decl.”) ¶¶ 3-4, Declaration of Edward Langhammer (“Langhammer Decl.”)
6 ¶ 4.

7 Defendant denies the allegations set out by Plaintiffs and opposes the merits of this
8 action. First, Defendant asserts that it complied with all of its compensation obligations, and
9 therefore, that Plaintiffs and other Class Members were paid all wages owed. Kim Decl., ¶ 9.
10 Second, Defendant asserts that it complied with all of its meal period and rest break obligations,
11 had appropriate and compliant policies in place, and thus, that Plaintiffs and other Class
12 Members were provided the opportunity to take all meal periods and rest breaks to which they
13 were entitled. Kim Decl., ¶ 9. Third, Defendant asserts that it indemnified Plaintiffs and other
14 Class Members for any and all necessary business expenses they incurred, and therefore, that
15 Plaintiffs and other Class Members suffered no actual damage or harm from unreimbursed
16 expenses. Kim Decl., ¶ 9. Fourth, Defendant asserts that it provided Plaintiffs with accurate wage
17 statements, and therefore, that Plaintiffs and other Class Members suffered no actual damage or
18 harm from any inaccurate wage statements. Kim Decl., ¶ 9. (*See, e.g., Angeles v. U.S. Airways,*
19 *Inc.*, No. C 12-05860 CRB, 2013 WL 622032, at *10 (N.D. Cal. Feb. 19, 2013) [“A plaintiff
20 must adequately plead an injury arising from an employer’s failure to provide full and accurate
21 wage statements, and the omission of the required information alone is not sufficient.”].) Fifth,
22 Defendant asserts that Plaintiffs cannot prove Defendant willfully failed to pay all final wages
23 at the time of termination, and thus, that Plaintiffs and other Class Members are not owed
24 waiting time penalties. Kim Decl., ¶ 9. (*See, e.g., Pedroza v. PetSmart, Inc.*, No. ED CV 11–
25 298 GHK (DTBx), 2012 WL 9506073, *5 (C.D. Cal. June 14, 2012).) Sixth, Defendant
26 denies derivative liability on these bases, asserting that it did not engage in any unfair
27 business practices and is not liable under the PAGA. Last, Defendant denies that Plaintiffs’
28 causes of action are proper for class treatment. Kim Decl., ¶ 9.

1 **B. Discovery And Investigation**

2 1. Badis and Reyes Action

3 Plaintiff Badis served an initial set of discovery and deposition notices on Defendant on
4 April 6, 2023 as well as noticing the deposition of Defendant's persons most qualified for
5 multiple topics. Kim Decl., at ¶ 3. Thereafter, the Parties agreed to an early mediation, a stay on
6 formal written discovery, and Defendant agreed to informally produced class data, policies, and
7 class information so that Plaintiff could adequately prepare for mediation. Kim Decl., at ¶ 3.
8 Defendant produced a 33% sampling of pay and time records for the putative class members
9 prior to mediation. Kim Decl., at ¶ 3. The Parties also conducted two deposition sessions of
10 Defendant's PMQ and Plaintiff Badis was deposed prior to mediation. Kim Decl., at ¶ 3.
11 Belaire-West notices were mailed on September 28, 2023. Kim Decl., at ¶ 3. Plaintiffs and their
12 counsel conducted an extensive investigation into the claims alleged, including lengthy and
13 numerous conversations with Plaintiffs, spoke with numerous additional putative class members
14 identified after the mailing of the Belaire-West notices, performed legal research, and engaged in
15 informal discovery with Defendant. Kim Decl., at ¶ 3.

16 Defendant produced hundreds of pages of relevant wage and hour policy documents, a
17 representative sampling of the time and payroll records for the Class Members, as well as other
18 employment data such as dates of employment, and employee and workweek/pay period counts.
19 Kim Decl., at ¶ 4. Plaintiffs Badis and Reyes' expert consultant analyzed the time and payroll
20 records, and prepared an exposure analysis, which assisted the Badis and Reyes Plaintiffs'
21 counsel in preparing a damages model prior to the mediation. Kim Decl., at ¶ 4.

22 2. Gutierrez Action

23 Over the course of litigation, Plaintiffs' counsel received a considerable amount of
24 information in preparation for mediation, including employee demographic data, time and pay
25 records, and Defendant's policies and procedures manuals which covered a broad range of topics
26 including, *inter alia*, employee clock-in policies and procedures, attendance policies, meal
27 periods/rest periods, overtime & premium pay, etc. and sampled time and pay records for the
28 Class Members. Hawkins Decl., ¶¶ 11, 12.

1 The document and data exchanges allowed Plaintiffs' Counsel to fully assess the nature
2 and magnitude of the claims being settled, as well as the impediments to recovery, and ultimately
3 enabled Plaintiffs' Counsel so as to make an independent assessment of the reasonableness of the
4 settlement's terms. Hawkins Decl., ¶ 11. Plaintiffs' Counsels performed a thorough
5 investigation into the claims at issue, which included: (1) determining Plaintiffs' suitability as
6 class representatives and private attorneys general through interviews, background
7 investigations, and analyses of their employment files and related records; (2) evaluating all of
8 Plaintiffs' potential representative claims; (3) researching similar wage and hour class actions as
9 to the claims brought, the nature of the positions, and the type of employer; (4) analyzing
10 employees' time and wage records; (5) reviewing Defendant's employment policies and
11 practices; (6) researching settlements in similar cases; (7) evaluating Plaintiffs' claims and
12 estimating Defendant's liability for purposes of settlement; (8) drafting the mediation brief; and
13 (9) participating in the mediation. Hawkins Decl., ¶ 12.

14 By engaging in such a thorough investigation and evaluation of Plaintiffs' claims,
15 Plaintiffs' Counsels can opine that the Settlement, for the consideration and on the terms set forth
16 in the Settlement Agreement, is fair, reasonable, an adequate, and is in the best interests of Class
17 Members in light of all known facts and circumstances, including the risk of significant delay
18 and uncertainty associated with litigation, and various defenses asserted by Defendant. Hawkins
19 Decl., ¶ 13; Kim Decl., ¶¶ 2-6.

20 **C. Settlement Negotiations**

21 1. First Mediation Session: Copan and Badis & Reyes Plaintiffs

22 On January 17, 2024, Defendant and Badis and Reyes Plaintiffs participated in private
23 mediation with professional neutral mediator Lisa Klerman, Esq. Kim Decl., ¶ 5. The settlement
24 negotiations were at arm's length and, although conducted in a professional manner, were
25 adversarial. Kim Decl., ¶ 5. The parties went into the mediation willing to explore the potential
26 for a settlement of the dispute, but each side was also prepared to litigate their position through
27 trial and appeal if a settlement had not been reached. Kim Decl., ¶ 5. After extensive
28 negotiations and discussions regarding the strengths and weaknesses of Plaintiffs' claims and

1 Defendant's defenses, a settlement was reached by the parties by way of a mediator's proposal
2 the following week. Kim Decl., ¶ 5.

3 2. Second Mediation Session: Reyes, Gutierrez & Copan

4 Shortly thereafter, Copan informed Badis and Reyes counsel that there may be overlap
5 between the two pending Gutierrez actions with the Badis and Reyes class action. Kim Decl., ¶
6 5. Badis and Reyes Plaintiffs' counsel reached out to Gutierrez Plaintiff's counsel to discuss the
7 scope of the overlap. Kim Decl., ¶ 5. Plaintiffs' counsels then agreed to a second mediation
8 session with Ms. Klerman, which took place on April 5, 2024. Kim Decl., ¶ 5. While the
9 Gutierrez cases did not settle during the mediation, a settlement was ultimately reached by way
10 of a mediator's proposal the following week. Kim Decl., ¶ 5. Settlement terms of both the Badis
11 & Reyes and Gutierrez cases are embodied in the Joint Stipulation re: Class Action Settlement
12 ("Stipulation") attached as Exhibit 1 to Kim Decl. ¶ 5. As part of the mediation, Plaintiff Reyes
13 separately resolved and released her claims against Copan for disability discrimination. *Id.*

14 Class Counsels have conducted a thorough investigation into the facts of this case. Based
15 on the foregoing document exchange and their own independent investigation and evaluation,
16 Class Counsel is of the opinion that the Stipulation is fair, reasonable, and adequate. Kim Decl.,
17 6; Hawkins Decl., ¶¶ 13-15. Furthermore, in light of all known facts and circumstances, the risk
18 of significant delay, trial risk, appellate risk, the defenses that could be asserted by Defendant
19 both to certification and on the merits, the settlement is in the best interests of the Settlement
20 Class Members. Kim Decl. ¶ 6.

21 3. Range of Recovery for Aggrieved Employees and Settlement Class Members

22 If the Stipulation is approved, the recovery range for Settlement Class Members is \$22.68
23 to \$7,077.66. Kim Decl. ¶ 7. The Aggrieved Employee settlement recovery range is \$0 to
24 \$31.38. Kim Decl. ¶ 7.

25 **III. SUMMARY OF SETTLEMENT**

26 Under the Stipulation, Defendant will pay \$1,235,000.00 to resolve this consolidated
27 action. This amount is all-inclusive. The Stipulation's key terms include:

28 //

1 1. Class and Class Period; PAGA Group and PAGA Period

2 The Class is defined as “All current and former hourly-paid or non-exempt employees
3 who worked for any of the Defendants within the State of California at any time during the
4 period September 14, 2018 to final judgment and who reside in California.” Field Service
5 Engineer employees who were included in the Field Service Engineer Settlement in *Gillette v.*
6 *Copan Diagnostics, Inc., Case No. CVRI-2105284* are excluded. Stipulation ¶ 1.1A. Class
7 Members consist of all hourly, non-exempt employees employed by Defendant in California
8 during the period from October 14, 2018, through the date of preliminary approval of the
9 Stipulation (the “Class Period”). Stipulation ¶ 1.1, 1.23. The PAGA Group are all persons
10 employed by Defendant as non-exempt employees in California at any time from October 14,
11 2021, to the Stipulation preliminary approval date (the “PAGA Period”). Stipulation ¶¶ 1.25A,
12 1.25. There are approximately 332 Class Members who worked approximately 31,142
13 workweeks during the Class Period, and 239 Aggrieved Employees who worked approximately
14 7,106 pay periods during the PAGA Period. There were 159 terminated employees during the
15 three-year period prior to the filing of this Action. Kim Decl. ¶ 7.

16 2. Gross, Non-Reversionary Settlement Amount

17 The total Gross Settlement Award is \$1,235,000.000, which represents the total extent of
18 Defendant’s monetary obligations under the Stipulation, other than the employer portion of
19 payroll taxes on the wage portion of the settlement payments. Stipulation, ¶¶ 1.16, 7.1.

20 If any checks mailed to Settlement Class Members remain uncashed after the expiration
21 of 120 days, or an envelope mailed to a Settlement Class Member is returned and no forwarding
22 address can be located for the Settlement Class Member after reasonable efforts have been made
23 (including, but not limited to, skip tracing)(“Initial Distribution”); then the Settlement
24 Administrator, after 140 days from initial mailing, shall send a pro-rata Second Distribution of
25 those uncashed funds to the Settlement Class Members who cashed their original checks sent
26 during the Initial Distribution. The Second Distribution checks will expire 60 days after mailing.
27 If there are any uncashed monies/checks after the Second Distribution those uncashed monies
28 will be sent by the Settlement Administrator to the California State Controller’s Unclaimed

Property Division in accordance with California Unclaimed Property Laws. Settlement Class Member who fails to timely cash or deposit their check(s) shall remain subject to the terms of the Stipulation, including without limitation all releases contained herein, and the Final Approval Order and Judgment from the Court. Stipulation, ¶7.4.

3. Release

“Released Class Claims” is defined as follows: all known and unknown claims, losses, damages, liquidated damages, penalties, interest, liabilities, causes of action, civil complaints, arbitration demands or suits which arise from the causes of action and facts asserted in the Class Action, and including, without limited to the foregoing, all claims under the California Labor Code as alleged in the Class Action, including without limitation any and all claims under the California Labor Code sections 201, 202, 203, 204, 226, 226.3, , 226.7, 227.3, 510, 512(a), 558, 558.1, 1174, 1174.5, 1175, 1194, 1197, 1197.1, 1198, 2802, 2804, violations for unpaid overtime and minimum wages, failure to timely pay wages upon termination, failure to provide compliant wage statements, failure to reimburse business expenses, unpaid earned, and accrued and vested vacation pay, and violations of California Unfair Competition Law (Cal. Bus. & Prof. Code §§ 17200, *et seq*, or other remuneration whether sought under statute, tort, contract or as an unfair business practice, released by Plaintiffs and each of the Settlement Class Members during the Class Period on behalf of themselves and each of their heirs, representatives, successors, assigns and attorneys, which shall be fully, finally and forever released, relinquished and discharged. Stipulation, ¶1.30.

“PAGA Released Claims” is defined as follows: any and all claims or actions for civil penalties under PAGA (the Private Attorneys General Act sections 2698, *et seq*.) for all claims that could have been sought by the LWDA for conduct or omissions based on or arising out of the factual allegations of the pre-filing letter and its attached Complaint under Labor Code section 2699.3, and as alleged in the Third Amended Complaint (the operative pleading) during the PAGA Period, including any and all claims under the California Labor Code section 2698 *et seq* for alleged California Labor Code violations under 201, 202, 203, 204, 226, 226.3, , 226.7, 227.3, 510, 512(a), 558, 558.1, 1174, 1174.5, 1175, 1194, 1197, 1197.1, 1198, 2699, , 2699.5,

2802, 2804, for violations for unpaid overtime, unpaid meal period premiums and rest period premiums, unpaid minimum wages, failure to timely pay wages upon termination, failure to provide accurate wage statements, failure to reimburse necessary business expenses, and failure to pay earned, and accrued and vested vacation pay (“PAGA Released Claims”) , as set forth in Section 2.8 of this Agreement. Stipulation, ¶1.27A. Both releases are effective on the Effective Date, defined as the date of Entry of the Final Approval Order and Judgment if there are no valid objections to the Stipulation. Stipulation, ¶ 1.12. Class Counsel is conferring with Defendant to amend this provision to be effective after Final Judgment and funding.

4. PAGA Penalty Amount

Thirty thousand dollars of the settlement will be allocated to the PAGA claims.
Stipulation, ¶ 1.27.

5. Net Settlement Fund

“Net Settlement Fund” is defined as the Gross Settlement Award less the Class Counsel Award to Class Counsel, all Settlement Administration Costs, the Class Representatives Enhancement Payments, and the PAGA Penalty Amount (consisting of the LWDA payment [75% of PAGA Penalty] and PAGA Group Amount [25% of PAGA Penalty Amount]).
Stipulation, ¶ 1.21. This amount totals \$473,550.00.

6. Settlement Payments and Calculation of Workweeks (Excluding PAGA Payments):

The Individual Settlement Amount is based upon the approximate number of Workweeks each Settlement Class Member worked as a Class Member during the Class Period. Individual Settlement Amounts shall be calculated and apportioned by the Settlement Administrator as follows: (1) The Settlement Administrator shall determine the number of Workweeks during the Class Period for each Settlement Class Member and the Total Workweeks based on the Class List provided by Defendant; (2) The Settlement Administrator shall divide the Net Settlement Fund by the number of Total Workweeks to derive the “Workweek Value”; (3) For each Settlement Class Member, the Settlement Administrator shall multiply the determined number of Workweeks they worked during the Class Period by the Workweek Value. The resulting figure

1 shall be the “Individual Settlement Amount” for each such Settlement Class Member. The
2 Individual Settlement Amount(s) will be allocated for tax purposes as follows: Thirty-Three
3 percent (33%) of each Individual Settlement Payment will be allocated as wages; Thirty-Three
4 percent (33%) will be allocated interest, and Thirty-four (34%) as penalties. The portion
5 allocated to wages will be reported on an IRS Form W-2 and the portions allocated to non-wages
6 (interest and penalties) will be reported on an IRS Form 1099 by the Settlement Administrator.
7 Plaintiff and Class Members shall assume full responsibility and liability for the payment of
8 taxes due on such awards except that Defendant shall solely be responsible for the employer
9 portion of the payroll taxes on the wages portion of such payments. Stipulation, ¶ 7.1.

10 7. PAGA Payments

11 PAGA Payments will be calculated based on each PAGA Class Member’s pro rata share
12 of the PAGA settlement amount of \$30,000.00. ¶ 7.2.

13 8. Class Representative Enhancement Payments

14 Plaintiffs will request up to a total of Twenty-Five Thousand dollars (\$25,000) for class
15 representative enhancement payments, allocated as follows: Plaintiff Badis will request up to
16 Seven Thousand Five Hundred dollars (\$7,500); Plaintiff Reyes will request up to Seven
17 Thousand Five Hundred dollars (\$7,500); and Plaintiff Gutierrez will request up to Ten
18 Thousand dollars (\$10,000) in recognition of their service, and Defendant will not oppose these
19 requests. Any portion of the Class Representative Enhancement Payments not awarded by the
20 Court to Plaintiffs or any of them, shall be added to the Class Settlement Amount for the benefit
21 of Participating Class Members. Stipulation, ¶1.8.

22 9. Class Counsel Award and Costs:

23 Class Counsel shall request attorneys’ fees of up to thirty-three percent (33% or \$408,550)
24 of the Gross Settlement Award ($\$935,000 + \$300,000 = \$1,235,000$), allocated \$200,557.50 to
25 CollinsKim, \$107,992.50 to Lawyers for Justice PC and \$100,000 to James Hawkins APLC plus
26 the reimbursement of reasonable costs and expenses not to exceed Fifty-Five Thousand Dollars
27 (\$55,000), allocated \$40,000 Collins Kim and Lawyers for Justice PC and \$15,000 to James
28 Hawkins APLC, all of which will be paid from the Gross Settlement Award. Defendant agrees

1 not to oppose Class Counsel's fee and cost applications up to the above-specified amounts. Any
2 portion of the Class Counsel Award not awarded to Class Counsel shall be added back to the
3 Gross Settlement Award for the benefit of Settlement Class Members. Stipulation, ¶1.5.

4 10. Notice of Proposed Settlement

5 As set forth in the Stipulation, "Notice" or "Class Notice" means the notice of the
6 proposed Stipulation terms, as approved by Class Counsel, Copan's Counsel and the Court, to be
7 provided to Class Members. The Class Notice must be substantially similar to the form attached
8 as **Exhibit C - Class Notice**, and contain: (a) information regarding the nature of the Action, (b)
9 a summary of the terms of the Agreement, (c) the definition of the Class, (d) the formula for
10 calculating the Net Settlement Fund (including the amounts sought for the Class Counsel Award,
11 Class Representatives Enhancement Payments, Settlement Administration Costs and the LWDA
12 Payment) and Individual Settlement Amounts, (e) the individual Class Member's estimated
13 number of Workweeks worked during the Class Period and Gross Allocated Amount (as defined
14 in Section 7.1), (f) the dates which comprise the Class Period, (g) instructions on how to submit a
15 Workweek Dispute/ Workweek Dispute Form (i.e. via **Exhibit D - Workweek Dispute Form**),
16 Request Exclusion From the Settlement (aka "Opt Out")/Request for Exclusion Form (i.e. via
17 **Exhibit E - Request for Exclusion Form**), or Object to the Settlement/Objection Form (i.e. via
18 **Exhibit F - Objection Form**), and (h) the deadlines by which the Workweek Disputes, Requests
19 for Exclusion, or Objections to the Settlement Agreement must be submitted to the Settlement
20 Administrator. Stipulation, ¶ 1.22.

21 11. Procedure for Disputing Workweeks

22 If a Class Member wishes to dispute the number of workweeks attributed to him/her, they
23 must submit a Workweek Dispute Form on or before the Response Deadline. The Workweek
24 dispute must (a) state the case name and number of the Action; (b) set forth the Class Member's
25 name, address, and telephone number; (c) be signed by the Class Member; (d) include any
26 documentary evidence showing that the Workweek information is inaccurate, and € be
27 postmarked or submitted to the Settlement Administrator on or before the Response Deadline.
28 Stipulation, ¶¶ 1.36, 4.5.

1 12. Settlement Administrator

2 The parties agreed to use CPT Group as the Settlement Administrator. Kim Decl., ¶ 15.
3 The costs are not to exceed \$10,000, a very reasonable amount in light of the class size, the labor
4 involved in processing claims, the inclusion of Spanish translated documents, and a settlement
5 website. Kim Decl., ¶ 15. The Settlement Administration costs will be paid from the Gross
6 Settlement Award. The parties also obtained a bid from Apex Class Action Administration,
7 which provided an estimate in the amount of \$9,950.00. Kim Decl., ¶ 15. Apex's bid was
8 slightly less than CPT's – by \$50.00. Kim Decl., ¶ 15. However, the parties decided to use CPT
9 because CPT was also used to administer the Belaire-West notices that were sent out in this
10 action and because CPT was readily able to provide settlement payout ranges required for
11 purposes of this Motion. Kim Decl., ¶ 15.

12 **IV. DISCUSSION**

13 **A. The Court Should Grant Preliminary Approval Of The Proposed Settlement**

14 Any settlement of class litigation must be reviewed and approved by the court. Cal. Rules
15 of Court, Rule 3.769(a); *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1800 (1996). This is
16 done in two steps: (1) a preliminary review by the court, and (2) a final review and approval by
17 the court after notice has been distributed to the class members for their comment or objections.
18 Cal. Rules of Court, rule 3.769(c)-(f). If the court has not yet certified the action as a class action
19 when settlement is reached, the court must certify the class according to the standards set out in
20 California Code of Civil Procedure § 382, in addition to distributing the settlement notice. Cal.
21 Rules of Court, rule 3.769(d).

22 At the preliminary approval stage, “the judge must make a preliminary determination on
23 the fairness, reasonableness, and adequacy of the settlement terms and must direct the
24 preparation of notice of the certification, proposed settlement, and date of the final fairness
25 hearing.” MANUAL FOR COMPLEX LITIGATION (FOURTH) § 21.632 (2004).

26 A court should grant preliminary approval of a class action settlement where it is within
27 the “range of reasonableness.” Alba Conte & Herbert B. Newberg, *Newberg on Class Actions* §
28 11.26 (4th Ed. 2009); *see also Hernandez v. Vitamin Shoppe Indus., Inc.*, 174 Cal. App. 4th

1441, 1446 (2009) (finding the proposed settlement was “within the range of reasonableness”).

1. The Stipulation May be Presumed Fair and Reasonable

This Court has wide discretion to determine whether the proposed settlement is fair and reasonable. *Mallick v. Super. Ct.*, 89 Cal.App.3d 434, 438 (1979). Fairness is presumed when: (1) the settlement is reached through arm’s-length bargaining; (2) investigation is sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. *Dunk*, 48 Cal.App.4th at p. 1800. While the recommendations of counsel proposing a settlement are not conclusive, the court can properly take them into account in recognition of counsel’s duty to the entire class; this is particularly true where, as in the instant case, counsel has been involved in informal and formal discovery and negotiations for some period of time. *Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004). Absent evidence of fraud or collusion, courts typically defer to the opinion of counsel. *Id.*

a. The Settlement Is Fair, Reasonable, Adequate, and the Product of Investigation, Litigation, and Negotiation

Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is offered; thus, there is a presumption here that the negotiations were conducted in good faith. Conte & Newberg, *Newberg on Class Actions* (3rd Ed.) § 11.51. Settlement is favored, and settlement agreements are realistically assessed. *Stamburgh v. Super. Ct.*, 62 Cal.App.3d 231, 236 (1976); *Priddy v. Edelman*, 883 F.2d 438, 447 (6th Cir. 1989) (“The fact that a plaintiff might have received more if the case had been fully litigated is no reason not to approve the settlement.”).)

The Stipulation was reached following extensive negotiations with experienced employment mediator Lisa Klerman, Esq. Kim Decl. ¶¶ 5-6. The settlement negotiations were at arm’s length and, although conducted in a professional manner, were adversarial. Kim Decl. ¶¶ 5-6. The parties went into the mediation willing to explore the potential for a settlement of the dispute, but each side was also prepared to litigate their or its position through trial and appeal if a settlement had not been reached. Kim Decl., ¶¶ 5-6.

1 Prior to reaching this Stipulation, Class Counsels conducted formal and informal
2 discovery and investigation into the claims alleged by Plaintiff, including, among other things,
3 speaking with Plaintiffs and other putative class members, reviewing and analyzing time and pay
4 records, and working with a third-party expert in preparing a damage analysis. Kim Decl., ¶¶ 3-
5 4. The Parties also exchanged extensive written discovery, conducted two sessions of
6 Defendant's persons most qualified, as well as producing Plaintiff Badis for deposition. Kim
7 Decl., ¶ 3.

8 Significantly, Class Counsel's calculations are based on the analysis of the data produced
9 by Defendant. Kim Decl., ¶¶ 3-6. In conjunction with their extensive factual investigation, Class
10 Counsel investigated the applicable law regarding the claims and defenses asserted in the
11 litigation. Kim Decl., ¶¶ 3-6. Thus, Plaintiffs and their counsel were able to act intelligently and
12 effectively in negotiating the proposed settlement. Kim Decl., ¶ 6.

13 b. The Stipulation Is Fair and Reasonable in Light of the Parties'
14 Respective Legal Positions

15 A settlement is not judged against what might plaintiff recover had they prevailed at trial,
16 nor does the settlement have to provide 100% of the damages sought to be fair and reasonable.
17 *Wershba v. Apple Computers, Inc.*, 91 Cal.App.4th 224, 246, 250 (2001) ("Compromise is
18 inherent and necessary in the settlement process...even if the relief afforded by the proposed
19 settlement is substantially narrower than it would be if the suits were to be successfully litigated,
20 this is no bar to a class settlement because the public interest may indeed be served by a
21 voluntary settlement in which each side gives ground in the interest of avoiding litigation."))

22 The settlement obviates the risk that this Court might deny certification of all of
23 Plaintiffs' claims. Kim Decl., ¶ 9. While Plaintiffs are confident in the merits of their claims, a
24 legitimate controversy exists as to each cause of action. Kim Decl., ¶ 9. Plaintiff also recognizes
25 that proving the amount of wages due to each class member would be an expensive, time-
26 consuming, and uncertain proposition. Kim Decl., ¶ 10. Furthermore, continued litigation would
27 be expensive, involving a trial and possible appeals, and would substantially delay and reduce
28 any recovery by the class. Kim Decl., ¶ 10.

1 The proposed settlement of \$1,235,000.00 therefore represents a substantial recovery
2 when compared to Plaintiffs' reasonably forecasted recovery. Kim Decl., ¶ 8. Because of the
3 proposed Stipulation, class members will receive timely, guaranteed relief and will avoid the risk
4 of not recovering any damages or penalties. Kim Decl., ¶ 9. When considering the risks of
5 litigation, the burdens of proof necessary to establish liability, the probability of appeal of a
6 favorable judgment, it is clear that the settlement amount of \$1,235,000.00 is within the
7 "ballpark" of reasonableness, and preliminary settlement approval is appropriate. Indeed, each
8 Settlement Class Member is eligible to receive an average net benefit of approximately
9 \$2127.86. Kim Decl., ¶ 7. Considering that the Class Members' average hourly rate is \$20.76
10 the average net benefit is approximately 102.5 hours of work. Kim Decl., ¶ 7.

11 c. The Stipulation is Within the Range of Reasonableness in Light of the
12 Estimate of Actual Loss

13 Plaintiffs estimated the maximum theoretical exposure to be in the range of
14 approximately \$4,568,400.00. Kim Decl., ¶ 8. This was based on the following calculations:

15 Overtime and Unpaid Wages

16 Based on the average rate of pay at \$20.76 and expert analysis of the time records for
17 unpaid time, unpaid overtime was valued at approximately \$221,650.00. Kim Decl., ¶ 8. This
18 amount was calculated by reviewing the actual time punch data sample and comparing that data
19 with the pay data to calculate overtime worked that was not paid at the legally required overtime
20 rate of pay, and extrapolating that amount to the rest of the data. Kim Decl., ¶ 8. Class Counsel's
21 expert consultant further identified shifts for which a shift differential would apply and estimated
22 underpaid wages based on the failure to pay the shift differential. Kim Decl., ¶ 8.

23 This claim is highly contested by Defendant and its counsel. Kim Decl., ¶ 8. They deny
24 that shift differentials were promised. Kim Decl., ¶ 8.

25 Meal and Rest Breaks

26 Plaintiffs' theory is that due to high pressure work demands and production demands,
27 Plaintiffs and the putative class members were deprived of their meal and rest breaks. Kim Decl.,
28 ¶ 8. Expert analysis of the available 33% of the time data found a range of meal period violation

1 rates ranging from 7.32% to 94% depending on the department. Kim Decl., ¶ 8. Based on actual
2 time punch data analyses of the data sample, Plaintiffs' expert then extrapolated that amount to
3 the rest of the class, and meal period exposure was calculated at \$581,295. Kim Decl., ¶ 8.
4 Theoretical rest break exposure was estimated at \$2,296,837.00, by assuming 100% violation
5 rates for each rest break eligible shift of 3.5 hours or longer. Kim Decl., ¶ 8.

6 Waiting Time Penalties

7 Plaintiff's consultant estimated approximately \$865,500 in waiting time penalties. Kim
8 Decl., ¶ 8. This amount was calculated by multiplying the number of terminated employees by
9 the average hourly rate of pay, by the maximum 30 day penalty. Kim Decl., ¶ 8.

10 Wage Statements and Reimbursements

11 The mediation centered around the Labor Code 226 claim, Labor Code 2802, the meal
12 and rest period claims and PAGA claims. The Labor Code 226 claim had a potential value of
13 approximately \$526,300 for approximately 178 employee in the 1 year statutory period. This
14 assumes full potential penalties using the \$50/\$100 amounts. This also assumes the Plaintiff
15 would be successful on the derivative underlying claims. For instance, using the meal period pay
16 period violations count used for PAGA, the Labor Code 226 claim would be \$254,600 based on
17 approximately 2,546 pay statements potentially defective. The meal period damages were valued
18 at approximately \$189,839 (9,171 alleged meal break violations multiplied by \$20.70). This
19 value could drop give the payment of some meal period premiums and alleged waivers. Lastly,
20 further investigation revealed the Labor Code 2802 and rest period claims lacked sufficient
21 evidence to support any finding of class wide failure. Hawkins Decl., ¶ 16.

22 PAGA

23 Based on the information and documents obtained through informal discovery, Plaintiffs
24 assessed the maximum value of the PAGA claims to be released by the settlement to be
25 approximately \$267,600.00 (at the rate of a reasonable \$50.00 penalty per pay period) for
26 approximately 5,352 pay periods at issue for the meal period or Labor Code 226 penalties.
27 Hawkins Decl., ¶ 17.

28 Turning to Plaintiffs' meal and rest period theories, with the assistance of an expert,

1 Plaintiffs calculated that at most there were 2,546 pay periods where a statutorily compliant meal
2 period was not reflected in employees' time records. Assuming a PAGA default penalty of \$50
3 for each of those pay periods, Plaintiffs assert this equals a potential exposure of \$127,300.00 for
4 meal period violations. Hawkins Decl., ¶ 18.

5 The PAGA exposure could increase if stacking were permitted and the Court awarded
6 maximum damages. An unlikely scenario here given the policies and protocols in place.
7 Hawkins Decl., ¶ 19.

8 Plaintiffs, however, recognize that this total does not take into account any potential
9 discount by the Court and do not take into account *Donahue, Domingo*, and Defendant's
10 evidence of its punch system. As discussed above, a Court may award lesser amounts than the
11 maximum civil penalty based on the facts and circumstances of the matter. Defendant asserts
12 that there are no underlying Labor Code violations and no basis for the award of any penalties
13 under PAGA. For example, Defendant contends that when punch guarding and premiums are
14 taken into account, Defendant has fully complied with California's meal and rest break
15 requirements. Defendant also contends that, even if penalties were awarded for any purported
16 Labor Code violation, penalties under PAGA cannot be stacked: at most, just one PAGA penalty
17 can be awarded to an aggrieved employee in any one pay period. *See* Labor Code § 2699(f)(2)
18 (authorizing awardable PAGA penalties to be measure by "each aggrieved employee per pay
19 period"); *Smith v. Lux Retail North America, Inc.*, No. C 13-01579 WHA, 2013 WL 2932243, at
20 *3-4 (N.D. Cal. June 13, 2013) (emphasis in original) (rejecting a pleading that sought the
21 "stacking of penalties"; "[f]or the single mistake of failing to include commissions in the
22 overtime base, plaintiff has asserted *five* (count them, five) separate labor code violations that
23 could lead to statutory penalties;" "is it plausible that we would really pile one penalty on
24 another for a single substantive wrong?"; noting that "no actual holding in any judicial decision
25 has ever blessed such stacking"). Hawkins Decl., ¶ 20.

26 In light of the above, Plaintiffs recognize that there were significant risks in proceeding in
27 litigation of this matter. Plaintiffs faced risks of not prevailing on the merits, prevailing on
28 certain claims for certain periods, reduced penalty amounts awarded by the trial Court, and

1 reversal on appeal. Hawkins Decl., ¶ 21.

2 The Total Settlement Amount allocated for PAGA penalties calculates to approximately
3 \$6 per pay period in which Plaintiffs calculated a rebuttable presumption of a meal period
4 violation ($\$30,000 / 5,352 \text{ pay periods} = \5.63). This means the per pay period value is
5 approximately 34% of the potential maximum reasonable value of \$267,600.00 in default PAGA
6 penalties Plaintiffs calculate for pay periods with a rebuttable presumption of a meal period
7 violation. Notably, this percentage is reflective of courts' reduction PAGA penalties following a
8 trial and where finding of liability is determined, as discussed above. Moreover, this Stipulation
9 provides for the recovery of penalties under PAGA now, rather than in the future to some
10 undetermined date and undetermined amounts. Based on Defendant's potential defenses to the
11 violations at issue, the risks and costs of continued litigation, Plaintiffs and their attorneys
12 believe that the PAGA Settlement is fair and reasonable. Hawkins Decl., ¶ 22.

13 In sum, the settlement is well within the range of reasonableness in light of the fact the
14 Gross Settlement Award accounts for nearly 27% of the high estimate of actual loss. *See Sullivan*
15 *v. DB Investments, Inc.*, 667 F.3d 273, 325 (3rd Cir. 2011) (there appears to be "no authority that
16 requires a district court to assess the fairness of a settlement in light of the potential for trebled
17 damages."); *Behrens v. Wometco Enters., Inc.*, 118 F.R.D. 534, 542 (S.D. Fla. 1988) ("A
18 settlement can be satisfying even if it amounts to a hundredth or even a thousandth of a single
19 percent of the potential recovery."); *Balderas v. Massage Envy Franchising, LLC*, 2014 WL
20 3610945, at *5 (N.D. Cal. July 21, 2014) (granting preliminary approval of net settlement
21 amount representing 5% of the projected maximum recovery at trial).

22 This percentage reflects a high recovery rate in light of the risks associated with trial and
23 class certification. As referenced above, Defendant vigorously disputes the merits of Plaintiffs'
24 allegations because (1) they had legally compliant meal and rest breaks in place during the class
25 period; (2) they deny ever promising shift differentials and establishing that shift differentials
26 were in fact promised would require further extensive discovery and surveys. Further,
27 Defendant contends that it had a valid reimbursement policy in place and that the putative class
28 members had no need to incur business expenses for purposes of performing their duties and

responsibilities. For those who in fact incurred business expenses, they were reimbursed if the employee submitted a reimbursement request. Based on Defendant's defense theories, Class Counsel believes that the settlement accounting for 27% percentage of the high estimate of actual loss is an excellent recovery. Kim Decl., 11; Hawkins Decl., ¶¶16-23.

2. Class Counsels are Experienced in Class Action

Class Counsels also have considerable experience and has demonstrated competence with litigating wage and hour class actions, having collectively certified at least five class actions following contest class certification motions and tried one wage/hour class action matter. Kim Decl., ¶12; Hawkins Decl., ¶ 24, Madoyan Decl. ¶¶ 2-7. Again, this supports that the terms of the Stipulation are based on objective evidence that has been considered and weighed against the risks, expenses, and time consumption to both sides of continued litigation of this action.

B. The Proposed Attorneys' Fees and Costs Are Reasonable

Under the Stipulation, subject to the Court's approval, Defendant agrees to pay Class Counsels reasonable attorneys' fees in the amount of \$408,550.00, which is 33% of the gross Settlement Award, and up to \$55,000 in litigation costs. Kim Decl., ¶ 13. These amounts are disclosed to all class members in the proposed Notice and are reasonable.

1. Class Counsel Will Request an Award Of Fees Based On The "Common Fund" Method

California courts have long awarded attorneys' fees as a percentage of the benefit created by counsel in pursuing claims on behalf of a class. The California Supreme Court held that "when a number of persons is entitled in common to a specific fund, and an action brought by a plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs may be awarded attorneys' fees out of the fund." *Serrano v. Priest*, 20 Cal.3d 25, 34 (1977), quoting *D'Amico v. Bd. of Medical Examiners*, 11 Cal.3d 1 (1974). Class Counsel seek an award of attorneys' fees on the "percentage of recovery/common fund" theory. The purpose of this approach is to "spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." (*Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (1977). In *Quinn v. State of California*, 15 Cal.3d 162

(1995), the California Supreme Court stated: “one who expends attorneys’ fees in winning a suit which creates a fund from which others derive benefits may require those passive beneficiaries to bear a fair share of the litigation costs.” *Id.* at 167. Similarly, in *City and County of San Francisco v. Sweet*, 12 Cal.4th 105 (1995), the California Supreme Court recognized that the common fund doctrine has been applied “consistently in California when an action brought by one party creates a fund in which other persons are entitled to share.” *Id.* at 110.

The California Supreme Court recently affirmed in *Laffitte v. Robert Half Int’l Inc.*, 1 Cal.5th 480 (2016) that, “when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created.” *Id.* at 503. The court explained: “The recognized advantages of the percentage method—including relative ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation—convince us the percentage method is a valuable tool that should not be denied our trial courts.” *Id.* (internal citations omitted).)

2. The Requested Fee Award Is in Line with Typical Cases

“No general rule can be articulated on what is a reasonable percentage of a common fund. Usually, 50% of the fund is the upper limit on a reasonable fee award from a common fund in order to assure that the fees do not consume a disproportionate part of the recovery obtained for the class, although somewhat larger percentages are not unprecedented.” *See Conte & Newberg, Newberg on Class Actions* (3rd Ed.) § 14.03.) Attorneys’ fees that are fifty percent of the fund are typically considered the upper limit, with thirty to forty percent commonly awarded in cases where the settlement is relatively small. *Id.*; see also *Van Vranken v. Atlantic Richfield Company*, 901 F.Supp. 94 (N.D. Cal. 1995) (stating that most cases where 30-50 percent was awarded involved “smaller” settlement funds of under \$10 million).)

Here, Class Counsel requests attorneys’ fees equal to 33% of the Gross Settlement Award, which is in line with the prevailing guidelines established in California case law and

1 academic literature and is consistent with awards in California. See *Chavez v. Netflix, Inc.*, 162
2 Cal.App.4th 43, 66, n.11 (2008) (“Empirical studies show that regardless whether the percentage
3 method or the lodestar method is used, fee awards in class actions average around one-third of
4 the recovery.”).) Accordingly, Plaintiffs respectfully requests that the Court preliminarily
5 approve the attorneys’ fees as negotiated by the Parties and requested herein.

6 3. This Matter Involves A “Fee-Shifting” Provision of the Labor Code

7 Labor Code §§ 218.5, 226, 1194, 2802 and 2699, *et seq.* provide for the recovery of
8 reasonable attorneys fees, and costs of suit, for the claims made in this action. Under these
9 sections, Plaintiffs would be permitted to recover their actual attorneys’ fees, even if those fees
10 were larger than the total class recovery at the conclusion of this case. This Stipulation is
11 beneficial in that it limits the risk of continued expenses and consumption of time, energy, and
12 resources facing Defendant while at the same time rewarding Class Counsel for their decision to
13 assume risk by taking on this matter. In fact, prosecution of this action involved significant
14 financial risk for Class Counsel. Kim Decl., ¶ 13. Class Counsels undertook this matter solely on
15 a contingent basis, with no guarantee of recovery. Kim Decl., ¶ 13. Once counsel undertook this
16 litigation on behalf of the Class, Class Counsels committed to pursue it to its conclusion, placing
17 its fiduciary duty to the Class ahead of all other concerns. Kim Decl., ¶ 13.

18 4. The Experience, Reputation and Ability of Class Counsel Support the Requested
19 Fee Award

20 As demonstrated by their past experience in pursuing class actions on behalf of
21 employees, Class Counsel possess considerable expertise in litigating class actions. Kim Decl.,
22 ¶¶ 11; Hawkins Decl., ¶ 24; Madoyan Decl., ¶¶ 2-7. Class Counsels have been involved as lead
23 counsel or co-counsel in several class actions that resulted in millions in recovery. *Id.* Because it
24 is reasonable to compensate class counsel commensurate with their skill, reputation and
25 experience, Class Counsels’ requested fee award is supported here.

26 Class Counsels’ experience in wage and hour class actions was integral in evaluating the
27 strengths and weaknesses of the case against Defendant and the reasonableness of the settlement.
28 *Id.* Practice in the narrow field of wage and hour litigation requires skill and knowledge

1 concerning the rapidly evolving substantive law (state and federal), as well as the procedural law
2 of class action litigation. Based on these and other factors, Class Counsels have frequently
3 received fee awards of this percentage from the gross recovery for the class. Therefore, the
4 requested fee award is reasonable and fair.

5 **C. The Class Representative Enhancement Payments To Named Plaintiffs Are**
6 **Reasonable**

7 Named plaintiffs in class action lawsuits “are eligible for reasonable incentive payments
8 to compensate them for the expense or risk they have incurred in conferring a benefit on other
9 members of the class.” *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal.App.4th
10 399, 412 (2010). Courts routinely grant approval of class action settlement agreements
11 containing enhancements for the class representatives, which are necessary to provide incentive
12 to represent the class and are appropriate given the benefit the class representatives help to bring
13 about for the class. See *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 958-59 (9th Cir. 2009).

14 Class Representative Enhancement Payments are particularly important to plaintiffs in
15 wage and hour cases because they promote the important public policies underlying the wage
16 and hour laws. This strong policy is codified in California Labor Code section 90.5, which
17 provides, “it is the policy of this state to vigorously enforce minimum labor standards in order to
18 ensure employees are not required or permitted to work under substandard unlawful
19 conditions....”). Nonetheless, the California Supreme Court has noted that “retaliation against
20 employees for asserting statutory rights under the Labor Code is widespread,” despite anti-
21 retaliation statutes designed to protect employees. *Gentry v. Super. Ct.*, 42 Cal.4th 443, 460-61
22 (2007). In this context, class representatives should be rewarded for assuming the risk of
23 retaliation for the sake of class members. See *Frank v. Eastman Kodak Co.*, 228 F.R.D. 174, 187
24 (W.D.N.Y. 2005).

25 Under the settlement agreement, subject to the Court’s approval, Defendant agreed to pay
26 Class Representative Enhancement Payments in the amount of \$7,500.00 to Plaintiffs Badis and
27 Reyes, and in the amount of \$10,000 to Plaintiff Gutierrez. Kim Decl., ¶ 12. Class Counsels
28 represent that Plaintiffs devoted a great deal of time and work assisting counsel in the case and

1 communicated with counsel very frequently for litigation and to prepare for mediation, including
2 attending mediation, conferring on the mediation brief, identifying additional witnesses, and
3 sitting for deposition. Kim Decl., ¶¶ 3-6, 12, 13; *see generally* Gutierrez Decl., Badis Decl., and
4 Reyes Decl. This amount is reasonable particularly in light of the substantial benefits Plaintiffs
5 generated for all class members. *Id.*

6 When compared with the amounts awarded in typical class action cases, the amount
7 requested here is particularly reasonable. Indeed, a 2006 study examining the average incentive
8 award given to class action plaintiffs from 1993 to 2002 found that the “average award per class
9 representative was \$15,992 and the median award per class representative was \$4,357.”
10 Theodore Eisenberg & Jeffrey P. Miller, “Incentive Awards to Class Action Plaintiffs: An
11 Empirical Study”, 53 UCLA L. Rev. 1303, 1308 (2006). That same study found that named
12 plaintiffs in employment discrimination class actions received an average award of \$69,850 and
13 a median award of \$31,081, while named plaintiffs in other employment class actions received
14 an average award of \$12,121 and a median award of \$13,059. *Id.* at 1334. The authors of the
15 study found that higher awards in employment cases reflected the “courts” wish to make
16 representative plaintiffs whole by compensating them for the high costs of their service to the
17 class, including risks of stigmatization or retaliation on the job.” *Id.* at 1308.

18 **D. Certification for Settlement Purposes is Warranted**

19 1. Legal Standard

20 The proposed Settlement Class is well suited for class certification. All of the claims
21 derive from a core set of alleged violations of California’s wage and hour laws and regulations.
22 For the reasons set forth more fully below, for purpose of settlement the Class satisfies the
23 prerequisites for certification under Code of Civil Procedure § 382. Section 382 provides: “when
24 the question is one of a common or general interest, of many persons, or when the parties are
25 numerous, and it is impracticable to bring them all before the court, one or more may sue or
26 defend for the benefit of all.” Code Civ. Proc., § 382. There are two requirements to section 382:
27 “(1) There must be an ascertainable class; and (2) there must be a well-defined community of
28 interest in the questions of law and fact involved affecting the parties to be represented.” *Daar v.*

1 *Yellow Cab Co.*, 67 Cal. 2d 695, 704 (1967) (citations omitted).) To clarify these requirements,
2 the California Supreme Court has looked to Federal Rule of Civil Procedure 23 to explain that
3 the community-of-interest requirement itself embodies three factors: “(1) predominant questions
4 of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class
5 representatives who can adequately represent the class.” *Richmond v. Dart Indus., Inc.*, 29 Cal.
6 3d 462, 470 (1981). California law and policy favor the fullest and most flexible use of the class
7 action device. *Id.* at pp. 469-73. Indeed, “Courts long have acknowledged the importance of class
8 actions as a means to prevent a failure of justice in our judicial system” particularly where the
9 rights of consumers are at issue. *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 434 (2000). Any
10 doubt as to the appropriateness of class treatment should be resolved in favor of certification.
11 *Richmond, supra*, 29 Cal.3d at 473-75.

12 2. The Criteria For Class Certification Are Satisfied

13 a. The Class Is Sufficiently Numerous

14 “The requirement of Code of Civil Procedure section 382 that there be ‘many’ parties to a
15 class action suit is indefinite and has been construed liberally.” *Rose v. City of Hayward*, 126
16 Cal.App.3d 926, 934 (1981). “Where a question is of common interest to ‘many’ persons, an
17 action may be maintained as a class action even where the parties are numerous and it is in fact
18 practicable to join them all.” *Id.* “No set number is required as a matter of law for the
19 maintenance of a class action.” *Id.* “Thus, our Supreme Court has upheld a class representing the
20 beneficiaries of a trust in an action for removal of the trustees.” *Id.*, citing *Bowles v. Super. Ct.*,
21 44 Cal.2d 574 (1955); see also, *Collins v. Rocha*, 7 Cal.3d 232 (1972) (upholding a 35 member
22 class).) Here, there are 332 putative class members, which is sufficiently numerous.

23 b. The Class Is Ascertainable

24 When determining whether a class is ascertainable, California courts focus on the
25 following three factors: (1) the class definition, (2) the size of the class, and (3) the means of
26 identifying class members. See *Miller v. Woods*, 148 Cal. App. 3d 862, 873 (1983).
27 “Ascertainability is achieved by defining the class in terms of objective characteristics and
28 common transactional facts making the ultimate identification of class members possible.”

1 *Sevidal v. Target Corp.*, 189 Cal. App. 4th 905, 919 (2010) (internal quotation marks and
2 citations omitted). “Thus, class members are ‘ascertainable’ where they may be readily identified
3 without unreasonable expense or time by reference to official or business records.” *Id.*

4 The Class is readily identified without unreasonable expense official for the following
5 primary reasons: (1) the class definition is stated in terms that are objectively easy to understand
6 and do not require any specific knowledge of Defendants’ business and (2) Defendant maintains
7 records showing non-exempt status and dates of employment for its employees. (Kim Decl. ¶ 3.)
8 The Class is therefore ascertainable. *See Sevidal, supra*, 189 Cal. App. 4th at 919 (proposed class
9 definition must provide “an objective means of identifying those persons who will be bound by
10 the results of the litigation”).

11 c. There are Many Common Issues of Law and Fact Which Predominate

12 The community interest requirement has three essential elements: (1) predominant
13 questions of law and fact; (2) class representatives with claims or defenses typical of the class;
14 and (3) class representatives who can adequately represent the class. *Linder, supra*, 23 Cal. 4th at
15 435. This inquiry tests whether proposed classes are sufficiently cohesive to warrant
16 adjudication by representation. *See Clothesrigger, Inc. v. GTE Corp.*, 191 Cal.App.3d 605
17 (1987). Plaintiffs’ claims satisfy all three requirements.

18 In this case, the employment practices at issue are: whether Defendant had legally
19 compliant policies and practices to pay employees all wages owed; whether Defendant had
20 legally compliant policies and practices to provide employees with meal and rest breaks; whether
21 Defendant had legally compliant policies to reimburse employees for all necessary expenditures
22 or losses incurred by the employee in direct consequence of the discharge of their duties;
23 whether final payment of wages was untimely and excluded unpaid wages, including meal period
24 premium wages, and rest period premium wages; whether all wages were paid to employees at
25 the time of termination of the employment relationship; and whether the wage statements were
26 consequently non-compliant. Plaintiffs contend that the factual and legal issues are the same for
27 all identified class members, including Plaintiffs.

28 Further, all class members suffered from and seek redress for the same alleged injuries.

1 Considering that Settlement Class Members would need to prove the same issues of law and fact
2 to prevail and their legal remedies are identical, it would be preferable to resolve all claims
3 through a settlement agreement than to force each Settlement Class Member to litigate their own
4 individual claims. Thus, the Court should grant conditional class certification for settlement
5 because common questions of law and fact predominate over any individual questions within the
6 class.

7 d. Plaintiffs' Claims Are Typical of the Claims of the Class

8 The typicality requirement does not focus on the individual characteristics or
9 circumstances of the representative plaintiff compared to those of the remainder of the class, but
10 rather upon the typicality of the proposed representative's claims as they relate to the defendant's
11 conduct and activities. *Classen v. Weller*, 145 Cal.App.3d 27, 47 (1983) (“[t]he only
12 requirements are that common questions of law and fact predominate and that the class
13 representative be similarly situated” vis-à-vis the class.).) A representative plaintiff's claims are
14 typical of the class if they arise from the same event, practice or course of conduct, and if the
15 claims rest on the same legal theories. (*Id.*) That is precisely the case here. Plaintiffs are all
16 former non-exempt, hourly employees of Defendant; they were subject to the same policies and
17 practices as other similarly situated employees; they experienced similar working conditions as
18 other similarly situated employees. Gutierrez Decl., ¶¶ 3,7

19 e. Plaintiffs and their Counsel Meet the Adequacy Requirement

20 Class Members are *adequately* represented if the named Plaintiff and its counsel (1) do
21 not have conflicts of interest with Class Members and (2) will prosecute the case vigorously for
22 the Class. *Hanlon*, 150 F.3d at 1020.¹ Here, there is no conflict of interest between the Class
23 Representatives (or their attorneys) and the remaining Class Members. Even if there were such a
24 conflict in a certain instance, any Class Member may “opt-out” of the Class. Finally, as set forth
25 above, Class Counsel has significant experience in wage and hour class action litigation and is
26 routinely appointed class counsel in cases alleging precisely these issues. Thus, Class Counsel

27 _____
28 ¹ Notably, mere divergence of opinion between the class and its representatives is not
sufficient to constitute a conflict. *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 462 (9th Cir.
2000).

1 and their clients clearly have the motivation and ability to litigate this class action had a fair
2 settlement not been obtained. Kim Decl., ¶ 6; Gutierrez Decl., ¶¶ 10-11. Further, Plaintiffs’
3 willingness to serve as representatives demonstrate their serious commitment to bringing about
4 the best results possible for the class. *McGhee v. Bank of American*, 60 Cal.App.3d 442, 451
5 (1976).

6 f. A Class Action is Superior to a Multiplicity of Litigation

7 Class actions are the superior method of adjudication when they unify claims that would
8 otherwise require adjudication of numerous separate actions arising out of the same basic facts.
9 *See Jaimez v. Daiohs USA, Inc.*, 181 Cal. App. 4th 1286, 1308 (2010) (“[i]n light of the
10 numerous common issues of fact and law that predominate in this lawsuit, we conclude that
11 proceeding by way of class action is the superior method of adjudication”); *Sav-On Drug Stores,*
12 *Inc. v. Superior Court*, 34 Cal. 4th 319, 326 (2004) (“As alleged, each class member’s claim to
13 unpaid overtime depends on whether he or she worked for defendant during the relevant period
14 in a position that was misclassified . . .”). Further, there is recognition by the courts that class
15 actions are encouraged where “absent effective enforcement, the employer’s cost of paying
16 occasional judgments and fines may be significantly outweighed by the cost savings of not
17 paying overtime.” *Gentry, supra*, 42 Cal. 4th at 462.

18 Here, the numerous common issues of law and fact that predominate in this case make
19 class treatment the superior method of adjudication. By consolidating many potential individual
20 actions into a single proceeding, this Court’s use of the class action device enables it to manage
21 this litigation in a manner that serves the economics of time, effort and expense for the litigants
22 and the judicial system. Absent class treatment, similarly-situated employees with small but
23 nevertheless meritorious claims for damages would, as a practical matter, have no means of
24 redress because of the time, effort and expense required to prosecute individual actions.
25 Moreover, in the context of settlement, the superiority concerns are essentially non-existent.

26 **E. The Proposed Notice is Constitutionally Sound**

27 The proposed Notice, Workweek Dispute Form, Exclusion Form, and Objection Form in
28 the forms attached to the Stipulation as Exhibits C, D, E, and F, respectively, should be approved

1 for dissemination to the class. The threshold requirement concerning the sufficiency of class notice
2 is whether the means employed to distribute the notice is reasonably calculated to apprise the class
3 of the pendency of the action, of the proposed settlement, and of class members' rights to opt out
4 or object. *Eisen*, 417 U.S. at 173-74 (1974). Notice is satisfactory if it "generally describes the
5 terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and
6 to come forward and be heard." *Churchill Vill., L.L.C. v. GE*, 361 F.3d 566, 575 (9th Cir. 2004).

7 The Notice is written in simple, straightforward language. See Kim Decl., Exh. 1, Exh. C
8 attached thereto. Since the Notice provides Class Members with sufficient information to make
9 an informed and intelligent decision about the settlement, it satisfies all due process
10 requirements. *In re Wells Fargo Loan Processor Overtime Pay Litig.*, 2011 WL 3352460, at *4
11 (N.D. Cal. Aug. 2, 2011); *Rodriguez v. West Publ'g Corp.*, 563 F.3d 948, 963 (9th Cir. 2009)
12 (where class notice communicated the essentials of the proposed settlement in a sufficiently
13 balanced, accurate, and informative way, it satisfied due process concerns). The Notice informs
14 the class of the terms of the settlement and of their rights to be excluded from the settlement.
15 The Exclusion form informs the class on how they might exclude themselves and provides a
16 mode for class member to exclude themselves through use of the form. The Objection Form
17 informs the class on how they might object to the settlement and provides a mode for class
18 members to object through use of the form. Each of the forgoing documents are also translated to
19 Spanish. Accordingly, the proposed Notice meets all the requirements of Rule 3.769(f) of the
20 FCalifornia Rules of Court.

21 **F. A Final Approval Hearing Should Be Set**

22 The final step in the settlement approval process is a final fairness hearing at which the
23 Court may hear all evidence and arguments necessary to make its evaluation regarding the
24 settlement. *MCL* § 21.63 at 318. Representative Plaintiffs requests the Court set a final approval
25 hearing at a time convenient for the Court, roughly 100 calendar days after preliminary approval.

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1 **IV. CONCLUSION**

2 For the reasons set forth above, Plaintiffs respectfully request that the Court (1) grant
3 preliminary settlement approval, (2) approve the content and plan for distribution of the Notice,
4 (3) appoint class counsels, Representative Plaintiffs and a Settlement Administrator, (4)
5 conditionally certify the Class, and (5) schedule a Final Approval Hearing.

6 Dated: November 4, 2024

COLLINS KIM LLP

7
8
9 By: 

Tae Kim

Attorneys for Plaintiffs

Adam Badis and Angelica Reyes