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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

COYOTE DENALI, an individual, and JEREMY JACKSON, an individual, on behalf of themselves, on behalf of the State of California as private attorneys general, and on behalf of all others similarly situated,

Plaintiffs,

v.

HIGHLAND ARMS ENTERPRISES, LLC, a Delaware limited liability company, d/b/a A GARAGE DOOR AND GATE STORE, PRECISION GARAGE DOOR OF SAN DIEGO, PRECISION OVERHEAD GARAGE DOOR SERVICE OF SAN DIEGO, A GARAGE AND GATE STORE, and PRECISION GARAGE DOOR OF CHULA VISTA; PRECISION DOOR SERVICE SVP LLC, a Delaware limited liability company; LBS, INC., a Minnesota corporation, d/b/a A GARAGE DOOR AND GATE STORE; and DOES 1 through 50, inclusive,

Defendants.

Case No.: 37-2024-00008618-CU-OE-CTL

Assigned for all purposes to:
Hon. Gregory W. Pollack, Dept. C-71

CLASS ACTION

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

[Declarations of Anthony J. Orshansky, Coyote Denali, and Jeremy Jackson, and Proposed Order submitted concurrently herewith]

[IMAGED FILE]

Preliminary Approval Hearing
Date: December 4, 2026
Time: 9:30 a.m.
Dept. C-71

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:

PLEASE TAKE NOTICE that on December 4, 2026 at 9:30 a.m., or as soon thereafter as the matter may be heard before the Honorable Gregory W. Pollack in Department C-71 of the above-captioned court located at 330 West Broadway, San Diego, California 92101, Plaintiffs Coyote Denali and Jeremy Jackson ("Plaintiffs" or "Class Representatives"), individually and on behalf of all others similarly situated, will and hereby do move this Court pursuant to California Rules of Court, Rule 3.769 for an order:

1. Granting preliminary approval of a) the Class Action and PAGA Settlement Agreement entered into between Plaintiffs and Defendant Highland Arms Enterprises, LLC ("Highland"), and b) the Class Action and PAGA Settlement Agreement entered into between Plaintiffs and Defendant LBS, Inc. ("LBS") (collectively, the "Settlement Agreements") (Highland and LBS are referred to herein as "Defendants");

2. Provisionally certifying a class pursuant to Code of Civil Procedure section 382, defined as follows:

> All non-exempt employees, including those employees as to whom a reasonable dispute regarding non-exempt classification may exist (including employees with the following job titles: Technician, Residential Garage Door Technician, Commercial Garage Door Technician, Garage Door Technician, Lead Technician, Residential Garage Door Estimator, Field Manager, Installer, Senior Technician, Residential Garage Door Estimator, Field Manager, Installer, Senior Installer, Lead Installer, Residential Garage Door Installer, Administrative Assistant, Commercial Administrator, Customer Experience - Lead, Purchase Clerk, Warehouse Associate, Warehouse Manager, Welder, Lead Welder, Lead Welder - Shop, Welder - Shop), who are employed or have been employed by Defendants in California at any time during the Class Period (the "Class" or "Class Members").[1]

3. Preliminarily appointing Plaintiffs as the Class Representatives;

4. Preliminarily appointing CounselOne, PC as Class Counsel;

5. Scheduling a Final Approval Hearing to consider whether the settlement should be finally approved and whether to award the agreed-upon amounts for the Class Representative Service Payments, Administration Expenses Payment to the Settlement Administrator, penalties

[1] "Participating Class Members" are defined as all Class Members who do not submit a timely and valid request for exclusion from/opt out of the class settlement. (Settlement Agreements ¶ 1.35.) "Class Period" is defined as the period beginning on February 23, 2020, and ending on May 27, 2025. (*Id.* at ¶ 1.13.)

pursuant to the Private Attorneys General Act of 2004 (Lab. Code, § 2698 et seq.; "PAGA") to the California Labor and Workforce Development Agency, as well as the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment to Class Counsel;

6. Appointing CPT Group, Inc. as the Settlement Administrator; and

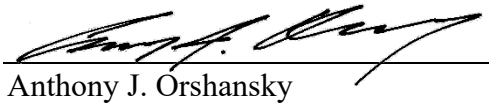
7. Approving the proposed Court Approved Notice of Class Action and PAGA Settlement and Hearing Date for Final Court Approval and directing it to be disseminated to the Class as provided in the Settlement Agreements.

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

Dated: November 6, 2026

Respectfully submitted,

COUNSELONE, PC

By: 

Anthony J. Orshansky
P. Bartholomew Quintans
Attorneys for Plaintiffs

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Coyote Denali and Jeremy Jackson ("Plaintiffs" or "Class Representatives"), individually and on behalf of all others similarly situated,[1] seeks preliminary approval of: a) the Class Action and PAGA Settlement Agreement entered into with Defendant Highland Arms Enterprises, LLC ("Highland"), and b) the Class Action and PAGA Settlement Agreement entered into with Defendant LBS, Inc. ("LBS") (collectively, the "Settlement Agreements") The Settlement Agreements between Plaintiffs and Defendants Highland and LBS (collectively, "Defendants") (together with Plaintiffs, the "Parties"), if approved, will resolve specific claims of the Participating Class Members[2] and Aggrieved Employees[3] in exchange for Defendants' agreement to pay the total amount of ***Six Hundred Sixty-Five Thousand Dollars ($665,000) into a non-reversionary common settlement fund***. As estimated by Defendants at mediation, there are approximately 56 Class Members (with 3,289 workweeks) employed by Defendants in California during the Class Period, and 118 Aggrieved Employees (with 3,733 pay periods) employed by Defendants in California during the PAGA Period. (Settlement Agreements ¶ 4.1.)

By way of this class and representative lawsuit, Plaintiffs pursued their rights against Defendants for mistreating certain of their employees by violating wage-and-hour laws under the California Labor Code, Business and Professions Code, and the California Industrial Welfare Commission ("IWC") Wage Orders. Plaintiffs' lawsuit thus sought to recover unpaid wages,

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[1] "Class Members" are defined as all non-exempt employees, including those employees as to whom a reasonable dispute regarding non-exempt classification may exist (including employees with the following job titles: Technician, Residential Garage Door Technician, Commercial Garage Door Technician, Garage Door Technician, Lead Technician, Residential Garage Door Estimator, Field Manager, Installer, Senior Technician, Residential Garage Door Estimator, Field Manager, Installer, Senior Installer, Lead Installer, Residential Garage Door Installer, Administrative Assistant, Commercial Administrator, Customer Experience - Lead, Purchase Clerk, Warehouse Associate, Warehouse Manager, Welder, Lead Welder, Lead Welder - Shop, Welder - Shop), who are employed or have been employed by Defendants in California at any time during the Class Period. (Settlement Agreements ¶ 1.5.) "Class Period" is defined as the period beginning on February 23, 2020, and ending on the May 27, 2025. (*Id.* at ¶ 1.13.)

[2] "Participating Class Members" are defined as all Class Members who do not submit a timely and valid request for exclusion from/opt out of the class settlement. (Settlement Agreements ¶ 1.35.)

[3] "Aggrieved Employees" are defined as all Class Members employed by Defendants during the PAGA Period. (Settlement Agreements ¶ 1.4). "PAGA Period" is defined as the period beginning on December 20, 2022, and ending on May 27, 2025 (*Id.* at ¶ 1.31.)

premiums for non-compliant meal and rest breaks, restitution, liquidated damages, penalties for improper wage statements, waiting time penalties, civil penalties pursuant to California's Private Attorneys General Act of 2004, Labor Code section 2698 et seq. ("PAGA"), injunctive and other equitable relief, prejudgment interest, and attorneys' fees and costs.

After engaging in substantial independent investigation and informal discovery, and following a full-day mediation session with Jonathan Andrews, Esq., the Parties agreed to settle the Participating Class Members' and Aggrieved Employees' claims alleged in this litigation for the non-reversionary total sum of Six Hundred Sixty-Five Thousand Dollars ($665,000) ("Gross Settlement Amount"), representing payment of $550,000 by Defendant Highland and $115,000 by Defendant LBS in this global settlement. True and correct copies of the fully executed Settlement Agreements are attached as **Exhibits A** and **B** to Declaration of Anthony J. Orshansky ("Orshansky Decl.") filed concurrently herewith, which are substantively identical other than the apportionment of the Gross Settlement Amount paid by each settling Defendant. After deductions for the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment to Class Counsel, Service Payments to the Class Representatives, Administration Expenses Payment to the Settlement Administrator, and PAGA Penalties, the remaining amount (the "Net Settlement Amount") of approximately $348,333.34 will be distributed to Participating Class Members. (Settlement Agreements ¶ 1.28; Orshansky Decl. ¶ 6.) The entire Net Settlement Amount will be paid out to Participating Class Members. Participating Class Members shall automatically receive payments ("Individual Class Payments") without the need to submit a claim form, and Aggrieved Employees shall receive their pro rata shares of the 25% of the PAGA Penalties ("Individual PAGA Payments") irrespective of whether or not they opt-out of the class settlement. (Settlement Agreements ¶¶ 1.23, 1.24, 3.2(d)-(e), 8.4(d).)

The settlement is fair, reasonable, and adequate, and in the best interests of Class Members. Consequently, Plaintiffs, with the consent and approval of Defendants, hereby move for an order: (1) conditionally certifying the Class for settlement purposes; (2) granting preliminary approval of the Settlement Agreements; (3) approving the Court Approved Notice of Class Action and PAGA

Settlement and Hearing Date for Final Court Approval ("Class Notice"); and (4) setting a hearing for final approval of the settlement.

II. THE EXTENT OF INVESTIGATION AND STAGE OF PROCEEDINGS

A. Discovery and Investigation

Here, the Parties engaged in extensive discovery—informally exchanging information, documents and reviewing and analyzing extensive data made available by Defendants—which enabled the Parties to thoroughly evaluate Plaintiffs' claims, the claims of the putative Class Members, and the Aggrieved Employees' PAGA claim, along with Defendants' affirmative defenses and the likely outcomes, risks, and expense of pursuing litigation.

Prior to initiating the lawsuit, counsel for Plaintiffs, CounselOne, PC ("CounselOne" or "Class Counsel"), independently and thoroughly investigated the claims and considered the facts and circumstances underlying the pertinent issues and applicable law. (Orshansky Decl. ¶ 29.) This required thorough discussions and interviews with Plaintiffs and other Class Members as well as research into the various legal issues involved in the case. (*Ibid.*) 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. (*Ibid.*)

On November 1, 2023, Class Counsel provided pre-filing written notice to the LWDA and by certified mail to certain fictitious business names of Defendant Highland and Precision Door Service of the below-identified allegations on behalf of Plaintiff Denali and similarly situated aggrieved employees in accord with the PAGA. (Orshansky Decl. ¶ 30.) On November 9, 2023, Class Counsel provided supplemental pre-filing written notice to the LWDA and by certified mail to additional entities, including Defendants Highland and LBS, of the below-identified allegations on behalf of Plaintiff Denali and similarly situated aggrieved employees in accord with the PAGA. (*Ibid.*) On December 8, 2023, Class Counsel provided an additional supplemental pre-filing written notice to the LWDA and by certified mail to Defendants Highland and LBS, as well as Precision Door Service SPV LLC ("Precision"), of the below-identified allegations on behalf of Plaintiff Denali, Plaintiff Jackson, and similarly situated aggrieved employees in accord with the PAGA. (*Ibid.*)

On February 23, 2024, Plaintiffs filed their Class and Representative Action Complaint against Defendants Highland, LBS, and Precision, asserting the following claims: (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide compliant meal periods and/or pay all associated premiums; (4) failure to provide compliant rest periods and/or pay all associated premiums; (5) failure to pay vested vacation time upon termination of employment; (6) failure to provide sick pay; (7) failure to provide accurate itemized employee wage statements, (8) failure to pay all wages owed timely and upon separation of employment, (9) failure to reimburse business expenses; (10) violation of Labor Code section 1174, subdivision (d), (11) violation of Business and Professions Code section 17200 et seq., and (12) penalties pursuant to the PAGA. (Orshansky Decl. ¶ 31.)

Defendants deny Plaintiffs' allegations of wrongdoing; Defendants make no admissions regarding any facts or law related to the lawsuit. (Orshansky Decl. ¶ 34; Settlement Agreements ¶¶ 2.2, 2.5.)

Prior to mediation, Defendants produced information and documentation concerning the alleged violations, such as Defendants' written policies concerning those claims, including Defendants' employee handbooks, policies and procedures regarding the payment of wages, the provision of meal and rest breaks, and time keeping policies, such as recording hours, issuance of wage statements, and providing all wages at separation, as well as composite data regarding the number of Class Members and Aggrieved Employees and the mix of current versus former employees, total number of pay periods, total number of workweeks, and the average hourly rate in effect. (Orshansky Decl. ¶ 35.) Counsel met and conferred at length regarding the information and documents produced. (*Ibid*.)

Class Counsel also interviewed Plaintiffs and analyzed the documents and data produced to determine Defendants' degree of liability and potential amounts due in damages. (Orshansky Decl. ¶ 36.)

B. Mediation and Settlement

After having performed extensive investigation and analysis of the legal and factual issues and risks, the Parties participated in a full-day mediation before Jonathan Andrews, Esq., where they

debated and discussed their respective positions in an attempt to resolve the action. (Orshansky Decl. ¶ 37.) Mr. Andrews is a well-respected mediator with considerable experience mediating wage and hour class actions and PAGA representative actions. (*Ibid.*) During the mediation, the Parties exchanged further information and discussed all aspects of the two actions, including the risks and delays of litigation and the risk of proceeding with a motion for class certification, liability under the claims asserted, and the implications of a PAGA representative action. (*Ibid.*) Pursuant to a mediator's proposal, the Parties came to an agreement on all material terms of the settlement. (*Id.* at ¶ 38.)

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. ¶ 41.) Class Counsel believe that the settlement serves the best interests of Class Members and Aggrieved Employees. (*Ibid*.) Further, and based on the settlement negotiations, which were hard fought and conducted in good faith and at arm's length between attorneys with substantial experience litigating class actions, representative actions, and wage and hour cases, the settlement was the product of a non-collusive settlement process in which the Parties were forced to make significant compromises. (*Id.* at ¶ 39.) The Parties have concluded that it is in their best interests to compromise, settle, and accept the terms of the Settlement Agreements.

III. SUMMARY OF BASIC SETTLEMENT TERMS

Under the terms of the Settlement Agreement, Defendants have agreed to pay a total non-reversionary Gross Settlement Amount of Six Hundred Sixty-Five Thousand Dollars ($665,000) into a common fund to settle the specific wage and hour claims of the Participating Class Members and Aggrieved Employees. (Settlement Agreements ¶ 3.1.)[4] This Gross Settlement Amount shall be

[4] The total Gross Settlement Amount includes $550,000 to be paid by Defendant Highland Arms Enterprises, LLC and $115,000 to be paid by LBS, Inc.; see ¶ 3.2(b) of each version of the

inclusive of all settlement payments to Participating Class Members, Service Payments to the Class Representative, Administration Expenses Payment to the Settlement Administrator, Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment to Class Counsel, and PAGA Penalties, including payment to Aggrieved Employees and to the LWDA for civil penalties pursuant to statute. (*Ibid.*)

The amount available for distribution to Participating Class Members is determined by deducting the following from the Gross Settlement Amount:

- Up to $221,666.66—which is 33-⅓% of the total Gross Settlement Amount—in attorneys' fees ("Class Counsel Fees Payment"), representing payment of $183,333.33 by Highland and $38,333.33 by LBS, respectively, and up to $15,000 in litigation costs to Class Counsel ("Class Counsel Litigation Expenses Payment"), representing equal payments of $7,500 by Highland and LBS, respectively;
- Up to $7,500 to each Plaintiff ($15,000 in the aggregate) ("Class Representative Service Payments")—in recognition of their service as the Class Representatives and in exchange for their general release of claims as to each Defendant;
- $50,000 to settle all claims under the PAGA ("PAGA Penalties"), representing payment of $40,000 by Highland and $10,000 by LBS, respectively—of which 75% ($37,500) is allocated to the LWDA for civil penalties pursuant to statute ("LWDA PAGA Payment") and 25% ($12,500) is allocated to Aggrieved Employees; and
- Up to $15,000 to the Settlement Administrator, representing equal payments of $7,500 by Highland and LBS, respectively—to notify Class Members and administer the settlement ("Administration Expenses Payment").

(Settlement Agreements ¶¶ 3.2(a)-(d); Orshansky Decl. ¶ 6) The amount remaining after the foregoing deductions, approximately $348,333.34, is called the "Net Settlement Amount." (Settlement Agreements ¶ 1.28; Orshansky Decl. ¶ 6.) The entire Net Settlement Amount shall be paid out to Participating Class Members. (Orshansky Decl. ¶ 6.) Participating Class Members shall

Settlement Agreement with each settling Defendant.

automatically receive payments ("Individual Class Payments") without the need to submit a claim form, and Aggrieved Employees shall receive their pro rata shares of the 25% of the PAGA Penalties ("Individual PAGA Payments") irrespective of whether or not they opt-out of the class settlement. (Settlement Agreements ¶¶ 1.23, 1.24, 3.2(d)-(e), 8.4(d); Orshansky Decl. ¶ 6.)

Individual Class Payments will be classified as fifteen percent (15%) wages to be reported on an IRS Form W-2, and eighty-five percent (85%) penalties, interest, and non-wage damages to be reported on an IRS Form 1099. (Settlement Agreements ¶ 3.2(e)(i); Orshansky Decl. ¶ 11.) The employer's share of payroll taxes will be paid by Defendants separately from, and in addition to, the Gross Settlement Amount. (Settlement Agreements ¶ 3.1; Orshansky Decl. ¶ 12.)

Settlement checks will be valid for a period of 180 days following the date of mailing. (Settlement Agreements ¶ 5.2; Orshansky Decl. ¶ 13.) For any Participating Class Member/ Aggrieved Employee whose settlement check is uncashed and cancelled after the void date, the funds associated with such checks will be transmitted to the California Unclaimed Property Fund, to be held in the name of the Participating Class Member/Aggrieved Employee until such time as he or she may claim it. (Settlement Agreements ¶ 5.4; Orshansky Decl. ¶ 13.)

A. The Settlement Provides for Reasonable Monetary Payments

Although exact recovery amounts depend on each Participating Class Member's relative number of qualifying workweeks, the estimated average Individual Class Payment of approximately $6,220.24 is substantial. (Orshansky Decl. ¶ 12.) Any Class Member who prefers to preserve his or her right to pursue relief or seek an alternative recovery may opt out. (Settlement Agreements ¶ 8.4.)

The Net Settlement Amount will be the amount that is available for distribution to Participating Class Members on a pro rata basis based on qualifying workweeks during the Class Period. (Settlement Agreements ¶¶ 1.23, 3.2(e); Orshansky Decl. ¶ 7.) Specifically, the Net Settlement Amount shall be divided by the sum of all workweeks of Class Members during the Class Period to determine the value of a workweek. (Orshansky Decl. ¶ 7.) Each Participating Class Member's Individual Class Payment will be calculated by multiplying the value of a workweek by the number of workweeks worked by that Class Member during the Class Period. (*Ibid.*)

In addition, each Aggrieved Employee will receive an Individual PAGA Payment based on

his or her qualifying pay periods during the PAGA Period. (Settlement Agreements ¶¶ 1.24, 3.2(d); Orshansky Decl. ¶ 8.) Specifically, 25% of the PAGA Payment amount (or $12,500) shall be divided by the total of all pay periods worked by Aggrieved Employees during the PAGA Period in order to establish the value of each pay period. (Orshansky Decl. ¶ 8.) The individual PAGA payment to be made to each Aggrieved Employee shall be calculated by multiplying the value of a pay period by the number of pay periods worked by the Aggrieved Employee during the PAGA Period. (*Ibid.*)

The payment to each Participating Class Member/Aggrieved Employee will be the sum of his or her Individual Class Payment, plus, if applicable, his or her Individual PAGA Payment. (Orshansky Decl. ¶ 9.) As a result of the distribution formulas, the consideration paid to each Participating Class Member/Aggrieved Employee is tailored to the impact of Defendants' alleged violations as well as to the claims the Participating Class Member/Aggrieved Employee is releasing. (*Ibid.*) Further, a Class Member or Aggrieved Employee may submit a written letter to the Settlement Administrator disputing the number of workweeks or pay periods credited to him/her if they believe that the count is inaccurate. (Settlement Agreements ¶ 8.5; see also internal Exh. 1 to Settlement Agreements [Class Notice].) Finally, any Class Member who prefers to preserve his or her right to pursue relief or seek an alternative recovery may opt out. (Settlement Agreements ¶ 8.4.)

B. Class Representative Service Payments and Class Counsel's Attorneys' Fees and Costs

As part of the settlement, Plaintiffs will apply for service payments at the time of seeking final approval in the amount of $7,500 each ($15,000 in the aggregate) for their service to the Class. (See Declaration of Coyote Denali ("Denali Decl."), filed concurrently herewith, *passim*; Declaration of Jeremy Jackson ("Jackson Decl."), filed concurrently herewith, *passim*; Settlement Agreements ¶¶ 1.15, 3.2(a); Orshansky Decl. ¶ 16.) "[I]ncentive awards are fairly typical in class action cases . . . and are intended to compensate class representatives for work done on behalf of the class [and] to make up for financial or reputational risk undertaken in bringing the action." (*In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1393-1394.) Plaintiffs' requested service payments are intended to recognize the significant benefits conferred upon the Class and be proportional to the time and effort that Plaintiffs expended on behalf of the Class, including

providing factual information and documents to Class Counsel, discussing the claims and theories at issue in the case with Class Counsel, identifying potential witnesses, and reviewing the Settlement Agreements, the significant risks Plaintiffs undertook by agreeing to serve as named plaintiffs, and the fact that each Plaintiff has agreed to a general release of all claims subject to a waiver of Civil Code section 1542. (See Denali Decl., *passim*; Jackson Decl., *passim*; Settlement Agreements ¶ 6.1(a); Orshansky Decl. ¶ 16.)

Class Counsel will apply at the time of final approval for an attorneys' fees award (again, "Class Counsel Fees Payment") of thirty-three and one-third percent (33-⅓%) of the Gross Settlement Amount, plus reimbursement of up to $15,000 in litigation costs (again, "Class Counsel Litigation Expenses Payment"). (Settlement Agreements ¶¶ 1.7, 3.2(b); Orshansky Decl. ¶ 17.) Plaintiffs submit that the requested fee is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent fee basis. (*Id.* at ¶ 18.) Class Counsel have incurred substantial attorneys' fees conducting pre-filing investigation, analyzing Plaintiffs' claims, conducting legal research and analysis, conducting informal discovery, meeting and conferring with defense counsel, interviewing putative class members, analyzing documents produced by Defendants (including corporate policies and employee time and payroll records), consulting with an expert, building damages models, preparing for and attending mediation, routine case updates and consultations with Plaintiffs, and negotiating and preparing negotiating and preparing the long-form Settlement Agreements, the Class Notice, and this Motion for Preliminary Approval and supporting documents. (*Ibid.*) Class Counsel will also expend future attorney time in attending the hearing on this motion, overseeing the notice and administration process, drafting the final approval motion and supporting documents, and attending the final approval hearing, among other tasks, such as addressing questions from Class Members. (*Id*. at ¶ 19.)

Both California and federal courts have recognized that an appropriate method for awarding attorneys' fees in class actions is to award a percentage of the "common fund" created as a result of the settlement. (See *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 506 ["the percentage of fund method survives in California class action cases…"]; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 254 [recognizing both the "percentage of recovery" and

"lodestar/multiplier" methods].) Historically, courts have awarded percentage fees in the range of 20% to 50%, depending on the circumstances of the case (See 4 Conte & Newberg, Newberg on Class Actions (4th Ed. 2002) § 14.6 ["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."].)

Class Counsel submit that their request for attorneys' fees is reasonable when viewed as an overall percentage of the settlement amount in light of the substantial risks and significant work undertaken, the excellent results obtained for the Class Members, and the efficiency with which the Parties have conducted the litigation. (Orshansky Decl. ¶ 20.) Assuming that the Court grants preliminary approval, Class Counsel will seek an award of attorneys' fees and litigation costs at the time of seeking final approval of this settlement.

IV. CERTIFICATION FOR SETTLEMENT PURPOSES IS APPROPRIATE

Express judicial policy favors maintaining wage and hour actions as class actions. (*Prince v. CLS Transp., Inc.* (2004) 118 Cal.App.4th 1320, 1328; *Richard v. Dart Industries, Inc.* (1981) 29 Cal.3d 462 [finding that California public policy "encourages the use of the class action device"].) Any doubt as to the appropriateness of class treatment should be resolved in favor of class certification, subject to later modification if necessary. (*Id.* at pp. 473-475.) The decision to certify a class is purely a procedural one and should be based on the allegations in the operative complaint, and not in the perceived factual or legal merit of the class claims. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 439-441.)

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

A. There Is an Ascertainable and Sufficiently Numerous Class

Whether a class is ascertainable is determined by examining the class definition, the size of the class and the means available for identifying class members. (See *Vasquez*, *supra*, 4 Cal.3d at pp. 821-822; *Reyes v. Board of Supervisors of San Diego County* (1987) 196 Cal.App.3d 1263, 1271; *Miller v. Woods* (1983) 148 Cal.App.3d 862, 873.) Class members are "ascertainable" where they may be readily identified without unreasonable expense or time.

Here, the class definition is "precise, objective and presently ascertainable." (*Sevidal v. Target Corp.* (2010) 189 Cal.App.4th 905, 919.) Class Members are comprised of all non-exempt employees, including those employees as to whom a reasonable dispute regarding non-exempt classification may exist (including employees with the following job titles: Technician, Residential Garage Door Technician, Commercial Garage Door Technician, Garage Door Technician, Lead Technician, Residential Garage Door Estimator, Field Manager, Installer, Senior Technician, Residential Garage Door Estimator, Field Manager, Installer, Senior Installer, Lead Installer, Residential Garage Door Installer, Administrative Assistant, Commercial Administrator, Customer Experience - Lead, Purchase Clerk, Warehouse Associate, Warehouse Manager, Welder, Lead Welder, Lead Welder - Shop, Welder - Shop), who are employed or have been employed by Defendants in California at any time during the Class Period. (Settlement Agreements ¶ 1.5.) Further, the Class Period is defined as the period beginning on February 23, 2020, and ending on May 27, 2025. (*Id.* at ¶ 1.13.) Thus, all Class Members are of a specific type (non-exempt employees, including those employees as to whom a reasonable dispute regarding non-exempt classification may exist) employed within California. (Orshansky Decl. ¶ 95.) Defendants are required to and do maintain employment records of such persons, including contact information and Social Security numbers. (*Ibid.*) At the time of mediation, Defendants estimated a class of 56 employees who meet the above definition working for Defendants in California during the Class Period. (*Ibid.*) Thus, the proposed Class satisfies the ascertainability and numerosity requirements. (See, e.g., *Collins v. Rocha* (1972) 7 Cal.3d 232 [finding a class of 44 farm workers sufficiently numerous].)

B. There Is a Well-Defined Community of Interest

A community of interest is established by the preponderance of common issues of law and fact. (See *Vasquez*, *supra*, 4 Cal.3d at p. 811.) The requirement of a community of interest:

> does not depend upon an identical recovery, and the fact that each member of the class must prove his separate claim to a portion of any recovery by the class is only one factor to be considered...The mere fact that separate transactions are involved does not of itself preclude a finding of the requisite community of interest so long as every member of the alleged class would not be required to litigate numerous and substantial questions to determine his individual right to recover subsequent to the rendering of any class judgment which determined in plaintiffs' favor whatever questions were common to the class.

(*Id*. at p. 809.) The instant litigation is predicated on uniform company policies and systemic top-down business practices revolving principally around Defendants' timekeeping and pay practices—*e.g.*, off-the-clock work attributed to understaffing, failure to provide compliant meal and rest breaks, failure to pay all meal period premiums, and failure to pay rest break premiums, as well as derivative inaccurate wage statements and pay owed upon separation. (Orshansky Decl. ¶ 96.) These allegations have given rise to the following claims: failure to pay wages; meal period liability; rest break liability; failure to timely pay all final wages due upon termination; failure to provide accurate itemized wage statements; and derivative UCL and PAGA claims arising therefrom. (*Ibid*.)

Plaintiffs have alleged a single top-down compensation scheme where "the relevant proof [does] not vary among class members" and "clearly present[] a common question fundamental to all class members." (See *In Re NASDAQ Market-Makers Antitrust Litigation* (S.D.N.Y. 1997) 172 F.R.D. 119, 123, citing *In Re NASDAQ Market-Makers Antitrust Litigation* (S.D.N.Y. 1997) 169 F.R.D. 493, 518.) California courts show "no hesitancy" in inferring class-wide causation, class-wide injury, and class-wide damages when a common course of action has been shown. (*B.W.I. Custom Kitchen, supra*, 191 Cal.App.3d at p. 1350 [granting class certification in a manufacturing defect case when a common course of action had been proven].) This inference "*eliminates* the need for each class member to prove individually the consequences of the defendants' actions to him or her." (*Id.* at p. 1351, emphasis added.) Thus, the outcome of this matter depends upon questions that are common to members of the Class. (Orshansky Decl. ¶ 97.) These types of claims are commonly held to be proper for class certification. (See, e.g., *Bluford v. Safeway, Inc.* (2013) 216 Cal.App.4th

864, 871 [reversing denial of rest period claim]; *Benton v. Telecom Network Specialists, Inc.* (2013) 220 Cal.App.4th 701, 726 [certifying meal period claim].)

C. The Claims of the Named Plaintiffs Are Typical.

The typicality requirement is satisfied where class representatives have claims that are typical of those of the rest of the class. (*B.W.I. Custom Kitchen, supra*, 191 Cal.App.3d at p. 1347.)

Here, Plaintiffs' claims are typical of those held by the members of the Class. (Orshansky Decl. ¶ 98.) Like other Class Members, Plaintiffs were either employees classified as non-exempt, or employees as to whom a reasonable dispute regarding non-exempt classification existed, working for Defendants in California during the Class Period. (*Ibid*.) As alleged, Plaintiffs were not compensated for all minimum and overtime hours worked, not provided with legally compliant meal and rest breaks or paid all premiums thereon, not provided with accurate itemized wage statements, and so forth (*Ibid*.) Plaintiffs were therefore impacted by the same challenged policies that allegedly injured the Class as a whole and subject to the same defenses forwarded by Defendants as to the Class; thus their claims are typical. (*Ibid*.)

D. Named Plaintiffs and Class Counsel Will Fairly and Adequately Represent the Settlement Class.

The adequacy of representation requirement examines conflicts of interest between named parties and the class(es) they seek to represent. (*Capital People First v. Department of Developmental Services* (2007) 155 Cal.App.4th 676, 697.) Here, Plaintiffs and Class Counsel will adequately represent the Class as there are no conflicts between the named Plaintiffs and the Class they seek to represent. (Denali Decl. ¶ 4; Jackson Decl. ¶ 4; Orshansky Decl. ¶ 99; *McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450 [finding adequacy satisfied where there was no indication that plaintiff's counsel were not qualified and the named plaintiff had no interests antagonistic to those of the proposed class].) Class Counsel also have extensive experience in wage and hour litigation. (Orshansky Decl. ¶¶ 89-93, 99.)

E. A Class Action Is Superior to a Multiplicity of Litigation

In making its class certification decision, the court must determine that a class action would be superior to alternative means for the fair and efficient adjudication of the litigation. By

consolidating more than fifty individual actions into a single proceeding, this Court's use of the class action device enables it to manage this litigation in a manner that is efficient to the litigants and the judicial system. (Orshansky Decl. ¶ 100.) Absent class treatment, the only alternative would be to force these employees to file individual actions. (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 339, fn. 10 [stating "[t]he relevant comparison lies between the costs and benefits of adjudicating Plaintiff's claims in a class action and the costs and benefits of proceeding by numerous separate actions – not between the complexity of a class suit that must accommodate some individualized inquires and the absence of any remedial proceeding whatsoever."].) Finally, in the context of settlement, the superiority concerns are essentially non-existent.

F. No Other Cases Will be Impacted by this Settlement.

Finally, there are no other pending cases that could be affected by the settlement of claims in this matter. (Settlement Agreements ¶ 2.6; Orshansky Decl. ¶ 14.)

V. THE TWO-STEP APPROVAL PROCESS

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

The preliminary approval of the class action settlement by the trial court is simply a conditional finding that the settlement appears to be within the range of acceptable settlements. (See, e.g., 4 Conte & Newberg, Newberg on Class Actions (4th Ed. 2002) § 11.25; *North County Contractor's Assn., Inc. v. Touchstone Ins. Services* (1994) 27 Cal.App.4th 1085, 1094-1095.) Thus, the preliminary approval of the class action settlement by the Court is simply a conditional finding that the settlement appears to be within the range of acceptable settlements. A review of the

preliminary approval criteria demonstrates a substantial basis for granting the preliminary approval requested by this Motion and proceeding to a full settlement hearing.

VI. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE

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

To summarize, the settlement here is fair because it offers payment to each Participating Class Member and Aggrieved Employee for releasing his or her claims, extinguishes the risk of litigation, and provides a fair and adequate distribution of the settlement proceeds whereby the funds are allocated proportionally based on the respective number of workweeks/pay periods that he or she worked during the relevant periods. (Orshansky Decl., *passim*.) For all of the foregoing reasons, the proposed settlement should be preliminarily approved.

A. The Settlement Is Entitled to a Presumption of Fairness

Moreover, courts presume the absence of fraud or collusion in the negotiation of a settlement unless evidence to the contrary is offered. In short, there is a presumption that the negotiations were conducted in good faith. (See 4 Conte & Newberg, Newberg on Class Actions (4th Ed. 2002) § 11.51; *Rodriguez v. West Publ. Corp.* (C.D.Cal. Sep. 10, 2007, No. CV05-3222 R (MCx)) 2007 U.S.Dist.LEXIS 74767, at *24-25; *In re Chicken Antitrust Litigation* (N.D.Ga. 1980) 560 F.Supp. 957, 962; *Priddy, supra*, 883 F.2d at p. 447; *Mars Steel Corp. v. Continental Illinois Nat'l Bank and Trust Co*. (7th Cir. 1987) 834 F.2d 677, 681.) Courts do not substitute their judgment for that of the proponents, particularly when settlement has been reached by experienced counsel familiar with the

litigation. (*Rodriguez, supra*, 2007 U.S.Dist.LEXIS 74767, at *24.) As detailed at length in the accompanying Orshansky Declaration, the settlement is the result of extensive settlement negotiations between the Parties, conducted at arm's length, and informed by substantial factual and legal investigations. (Orshansky Decl., *passim*.)

B. Negotiations Were at Arm's Length before a Respected Mediator

As noted above, the Parties engaged in a full day mediation session with Jonathan Andrews, Esq. (Orshansky Decl. ¶ 37.) Mr. Andrews is a well-respected mediator with considerable experience mediating wage and hour class and PAGA representative actions. (*Ibid.*) The settlement was reached pursuant to a mediator's proposal. (*Id.* at ¶ 38.) The settlement negotiations were hard fought and conducted in good faith and at arm's length between attorneys with substantial experience litigating class actions, representative actions, and wage and hour cases. (*Id.* at ¶ 39.) The settlement was the product of a non-collusive settlement process in which the Parties were forced to make significant compromises in the interest of reaching a full and complete settlement of the action. (*Ibid*.)

C. Investigation Was Sufficient to Allow Counsel to Act Intelligently

Throughout this case, Class Members have been represented by counsel who have years of experience in employment class action litigation. (Orshansky Decl. ¶¶ 89-93.) Class Counsel devoted a considerable amount of time to the prosecution of this case, including, but not limited to, analyzing Plaintiffs' claims; conducting pre-filing investigation and research; conducting informal discovery; reviewing Defendants' written policies concerning the claims set forth in the action, including Defendants' policies and procedures regarding the payment of wages, the provision of meal and rest breaks, time keeping policies, issuance of wage statements, and providing all wages at separation; reviewing and analyzing time and pay records; meeting and conferring regarding the information and documents produced; interviewing Class Members; drafting pleadings; preparing damages models; consulting with an expert; preparing for and attending mediation; providing routine case updates and consultations with Plaintiffs and negotiating and finalizing the settlement and related documents. (*Id.* at ¶ 18.)

D. Class Counsel Are Experienced in Similar Litigation

Class Counsel believe that the settlement is fair and reasonable and serves the best interests of the Class Members. (Orshansky Decl. ¶ 41.) Although the recommendations of counsel proposing the class settlement are not conclusive, the Court can properly take the recommendations into account, particularly if counsel have been involved in litigation for some period of time, appear to be competent, have experience with this type of litigation, and significant discovery has been completed. (See 4 Conte & Newberg, Newberg on Class Actions (4th Ed. 2002) § 11.47.) Here, Plaintiffs are represented by competent and experienced counsel who possess extensive experience litigating wage and hour class actions and have been appointed as class counsel in numerous cases alleging similar claims. (Orshansky Decl. ¶¶ 89-93.)

E. The Settlement Is Fair, Reasonable, and Adequate

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

1. The Strength of Plaintiffs' Case

Class Counsel carefully vetted the claims at issue to arrive at a comprehensive damages model for Defendants' liability. (Orshansky Decl. ¶ 42.) Although Plaintiffs steadfastly maintain their claims are meritorious, they acknowledge that there are substantial risks in proceeding with class certification and trial. (*Ibid*.) As explained in further detail in Section VI.E.4, *infra*, Defendants presented numerous defenses to Plaintiffs' claims, both on the merits and with respect to class certification. (Orshansky Decl. ¶ 42.) For example, Defendants defended against the minimum and overtime wage claims by relying on policies that explicitly prohibited Class Members from engaging in off-the-clock work. (*Id*. at ¶ 43.) Defendants also argued that Class Members worked in different

job positions and had different managers, and, as a result, Defendants contended there was variation to the circumstances that could allegedly cause the employees to 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. (*Ibid*.)

Although Plaintiffs were prepared to litigate these claims through class certification and ultimately through trial, given the substantial amount offered in settlement, Class Counsel predicted that it was far from certain that Plaintiffs would be able to recover a greater amount at trial, particularly after considering the increased litigation costs that would accrue. (Orshansky Decl. ¶ 46.) Thus, this factor supports preliminary approval of the settlement.

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

Although Plaintiffs investigated the claims prior to settlement, the Parties agreed to focus on exhausting settlement efforts before launching into full-fledged and contested litigation. (Orshansky Decl. ¶ 44.) Therefore, absent settlement, the Parties would have needed to conduct substantial additional discovery, such as the production of voluminous records and numerous depositions of experts and percipient witnesses, and prepare the case for class certification and trial. (*Ibid*.) The Parties would have had to depose a number of people such as managers, supervisors, human resource representatives, and employees in order to establish liability. (*Ibid.*) Discovery disputes would have been in the offing and liability likely would have entailed a battle of experts. (*Ibid.*) 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. (*Ibid.*) 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. ¶ 45.) Yet, class certification was by no means a foregone conclusion. (*Ibid*.) For example, Class Members worked in different job positions with different requirements and different managers; as a result, Defendants contended there was variation to the circumstances that could allegedly cause 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. (*Ibid.*) Defendants disputed Plaintiffs' characterization of working conditions, liability, and damages, and possessed documentary and testimonial evidence rebutting Plaintiffs' allegations. (*Ibid.*)

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*, *supra*, 91 Cal.App.4th at pp. 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 to be 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."].)

Plaintiffs' estimate of the settlement recovery is a reasonable percentage of possible recoverable damages at trial. Plaintiffs' damages analysis shows that the settlement reflects an estimated 64% of the potential damages recoverable at trial. (Orshansky Decl. ¶ 47.) Utilizing a class-wide damages study to assess the nature and magnitude of the claims in question (see *Kullar v. Foot Locker Retail, Inc*. (2008) 168 Cal.App.4th 116, 123), this case clearly meets requirements establishing that the settlement is within the "ballpark" of reasonableness. The settlement provides a fair and reasonable monetary recovery for the Class in the face of disputed claims.

<u>Unpaid Wages</u>

Plaintiffs, along with other hourly-paid or non-exempt employees, performed off-the-clock work, including but not limited to on-call time, to minimize the incidence of overtime. (Orshansky Decl. ¶ 49.) Plaintiffs contended that all off-the-clock work is compensable time. *(Ibid.*) An employer must pay its employees no less than the minimum wage for all hours worked (see Lab. Code, § 1197), thus, Plaintiffs sought to recover at least the minimum wage for all off-the-clock

work, plus liquidated damages in that amount under Labor Code section 1194. (Orshansky Decl. ¶ 49.)

Defendants contended that Plaintiffs' claim for off-the-clock work is not amenable to class treatment, because employees worked in a variety of positions with different requirements and different managers, and it would require an unmanageable series of mini-trials to determine how much time was spent without pay. (Orshansky Decl. ¶ 50.) The failure to track all hours poses evidentiary difficulties because it is hotly contested how much off-the-clock work actually occurred. For Plaintiffs to establish the quantity of specific disputed and unrecorded work activities—especially over multiple job titles, at differing pay rates—would have been costly, time-consuming, and daunting. (*Id.* at ¶ 52.)

Further, in terms of merit defenses, Defendants vigorously disagreed with Plaintiffs' theories regarding how much off-the-clock work occurred in reality and the credibility of those claimed hours given Defendants' policies to the contrary. (*Ibid.*) Defendants further responded that any off-the-clock time is de minimis. (*Id.* at ¶ 53.) Plaintiffs countered that such defense lacks viability in light of *Troester v. Starbucks Corp.* (2018) 5 Cal.5th 829, given that the California Supreme Court refused to allow the de minimis defense to insulate Starbucks from having to pay employees for small amounts of work regularly performed off-the-clock. (Orshansky Decl. ¶ 53.) What is not clear, however, is to what extent the de minimis defense would apply where the uncaptured hours were associated with an occasionally recurring activity. (*Ibid.*) Defendants also disputed that any alleged on-call time met applicable legal theories to be deemed compensable. (*Ibid*.)

Additionally, in response to Plaintiffs' allegation that overtime was underpaid because Defendants incorrectly calculated the regular rate by failing to include non-discretionary payments, Defendants vigorously disputed the discretionary nature of certain payments, and the degree to which they were required to be included in calculating the regular rate of pay. (Orshansky Decl. ¶ 54.)

Class Counsel analyzed the documents produced by Defendants and, in conjunction with interviews of Plaintiffs, determined Defendants' potential degree of liability and amounts due in damages. (Orshansky Decl. ¶ 55.)

Based on Defendants' records, Plaintiffs estimate that Defendants are liable for an aggregate of approximately 120 minutes of unpaid time per workweek. (Orshansky Decl. ¶ 56.) At the average hourly rate of $42, such yields an estimated damages amount of $248,472.00. (*Ibid.*)

Meal and Rest Period Violations

Plaintiffs asserted that there are compliance issues *vis-à-vis* meal breaks—some were late, missed, short, or interrupted. (Orshansky Decl. ¶ 57.)

On February 25, 2021, in *Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58, the California Supreme Court reversed the Fourth Appellate District and set forth two clear rules: (1) employers are not permitted to round time records when determining if employees are entitled to meal premium pay, and (2) it is the employer's burden to show that compliant meal periods were provided to employees if the time records show otherwise. Using this opportunity to echo its longstanding position that California liberally construes the Labor Code and Wage Orders to favor protection of employees, the court emphasized that meal periods are part of the remedial worker protection framework to protect the health and safety of employees.

Labor Code sections 226.7 and 512 and IWC Wage Order No. 16-2001 require employers to provide employees with a thirty (30) minute uninterrupted and duty-free meal period within the first five (5) hours of work. (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1042 ["Accordingly, first meal periods must start after no more than five hours."].) Moreover, an employee who works more than ten (10) hours per day is entitled to receive a second thirty (30) minute uninterrupted and duty-free meal period. (See Lab. Code, § 512.) Further, although Defendants made some premium payments for short, late, interrupted, or missed meal periods, those payments were only a portion of what should have been paid (Orshansky Decl. ¶ 60; c.f. *Ferra v. Loews Hollywood Hotel* (2021) 11 Cal.5th 858; IWC Wage Order No. 16-2001, § 11(b).) Consequently, Plaintiffs alleged that Defendants violated *Ferra, supra*, Labor Code sections 226.7 and 512, and IWC Wage Order No. 16-2001 by failing to provide compliant, duty-free meal periods and failing to compensate Plaintiffs and Class Members for all short, late, interrupted, and missed meal periods. (Orshansky Decl. ¶ 61.)

Defendants, however, contended that they had practices, policies, and procedures to provide meal and rest breaks every workday to their employees that fully complied with the law. (Orshansky Decl. ¶ 62.) Defendants vehemently argued that they complied with the requirements articulated by the California Supreme Court in *Brinker, supra*, 53 Cal.4th 1004. (Orshansky Decl. ¶ 62.) Specifically, Defendants maintained that they "provided" employees with a reasonable opportunity to take timely meal periods of at least 30 minutes, relieve employees of all duties, relinquish control over employees' activities, and allow employees to leave the premises during meal periods. (*Ibid*.) Like most employers facing meal period litigation, Defendants argued that employees were apprised of their right to take meal periods and provided compliant meal periods, but some may voluntarily have waived them in the management of their own schedules. (*Id.* at ¶ 63.) The issue of waiver, Defendants contended, would cause the action to necessarily devolve into a series of individualized mini-trials, precluding class certification. (*Ibid.*; see *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 25 [holding that the defendant must be provided an opportunity to litigate affirmative defenses, even when they turn on individual questions].)

Based upon the analysis of Class Members' time and payroll records, Plaintiffs determined that 40% of eligible shifts were the subject of unique violations for missed, short, or late meal periods, and calculated the exposure of this claim to be $248,472.00. (Orshansky Decl. ¶ 64.)

Plaintiffs also alleged that 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." (Orshansky Decl. ¶ 65; *Augustus v. ABM Security Service, Inc.* (2016) 2 Cal.5th 257, 260.) Due to Defendants' alleged work demands and staffing, Plaintiffs and Class Members did not always receive timely and compliant rest breaks, nor did Defendants relinquish control over how employees spent their 10-minute rest breaks. (Orshansky Decl. ¶ 65.) Plaintiffs and Class Members claimed they did not receive rest break premium payments for non-compliant rest breaks as required under Labor Code section 226.7. (Orshansky Decl. ¶ 65.)

Here again, Defendants disputed liability and damages. Defendants maintained that they authorized and permitted duty-free rest breaks of not less than ten minutes for every major fraction of four hours worked as required by Labor Code section 226.7. (Orshansky Decl. ¶ 67.) Defendants

explained that Class Members had ample opportunity to take, and did take, regular rest breaks. (*Ibid*.) As with meal periods, Defendants argued that any Class Member who failed to take a rest break, or took a short or late rest break, did so voluntarily and that all applicable rest breaks were still authorized and provided. (*Ibid.*) Defendants also attempted to distinguish *Augustus*, *supra*, which involved security guards who were required to monitor a pager, phone, or other device as having an added constraint that is not present in the matter sub judice. (Orshansky Decl. ¶ 67.)

Unlike meal periods, rest breaks need not be recorded and thus establishing Defendants' exertion of pressure, control, and resulting violations is likely to be more difficult. (Orshansky Decl. ¶ 68.) Class Counsel applied a 20% violation rate based on the narratives of Plaintiffs and other Class Members, resulting in a value of $124,236.00 attributable to this claim. (*Ibid.*)

Wage Statement Violations

Plaintiffs alleged a cause of action under Labor Code section 226, subdivision (a), for Defendants' failure to provide accurate itemized wage statements. (Orshansky Decl. ¶ 69.) 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 Lab. Code, § 226, subd. (e).) This cause of action is derivative of the foregoing causes of action because if Defendants did not provide wages for all hours worked, pay all premiums for non-compliant meal and rest breaks, and so forth, then the wage statements were inevitably inaccurate. (Orshansky Decl. ¶ 69.)

Defendants contended, however, that Labor Code section 226, subdivision (e), penalties are not automatic. (Orshansky Decl. ¶ 70.) Rather, the employee must show that Defendants' non-compliance was "knowing and intentional." (*Ibid*.) Defendants suggested that any non-compliance was not knowing and intentional.[5] (*Ibid*.)

[5] (See, e.g., *Naranjo v. Spectrum Security Services, Inc.* (2022) 15 Cal.5th 93.) In 2023, the Court of Appeals, re-visiting *Naranjo* on remand, substantiated such good faith arguments because penalties for missed meal rest breaks were not clearly established law until the May 2022 California Supreme Court decision. (See *Naranjo v. Spectrum Security Services, Inc*. (2023) 88 Cal.App.5th 937.) On May 6, 2024, the California Supreme Court, on review, clarified that an employer is not liable for statutory penalties for inaccurate wage statements when it had a good faith and reasonable

Because the damages for this cause of action are penalties, the statute of limitations is only one year prior to the filing of the original complaint. (See Code Civ. Proc., § 340.) Based on the $50 initial violation, plus the $100 per pay period subsequent violation rates, Plaintiffs estimated the total wage statement exposure to be $44,800. (Orshansky Decl. ¶ 71.)

Derivative Waiting Time and UCL Claims

Plaintiffs further asserted causes of action against Defendants for failure to timely pay all wages due employees at separation and for engaging in unfair, unlawful, and fraudulent business practices. (Orshansky Decl. ¶ 72; see Lab. Code, § 203; Bus. & Prof. Code, § 17200 et seq.) As with other claims, Defendants vigorously disagreed that they engaged in any conduct giving rise to liability, or entitlement to recovery of penalties or equitable relief. (Orshansky Decl. ¶ 72.)

Defendants argued that waiting time penalties are not appropriate because they attempted to pay employees all final wages owed in good faith upon their separation, thereby precluding a finding of willfulness necessary to obtain waiting time penalties. (Orshansky Decl. ¶ 73.) Moreover, as with wage statements, Defendants maintained that no waiting time penalties were recoverable from alleged meal or rest period violations and/or the fluctuating legal landscape arguably engendered a good-faith dispute defense precluding penalties. (*Id.* at ¶ 74.)

Based on the count of 33 former employees, Class Counsel appraised the maximum value of the waiting time claim as $332,640.00. (Orshansky Decl. ¶ 75.)

Unreimbursed Expenses

Plaintiffs alleged a cause of action under Labor Code section 2802, subdivision (a), which requires that an employer reimburse employees for all necessary expenditures that employees incur in discharging their duties. Here, Plaintiffs alleged Defendants' failure to reimburse non-exempt employees for necessary business expenses incurred, *i.e.*, Plaintiffs and Class Members alleged they were required to pay for tools and other equipment that was purchased for business-related purposes and which was necessary for their jobs, and use their cell phones for work purposes. (Orshansky Decl. ¶ 76.)

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belief that the issued statements were accurate. (*Naranjo v. Spectrum Security Services, Inc.* (2024) 15 Cal.5th 1056.)

Defendants contended that they have a policy and practice of reimbursing employees for necessary business-related expenses. (Orshansky Decl. ¶ 77.) Defendants also contended that, with respect to the alleged expenses for which Plaintiffs and other Class Members never requested reimbursement from Defendants, Defendants did not know and had no reason to know that the alleged business-related expenses were incurred. (*Ibid.*) Moreover, to the extent it occurred, Defendants asserted that this claim is not suitable for class treatment as it would require individualized determinations as to, for example, what tools each employee bought and under what circumstances, and whether each employee used a personal cell phone for work-related purposes and, if so, how much of that use was a reasonable percentage of his or her individual monthly phone bill. (*Ibid*.)

Defendants also argued that the California Labor Code only requires reimbursement of "necessary" expenses—as opposed to any expense that is incurred in the course of performing work—and argued that distinguishing a necessary expense from an unnecessary one would require individualized inquiry. (Orshansky Decl. ¶ 78; see also Lab. Code, § 2802; *Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554.) Furthermore, whether an expense was necessary would depend in part on the reasonableness of the employee's choice and would thus have to be established by way of extensive individual factual inquiry and/or statistical evidence. (*Cochran v. Schwan's Home Services, Inc.* (2014) 228 Cal.App.4th 1137).

With recognition that this claim is difficult to certify class-wide and quantify in terms of damages, Plaintiffs assigned a de minimis value to this claim. (Orshansky Decl. ¶ 79.)

PAGA Penalties

The success of Plaintiffs' PAGA claim is wholly dependent upon the success of their underlying claims occurring within the one-year statute of limitations applicable to the PAGA. (Orshansky Decl. ¶ 80.) Defendants maintained and continue to maintain that they had legally compliant employment policies and practices throughout the statutory period. (*Id*. at ¶ 81.) Defendants denied and continue to deny that they ever violated any provision of the California Labor Code and argued that, even assuming such violations occurred, Defendants would not be treated as having engaged in subsequent violations giving rise to heightened penalties. (*Ibid.*) In other words,

Defendants argued that heightened civil penalties for subsequent violations would not be assessed unless it could be shown that Defendants had notice they were violating the law, *e.g.*, they had been cited by a labor agency or adjudged by a court to have done so. (*Ibid.*; see, e.g., *Amaral v. Cintas Corp.* (2008) 163 Cal.4th 1157, 1209.) Thus, Defendants 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. ¶ 81.)

Moreover, Defendants asserted that before a PAGA claim could be tried, the court of law would have to be satisfied that the adjudication of the PAGA claim, based on a theory of uniform wage and hour practices relating to a large group of aggrieved employees, is sufficiently "manageable" so as not to interfere with Defendants' right to due process. (Orshansky Decl. ¶ 82.) Defendants reiterated how hourly employees' job duties, managers, and work hours varied. (*Id.* at ¶ 82.) Defendants contended that there was variation as to the circumstances that could allegedly cause employees to work off the clock or to be deprived of the opportunity to take legally compliant, duty-free meal and/or rest periods. (*Ibid*.) Defendants further opined that these issues presented challenges not only to liability but also to Plaintiffs' ability to show that a PAGA claim could be efficiently and manageably adjudicated without abridging Defendants' due process rights. (*Ibid*.)

Finally, Defendants maintained that the Court would have significant discretion to reduce any award of PAGA penalties where it views them as duplicative. (Orshansky Decl. ¶ 84; see Lab. Code, § 2699, subd. (e)(2) [the Court may "award a lesser amount than the maximum civil penalty amount [authorized by PAGA] if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory."].)

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. (Orshansky Decl. ¶ 85.) Thus, Class Counsel applied discounts for the risks in establishing manageability and 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. (*Ibid*.) In *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 517, for example, the

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.* (C.D.Cal. Aug. 12, 2011, No. EDCV-10-01487-RGK-OP) 2011 U.S.Dist.LEXIS 154590, at *9, 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 *In re Taco Bell Wage & Hour Actions* (E.D.Cal. Apr. 8, 2016, No. 1:07-cv-01314-SAB) 2016 U.S.Dist.LEXIS 48557, at *40-43 [PAGA penalties denied after trial].) In *Cotter v. Lyft, Inc.* (N.D.Cal. 2017) 176 F.Supp.3d 930, 941, 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, Defendants could state a strong case that, as the court concluded in *Cotter*, their efforts to devise compliant operational policies do not indicate an organization that has deliberately sought to evade the law. (Orshansky Decl. ¶ 86.) This was a very significant risk factor for Plaintiffs. Defendants also disputed that Plaintiffs could find a coherent method for proving liability for various employees working in different departments and/or job positions. (*Ibid*.)

As a result, Plaintiffs used the initial $100 penalty violation rate per pay period to calculate an estimated $45,600 in potential PAGA penalty exposure, of which, by statute, only 25% ($11,400) would be recoverable by the Aggrieved Employees. (Orshansky Decl. ¶ 86.)

Other Claims

Plaintiffs also asserted causes of action for: (a) failure to provide accrual of vacation wages/pay; (b) failure to provide sick pay; and (c) failure to maintain payroll records pursuant to Labor Code section 1174, subdivision (d). (Orshansky Decl. ¶ 87.) However, upon further investigation and analysis, Class Counsel assigned de minimis value to these claims.

Summary

Class Counsel calculated that the recovery for each of the above claims, in the aggregate, is $1,044,220.00. (Orshansky Decl. ¶ 88.) Hence, the Gross Settlement Amount of $665,000 represents approximately 64% of Plaintiffs' potential recovery, while avoiding the further expense and serious

risk of proceeding toward class certification and trial. (*Ibid.*) "The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved." (*Linney v. Cellular Alaska P'ship* (9th Cir. 1998) 151 F.3d 1234, 1242, internal quotations omitted; see, e.g., *Altamirano v. Shaw Indus.* (N.D.Cal. July 24, 2015, No. 13-cv-00939-HSG) 2015 U.S.Dist.LEXIS 97098, at *24 [preliminarily approving wage and hour class action settlement stating, "[a]lthough 15% represents a modest fraction of the hypothetical maximum recovery estimated by Plaintiffs, that figure is sufficient for the Court to grant preliminary approval given the merits of Plaintiff's claims."].) Taking into account the risks of non-certification and failure to prevail on the merits, and the Court's power to reduce the civil penalties, the proposed settlement falls within the realm of being fair, reasonable, and adequate. (Orshansky Decl. ¶ 88.)

VII. PROPOSED NOTICE PROVIDES ADEQUATE NOTICE TO THE CLASS

This Court should order distribution of the proposed Court Approved Notice of Class Action and PAGA Settlement and Hearing Date for Final Court Approval (again, "Class Notice") (see Orshansky Decl. Exhs. A and B [Settlement Agreements] at internal Exhibit 1) to the Class by first class mail, postage prepaid, using the last known mailing address information provided by Defendants. (Orshansky Decl. ¶ 101.) Here, Plaintiffs propose that the settlement be administered by CPT Group, Inc. ("CPT"), an experienced class action settlement administrator. (Settlement Agreements ¶ 8.1; Orshansky Decl. ¶ 102.) Class Members' and Aggrieved Employees' addresses will be ascertainable through Defendants' personnel and payroll records, which Defendants will provide to CPT within ten (10) business days after preliminary approval of the settlement. (Settlement Agreements ¶ 4.2; Orshansky Decl. ¶ 102.) Under the settlement, CPT will run all addresses through the National Change of Address database, and to the extent that any notices are returned, will conduct further skip traces to obtain current address information and remail those notices. (Settlement Agreements ¶¶ 5.2-5.3.) CPT shall also establish a telephonic hotline and maintain a case-specific website for hosting relevant documents, including a copy of the Class Notice and Settlement Agreements. (*Id.* at ¶¶ 8.1, 8.7(a).)

The content of the proposed notice satisfies California Rules of Court, Rule 3.766(d) because it advises Class Members of the nature of the claims, basic contentions and denials of the Parties, the key terms of the Settlement Agreement, the uniform 45-day deadline to submit a dispute, opt-out, or object to the class settlement and the procedure by which to do so, and explains the recovery formula and credited number of workweeks and pay periods for each Class Member. (Orshansky Decl. ¶ 103.) An optional request for exclusion form will also be attached to the Class Notice for convenience. (*Ibid.*) The proposed notice will notify Class Members of the final approval hearing date, provide the contact information for Class Counsel, and advise Class Members that they may enter an appearance through counsel if they wish. (*Id*. at ¶ 104.) This manner of giving notice satisfies California Rules of Court, Rule 3.766(e) as the most reliable and cost-effective method of reaching Class Members. Thus, the proposed method of notice is reasonably calculated to reach Class Members by the best means practicable and should be approved. (Orshansky Decl. ¶ 104.)

VIII. THE COURT SHOULD SET A FINAL APPROVAL HEARING

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

IX. CONCLUSION

Based upon the foregoing, and because the proposed settlement is fair, reasonable, and advantageous to the Class Members, Plaintiffs respectfully request that the Court enter an order:

1. Preliminarily approving the Settlement Agreements as fair, reasonable, and adequate;

2. Preliminarily approving the form and content of the Court Approved Notice of Class Action and PAGA Settlement and Hearing Date for Final Court Approval, attached as Exhibit 1 to the Settlement Agreements;

3. Provisionally certifying the Settlement Agreements' proposed Class comprised of the Class Members identified during the Class Period under Civil Code section 382 for settlement purposes only;

4. Approving and appointing Plaintiffs as the Class Representatives;

5. Approving and appointing CounselOne, PC as Class Counsel;

6. Approving and appointing CPT Group, Inc. as the Settlement Administrator;

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

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

Dated: November 6, 2026

Respectfully submitted,

COUNSELONE, PC

By: _____

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