BRANDON BROUILLETTE, ESQ. (SBN 273156)
bbrouillette@crosnerlegal.com
ZACHARY M. CROSNER, ESQ. (SBN 272295)
zach@crosnerlegal.com
CROSNER LEGAL, PC
9440 Santa Monica Blvd. Suite 301
Beverly Hills, CA 90210
Tel: (866) 276-7637
Fax: (310) 510-6429

Attorneys for Plaintiff ISMAEL CRUZ

[*Additional Counsel on Following Page*]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

ISMAEL CRUZ and PRINCE RAY, as individuals and on behalf of all other similarly situated Class Members,

Plaintiffs,

v.

HENKELS & MCCOY WEST, LLC, a Florida Limited Liability Company; HENKELS & MCCOY, INC., a Pennsylvania Corporation; and DOES 1-100, inclusive,

Defendants.

Case No.: 24STCV29321 (Lead)
Related Case No.: 24STCV29074

Assigned for All Purposes to:
Hon. Elihu Berle
Dept. SSC-6

MEMORANDUM OF POINTS & AUTHORITIES IN IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Date: September 29, 2026
Time: 11:00 a.m.
Dept.: SSC-6

Nicholas J. Ferraro (State Bar No. 306528)
Lauren N. Vega (State Bar No. 306525)
Nicolas P. Ahadzadeh (State Bar No. 365386)
FERRARO VEGA EMPLOYMENT LAWYERS, INC.
3333 Camino del Rio South, Suite 300
San Diego, California 92108
(619) 693-7727 main / (619) 350-6855 fax
nick@ferrarovega.com / lauren@ferrarovega.com
npa@ferrarovega.com

Attorneys for Plaintiff Prince Ray

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I. INTRODUCTION

Plaintiffs Ismael Cruz and Prince Ray respectfully request that the Court preliminarily approve the Class Action and PAGA Settlement Agreement ("Agreement") entered into between Plaintiffs and Defendants Henkels & McCoy West, LLC and Henkels & McCoy, Inc. (together 'H&M" or "Defendants"). The proposed settlement seeks to resolve claims in this matter in exchange for a non-reversionary $1,775,000 Gross Settlement Amount. The settlement class consists of all current and former hourly-paid or non-exempt employees who worked for Defendants within the State of California at any time during the Class Period of November 3, 2021 through July 17, 2026. The Agreement and Notice distribution plan are the products of adversarial, arm's-length negotiations by informed counsel and parties, facilitated by an experienced mediator. The settlement is fair, reasonable, and adequate to all. Plaintiffs analyzed the strengths and vulnerabilities of the claims with Defendants' potential exposure and determined the $1,775,000 proposed settlement is well within the range of reasonableness and is in the Settlement Class Members' best interests. The length and risks of continued litigation and trial that affect the values of the claims were all carefully weighed. In addition, the defenses asserted by Defendants, the uncertainty of class certification, the difficulties of complex litigation, the lengthy process of establishing specific damages and possible delays and appeals, were also considered by Plaintiffs and counsel in negotiating the proposed settlement. Further, the proposed settlement satisfies the criteria for preliminary approval under California Rules of Court, Rule 3.769.

Accordingly, Plaintiffs seek: (1) preliminary approval of the settlement; (2) provisional certification of the Settlement Class; (3) appointment of Plaintiffs as the Class Representatives; (4) appointment of Crosner Legal, PC and Ferraro Vega Employment Lawyers, Inc. as Class Counsel; (5) approval of the Parties' proposed Notice of Class Action Settlement ("Notice") and method of notifying the Settlement Class Members; (6) a hearing date for Plaintiffs' Motion for Final Approval of Class Action and PAGA Settlement; and (7) entry of an Order Granting Preliminary Approval of Class Action and PAGA Settlement.

II. BACKGROUND/LITIGATION HISTORY

Henkels & McCoy West is a leading utility construction firm that operates throughout North America, including California. Plaintiff Ishmael Cruz worked for H&M in Southern California as a

Maintenance Worker from August 13, 2013 until he was terminated on July 12, 2024. As a maintenance worker, Plaintiff Cruz was responsible for completing facility repairs at different job sites throughout Southern California. Plaintiff Prince Ray worked for H&W from November 2019 to January 2025, in the County of San Diego as a Gas Technician. As a Gas Technician, Plaintiff Ray was responsible for installing gas utility service lines to residential communities and for commercial use. (Brouillette Decl., ¶ 15.)

On November 5, 2024, after notice to the LWDA and Defendants, and exhausting administrative remedies, Plaintiff Cruz filed a PAGA action against Defendants in Los Angeles County Superior Court, which was assigned Case No. 24STCV29074. The Complaint subsequently was amended to add individual causes of action asserting Plaintiff Cruz experienced harassment and wrongful constructive termination. On November 7, 2024, Plaintiff Cruz filed a separate class complaint in Los Angeles County Superior Court, which was assigned Case No. 24STCV29321, alleging claims for (1) failure to pay all wages owed, (2) failure to pay all overtime wages, (3) meal period violations, (4) rest period violations, (5) wage statement violations, (6) waiting time penalties, (7) failure to reimburse business and expenses, and (8) unfair competition. (Brouillette Decl., ¶ 16; Exh. 4.)

On December 6, 2024, Plaintiff Ray filed a class action complaint in San Diego Superior Court, Case No. 24CU026747C, alleging claims for (1) failure to pay all wages owed, (2) failure to pay all overtime wages, (3) meal period violations, (4) rest period violations, (5) paid sick leave violations, (6) untimely payment of wages, (7) wage statement violations, (8) waiting time penalties, (9) failure to reimburse business and expenses, and (10) unfair competition. On December 13, 2024, Plaintiff Ray amended his complaint to add claims for civil penalties under the Private Attorneys General Act, after notice to the LWDA and Defendants, and exhausting administrative remedies. (Brouillette Decl., ¶ 17.)

In June 2025, the Parties participated in a global mediation with Steve Mehta, Esq., respected wage and hour class action mediator. The mediation lasted a full day and, while the Parties did not settle at the mediation, they ultimately agreed to a second mediation with Mr. Mehta in February 2026. After the second mediation the Parties reached agreement on all major issues to resolve the matters on a global basis. They then formally reduced the proposed settlement to the Agreement now before the Court for approval. The Agreement meets the requirements in the LASC Checklist for Preliminary Approval. The Agreement has also been uploaded to the LWDA. (Brouillette Decl., ¶ 18; Exh. 6.)

Finally, in order to fully effect a global settlement of the above cases, the Parties stipulated to file a First Amended Complaint in this matter to include all plaintiffs and claims alleged in complaints at issue. Plaintiffs filed the operative FAC on June 22, 2026[1] and the Ray Action was dismissed on July 24, 2026. (Brouillette Decl., ¶ 19.)

III. INVESTIGATION

Prior to the mediations, Defendants provided Plaintiffs with extensive informal discovery, including Plaintiffs' personnel, time, and payroll records, time records and payroll records for the entire population of Settlement Class Members, wage statement exemplars, Defendants' employee handbooks, including policies and procedures regarding the payment of wages, the provision of meal and rest breaks, timekeeping policies (including recording hours), issuance of wage statements, and termination wages, as well as information regarding the number of putative Settlement Class Members who are current and former employees, sample arbitration agreements, the number of PAGA Aggrieved Employees, the number of workweeks throughout the Class Period, and the number of pay periods throughout the PAGA Period. From this information, Plaintiffs were able to analyze Defendants' liability for the claims asserted in this case and, with the assistance of Plaintiffs' experts at Berger Consulting Group, the potential exposure and damages. (Brouillette Decl., ¶ 20.)

Based on this informal discovery, Plaintiffs contend the Settlement Class Members were not paid all minimum or overtime wages, did not receive proper expense reimbursement, were not provided with legally compliant meal and rest periods, did not receive compliant wage statements, and did not receive all wages due on separation of employment. In considering the reasonableness of the proposed settlement, Plaintiffs considered each of Defendants' counterarguments, which sharply contested Plaintiffs' claims. Plaintiffs' Counsel weighed the strength of Defendants' arguments, including the risks posed by the various arbitration agreements, the risks of prevailing

[1] Plaintiffs uploaded the FAC to the LWDA. (Brouillette Decl., Exh. 5.)

in the underlying individual arbitrations and on the merits of the representative claims, and determined that the proposed settlement is in the best interests of the Settlement Class. Although remaining confident in the strength of their claims, all these factors led Plaintiffs to discount the exposure analysis, discussed in detail below. (Brouillette Decl., ¶ 21.)

IV. TERMS OF THE PROPOSED SETTLEMENT

A. Deductions from the Settlement

The Parties have agreed (subject to Court approval) that this action be settled and compromised for the non-reversionary sum of $1,775,000.00 ("Gross Settlement Amount" or "GSA"). (Agreement, § 3.1.) The GSA includes: (a) attorney's fees of up to $591,666.67 (1/3 of the GSA)[2] to compensate Class Counsel for work already performed and all work remaining to be performed (Agreement, § 3.2.2.); (b) actual litigation expenses not to exceed $40,000.00[3] (Agreement, § 3.2.2.); (c) Administration Costs to CPT Group, Inc. in an amount not to exceed $30,000 (Agreement, § 3.2.3.); (d) Enhancement Awards to Plaintiffs in an amount not to exceed $10,000 each ($20,000 total) (Agreement, § 3.2.1.) and (e) PAGA penalties to the LWDA of $48,750 (which is 65% of the $75,000.00 PAGA Payment, with the remaining 35% or $26,250.00 to the Aggrieved Employees) (Agreement, § 3.2.5.). Employer-side payroll taxes (including FICA, FUTA, and SDI) will be paid by Defendants separate and apart from the GSA. (Agreement, § 3.1.)

B. Calculation of the Individual Settlement Payments to Settlement Class and PAGA Aggrieved Employees

After all Court-approved deductions from the GSA, it is estimated that $1,018,333.33 ("Net Settlement Amount" or "NSA"), less all applicable employee-side taxes, will be distributed to the estimated 3,300[4] Settlement Class Members, with an average individual settlement amount of

[2] The percentage method, with or without a lodestar cross-check, may be used in common fund cases like this one. *Laffitte v. Robert Half Int'l., Inc.* (2016) 1 Cal.5th 480, 503. In support of their fee request at Final Approval, Class Counsel will provide the Court with lodestar information to permit the Court to do a lodestar cross-check in connection with Class Counsel's request for attorney's fees. Additionally, any fees awarded will be split 50/50 between Class Counsel, and both Plaintiffs have been informed of the fee split and consented thereto in writing.

[3] At Final Approval, Class Counsel will provide documentation regarding actual expenses incurred to support Class Counsels' request for reimbursement of actual expenses.

[4] $1,018,333.33 NSA / 3,300 class members.

around $308. Additionally, it is estimated that the 35% PAGA Payment ($26,250.00) will be distributed to the estimated 1,932 Aggrieved Employees, resulting in an average payment of $13.59[5] per Aggrieved Employee. (Brouillette Decl., ¶ 23.)

Subject to the terms and conditions of the Settlement, CPT will calculate and issue Individual Settlement Payments to Participating Settlement Class Members based on the following formula: (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Settlement Class Members during the Class Period and (b) multiplying the result by each Participating Settlement Class Member's Workweeks. (Agreement, § 3.2.4.)

Additionally, CPT will calculate and issue payments to Aggrieved Employees based on the following formula: (a) dividing the amount of the Aggrieved Employees' 35% share of PAGA Penalties ($26,250.00) by the total number of PAGA Period Pay Periods worked by all PAGA Aggrieved Employees during the PAGA Period and (b) multiplying the result by each PAGA Aggrieved Employee's PAGA Period Pay Periods. Therefore, the value of each PAGA Aggrieved Employee's share of the PAGA Payment ties directly to the amount of pay periods that he or she worked. (Agreement, § 3.2.5.1.)

The number of pay periods and weeks worked by each Participating Class Member and PAGA Aggrieved Employee will be derived from Defendants' records. Each Class Member's gross settlement award will be apportioned as follows: 20% wages and 80% penalties and interest. CPT will be responsible for issuing Form W-2s for amounts deemed "wages" and Form 1099s for the portions allocated to penalties and interest. (Agreement, §§ 3.2.4.1, 3.2.5.1.)

C. Uncashed Funds to Unclaimed Property Fund

Settlement checks must be cashed or deposited within 180 days after the checks are mailed to them. (Agreement, § 4.3.1.) In the event a settlement check remains uncashed, such uncashed funds shall be transmitted to the State Controller's Office Unclaimed Property Fund in the name of the Participating Class Member and/or PAGA Member for later claim. (Agreement, §§ 4.3.3, 4.3.4.) Because this lawsuit benefits Class Members/PAGA Members who release claims by participating in the lawsuit, the funds representing their settlement payments should remain their property. By

[5] $26,250 (35% PAGA Payment) / 1,932 Aggrieved Employees.

sending the uncashed funds to the Unclaimed Property Fund in the name of the Class Member/PAGA Member, he or she can claim his or her property at a future date convenient to the Class Member. Therefore, there will be no unpaid residue or unclaimed or abandoned Class Member funds under California Code of Civil Procedure section 384(a).

D. Notice and Extended Response Deadline for Re-Mailed Notices

Within 21 days after entry of the Preliminary Approval Order, Defendants will provide CPT with the Class List, containing each Class Member's first and last name, last known mailing address, Social Security number, total number of weeks worked during the Class Period, and total number of pay periods worked during the PAGA Period. (Agreement, § 7.4.1.) Prior to mailing, CPT will perform a search for updated addresses in the National Change of Address Database. (Agreement, § 7.4.2.) CPT will use the NCOA and skip traces to attempt to find current addresses for any Notice returned as undeliverable. For any re-mailed Notice, CPT will extend the Class Member's Response Deadline by 14 calendar days. If CPT is unable to obtain a better address for a Class Member, the Notice will be deemed undeliverable. No later than 15 days after receiving the class data, CPT will mail via regular First-Class mail the Notice to all Settlement Class Members. (Agreement, § 7.4.3.)

The contents of the Notice are consistent with the terms of the Agreement. The Notice informs Settlement Class Members how and when to request exclusion from or object to the settlement and of their estimated payment amount which they will automatically receive a settlement payment if they do nothing. The Notice further advises Settlement Class Members how to obtain documents filed in the case from the Court, CPT or Class Counsel, how to check the Court's website to find out whether the Final Approval hearing date/location has been changed, directs the Class Member to CPT's website and the Court's website to find out whether final judgment has been entered. (Brouillette Decl., ¶ 29, Exh. 3.)

E. Responses to the Settlement

Settlement Class Members will have 45 days from the initial mailing of the Notice to respond to the settlement by submitting a challenge to the number of weeks or pay periods attributed to them, submitting an objection, or requesting to be excluded from the settlement and the consequences of each choice. (Agreement, § 1.48.) Settlement Class Members can submit a written request for exclusion from the settlement by mailing, faxing, or emailing a signed written request, including his or her name, address, and phone number, and a statement demonstrating his or her intent to opt out of the settlement. (Agreement, § 7.5.)

The Notice also informs the Class Member/PAGA Aggrieved Employees that they can dispute the number of weeks/pay periods allotted to them to calculate their settlement payments by contacting CPT before the Response Deadline and include any documentation supporting the dispute. CPT will investigate the dispute, request additional information from Defendants, and make a final decision as to the number of eligible work weeks/pay periods. (Agreement, § 7.6.)

Participating Class Members and Aggrieved Employees also can object to the settlement in writing via mail or fax by submitting a document with their name, the words "Notice of Objection" or "Formal Objection" and a description of the arguments supporting their objection. Settlement Class Members are informed that the Court will hear any objections from any Class Member who attends the Final Approval Hearing. (Agreement, § 7.7.)

F. Funding and Distribution of the Settlement

Defendants shall fund the Gross Settlement Amount within 14 days after the Effective Date. (Agreement, § 4.2.) CPT shall disburse all payments under this Settlement within 10 days after Defendants fund the Gross Settlement Amount. (Agreement, § 4.3.)

G. Release of Claims

Upon Defendants' payment funding the GSA, Participating Settlement Class Members shall forever release the Released Parties[6] for the Released Claims for the Class Period. (Agreement, § 5.3.) Likewise, upon Defendants' payment funding the GSA, Plaintiffs, the PAGA Aggrieved Employees, and the State of California shall forever release the Released Parties for the PAGA Released Claims for the PAGA Period. (Agreement, § 5.4.)

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[6] "Released Parties" means Defendants and any of their respective current or former directors, officers, members, administrators, agents, insurers, beneficiaries, trustees, employee benefits plans, representatives, servants, employees, attorneys, parents, subsidiaries, affiliates, divisions, branches, units, shareholders, investors, contractors, successors, joint venturers, predecessors, related entities, and assigns, and all other individuals and entities acting on their behalf. (Agreement, § 1.46.)

As discussed below, Plaintiffs' Counsel is convinced that the proposed settlement is in the Settlement Class Members' best interests based on the negotiations and a detailed knowledge of the issues present in this action. The length and risks continued litigation that affect the value of the claims were all carefully weighed. In addition, the affirmative defenses asserted by Defendants, the uncertainty of class certification, the difficulties of complex litigation, the lengthy process of establishing specific damages and various possible delays and appeals were also carefully considered by Plaintiffs' Counsel in arriving at the proposed settlement. (Brouillette Decl., ¶ 35.)

IV. ARGUMENT

In deciding whether to approve a proposed class action settlement under Code of Civil Procedure section 382, the Court must find that a proposed settlement is "fair, adequate and reasonable." *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801 *quoting Officers for Justice v. Civil Serv. Comm'n* (9th Cir. 1982) 688 F.2d 615, 625, cert. den. (1983) 459 U.S. 1217. A proposed class action settlement is **presumed** fair under the following circumstances: (1) the parties reached settlement after arms-length negotiations; (2) investigation and discovery were 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. *Id.* at 1802. As the following shows, all of these elements are present here and the Court should grant of preliminary approval.

A. The Settlement was Reached as a Result of Arm's Length Negotiations

The proposed settlement was reached as a result of arm's-length negotiations. Though cordial and professional, the settlement negotiations have been, at all times, adversarial and non-collusive in nature. Following mediation, Counsel for the Parties further negotiated regarding the settlement terms memorialized in the Agreement. While Plaintiffs believe in the merits of their case, they also recognize the inherent risks of litigation and understand the benefit of Settlement Class Members receiving significant settlement funds immediately as opposed to risking continued litigation in achieving class certification, the merits of the case before and after trial, the damages awarded and/or an appeal that can take several more years to litigate. (Brouillette Decl., ¶ 36.)

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B. The Settlement is the Result of Thorough Investigation and Discovery

The Parties thoroughly investigated and evaluated the factual strengths and weaknesses of their arguments before reaching the proposed settlement, and engaged in sufficient investigation, research and discovery, referenced above, to support the settlement. The proposed settlement was only possible following significant analysis and evaluation of Defendants' relevant policies and procedures, as well as the data it produced for the putative Class, which permitted Plaintiffs' Counsel and experts to engage in a comprehensive analysis of liability and potential damages to prepare for mediation. (Brouillette Decl., ¶ 37.) This litigation has reached the stage where "the Parties certainly have a clear view of the strengths and weaknesses of their cases" sufficient to support the Settlement. *Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F. Supp. 610, 617.

C. Counsel for the Parties are Experienced in Similar Litigation

Counsel for the Parties are particularly experienced in wage and hour employment law, class actions and PAGA actions. Plaintiffs' Counsel have prosecuted numerous cases on behalf of employees for wage and hour violations and thus are experienced and qualified to evaluate the class and PAGA claims, evaluate settlement versus trial on a fully informed basis, and to evaluate the viability of the defenses. This experience informed Plaintiffs' Counsel on the risks and uncertainties of further litigation and guided their determination to endorse the proposed settlement.[7] (Brouillette Decl. ¶¶ 4-14; Declaration Conor J.D. Gomez ("Gomez Decl."), ¶¶ 3, 9-15, Exh. 2.)

D. The Proposed Settlement is a Reasonable Compromise of Claims

An understanding of the amount in controversy is an important factor into whether the settlement "of the Settlement Class Members' claims is reasonable in light of the strengths and weaknesses of the claims and the risks of the particular litigation." *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116; 129; *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 409. The most important factor in this regard is "the strength of the case for

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[7] The final factor mentioned in *Dunk* - the number of objectors - is not determinable until the Notice of Class Action Settlement has been provided to the Class and they have had an opportunity to respond. This information will be provided to the Court in conjunction with the Motion for Final Approval of Class Action Settlement.

plaintiffs on the merits, balanced against the amount offered in settlement." *Kullar*, 168 Cal.App.4th at 129.

In weighing the strength of Plaintiffs' case, *Kullar* instructs that the court is not to "decide the merits of the case or to substitute its evaluation of the most appropriate settlement for that of the attorneys." 168 Cal.App.4th at 133. Further, this analysis does not require an explicit statement of the maximum amount the plaintiff class could recover if it prevailed on all its claims, provided there is a record which allows "an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation." *Munoz*, 186 Cal. App. 4th at 409. Put differently, "as the court does when it approves a settlement as in good faith under Code of Civil Procedure section 877.6, the court must at least satisfy itself that the class settlement is within the 'ballpark' of reasonableness." *Kullar*, 168 Cal. App. 4th at 133 citing *Tech-Bilt v. Woodward-Clyde & Associates* (1985) 38 Cal. 3d 488, 499-500. As shown below, the Parties' investigation and discovery revealed several reasons to discount claims and agree to this settlement.

E. The Settlement is Fair and Reasonable Based on the Strengths of Plaintiffs' Case and the Risks and Costs of Further Litigation

The proposed settlement was only possible following significant analysis and evaluation of Defendants' relevant policies and procedures, as well as the data that Defendants produced for the Class. This permitted Plaintiffs' Counsel to engage in a comprehensive analysis of liability and potential damages. The discovery conducted resulted in Plaintiffs' central theories of liability, which are based on Plaintiffs' claims that Defendants failed to provide compliant meal and rest periods, failed to pay all minimum and overtime wages at the correct rate, failed to provide accurate, itemized wage statements and failed to pay all wages due on separation of employment. On the other hand, Defendants maintained that Plaintiffs and the majority of the Class Members are union employees and that the applicable CBAs would substantially impact Plaintiffs ability to pursue their claims due to federal preemption and arbitration issues. Defendants argued strongly that the discovery produced demonstrates they would succeed at both class certification and on the merits. (Brouillette Decl., ¶ 38.)

Plaintiffs believe this case is suitable for certification on the claimed basis that there are company-wide policies that Plaintiffs contend violate California law and uniformly affect the Settlement Class Members. However, Defendants' counterarguments raise uncertainties with respect to both class certification and success on the merits. As the California Supreme Court emphasized in *Sav-On v. Superior Court* (2004) 34 Cal.4th 319 (2004), class certification is always a matter of the trial court's sound discretion, and decisions following *Sav-On* have reached different conclusions with respect to certification of wage and hour claims.[8] While remaining confident in the strengths of their claims, all of these factors led Plaintiffs to discount the following maximum potential damage claims. (Brouillette Decl., ¶ 39.)

1. The Settlement Amount is Reasonable

Defendants provided Plaintiffs with class-wide data from which Plaintiffs' Counsel could extrapolate a damage analysis in preparation of mediation. Per Defendants there are about 3,300 putative class members and 187,150 work weeks in the Class Period, and approximately 1,932 Aggrieved Employees and 167,003 pay periods within the PAGA Period. (Brouillette Decl., ¶ 40.)

On their unpaid wage claims, Plaintiffs assert Defendants failed to pay for all hours worked and allege they regularly required employees to work off the clock. Plaintiffs alleged, among other things, that they sometimes worked through lunch breaks (if for example a load of asphalt or cement had to be finished), had to perform post-shift work "off the clock" after the scheduled end of a shift, and to attend 30 minute pre-shift meetings twice each month. Plaintiffs estimated class members worked at least two hours of off the clock work per week. (Brouillette Decl., ¶ 41.)

In response Defendants argued their timekeeping and payroll policies accurately tracked and paid for all hours worked at the correct hourly rates. They further argued their policies strictly prohibited "off the clock" work, and contend that if any such work occurred it was aberrational and done without management's authorization or knowledge. *White v. Starbucks Corp.* (N.D. Cal. 2007)

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[8] *E.g.*, *Harris v. Superior Court*, 154 Cal.App.4th 164 (2007) (reversing decertification of class claiming misclassification and ordering summary adjudication in favor of employees), *review granted*, 171 P.3d 545 (2007) (not cited as precedent, but rather for illustrative purposes only); *Walsh v. IKON Solutions, Inc.*, 148 Cal.App.4th 1440 (2007) (affirming decertification of class claiming misclassification); *Aguilar v. Cintas Corp. No. 2*, 144 Cal.App.4th 121 (2006) (reversing denial of certification); *Dunbar v. Albertson's Inc.*, 141 Cal.App.4th 1422 (2006) (affirming denial of certification).

497 F.Supp.2d 1080, 1083 (employer must have actual or constructive knowledge of the off the clock work). Defendants likewise argued these issues would render the claims uncertifiable since innumerable individualized inquiries would be necessary to determine if and why a class member worked off the clock. Without considering any of Defendants' defenses to certification or on the merits, Plaintiffs estimate around $21,503,535 in unpaid wages for off the clock work. (187,150 work weeks x 2 hours/week x $57.45). (Brouillette Decl., ¶ 42.)

Plaintiffs next contend Defendants failed to provide legally compliant meal and rest breaks. First, Plaintiffs allege that due to the high demands of the job, the class members regularly experienced non-compliant missed, late, short, and interrupted meal periods. Plaintiffs further allege H&M used an "auto-deduct policy" whereby compliant meal periods were often reported regardless of whether the meal break occurred or was fully compliant. Per Plaintiffs, class members often experienced missed or otherwise non-compliant meal periods due to meeting project goals and working with sensitive materials, like asphalt. For example, Plaintiffs and the class members would be told they needed to complete a set amount of footage by the end of the day often forcing them to work through their unpaid meal period in order to meet the goal. Similarly, concrete had to be laid within 1 hour of the truck arriving to the job site. Plaintiffs argued these factors resulted in numerous "de facto" meal period violations for missed, untimely, and short meal periods. Plaintiffs estimate about $10,751,767.50 in damages for meal period violations assuming just one violation per week (187,150 work weeks x $57.45 x 1 hour/week), without accounting for any of Defendants' defenses to certification or on the merits. (Brouillette Decl., ¶ 43.)

On the rest break claims, Plaintiffs argued Defendants failed to maintain a code-compliant rest break policy that provided the requisite number of rest breaks per shift. Because the applicable CBA's do not provide equivalent protection of the wage order's rest break requirements, the Wage Order will apply. Per Plaintiffs, the two boxes for a first and second rest break on each timesheet were checked automatically by supervisors regardless of whether the break took place or was compliant. Further, Defendants' timesheet "Instructions" language is non-compliant in that it: (1) only provides for two rest breaks per shift, (2) does not provide the necessary 'or major fraction thereof' language for shift lengths that are more than 6 and less than 8 hours, and more than 10 and less than 12 hours, and (3) does not provide for a third rest break for any shift over 10 hours. Without accounting for any of Defendants' defenses, and assuming employees missed just one rest break per week to which they were entitled, Defendants' exposure is $10,751,767.50 in class damages (187,150 work weeks x $57.45 x 1 hour/week). (Brouillette Decl., ¶ 44.)

Defendants deny Plaintiffs' contentions, and argued it made meal and rest breaks available to Settlement Class Members in compliance with California law and their fully compliant meal and rest break policies. Defendants contended Class Members were provided with all required breaks, or that they paid appropriate meal period premiums on the rare occasions a violation did occur. Defendants further argued Plaintiffs' meal and rest break claims are not susceptible to common proof, as the claims would require individualized inquiry, including whether there was an unlawful companywide policy, whether employees had the opportunity to take meal and rest periods, whether they voluntarily chose to forego their meal and rest periods, and whether Defendants ever prevented them from taking meal and rest periods. Accordingly, Defendants contend these claims are vulnerable to a ruling that class treatment is not appropriate. (Brouillette Decl., ¶ 45.)

For their expense reimbursement claims, Plaintiffs alleged H&W had a policy and practice of requiring class members use their personal cell phones for business purposes. Specifically, Plaintiffs contended class members were required to use their personal cell phones to communicate with each other and their supervisors, were put in a group chat to discuss policies, scheduling and other work-related matters, and to communicate with each other throughout the day. On the other hand Defendants argued their policies prohibited use of personal phones while working and not on a break, and that other means of communicating were available at job sites, such as company-issued cell phones. Thus, per Defendants any use of personal phones would have been purely for personal convenience and not reimbursable as a "reasonable" or "necessary" business expense under Labor Code section 2802. Here, Plaintiffs estimated liability at about $935,750 (187,150 work weeks * $5/week). (Brouillette Decl., ¶ 46.)

On the alleged violations of Labor Code § 226 (wage statement violations), Plaintiffs argued Defendants committed direct violations by failing to provide class members with wage statements in full compliance with the law. Here, Plaintiffs contended Defendants failed to provide employees with the right to receive written paper wage statements and further did not provide employees with the ability to easily access their payroll information and convert electronic statements into hard copies at no expense to employees. Plaintiffs pointed to guidance from the Division of Labor Standards Enforcement, which provides in an Opinion Letter that:

> The apparent intent of both forms of wage statements described in Section 226(a) is to allow employees to maintain their own records of wages earned, deductions, and pay received. The Division in recent years has sought to harmonize the "detachable part of the check" provision and the "accurate itemized statement in writing" provision of Labor Code section 226(a) by allowing for electronic wage statements ***so long as each employee retains the right to elect to receive a written paper stub or record and that those who are provided with electronic wage statements retain the ability to easily access the information and convert the electronic statements into hard copies at no expense to the employee***.

DLSE Op. Ltr. 2006.07.06. Plaintiffs contended Defendants' failure to make paper wage statements available, and failure to provide easy access to electronic statements, resulted in violations of Section 226 and potential statutory penalties of about $6,896,000 (lesser of [98,756 pay periods (in 1 year SOL) x 100] – [50 x 1,724] = $9,789,400 or $4,000 x 1,724 = $6,896,000). (Brouillette Decl., ¶ 47.)

Plaintiffs also alleged direct violations of Labor Code Sections 201 *et seq.* and that Defendants' policies resulted in the deliberate failure to pay final wages in a timely fashion. Here, Plaintiffs emphasized that, as a matter of policy and practice, Defendants mailed former employees their final paychecks and did not include any waiting time penalties to account for the amount of time the paychecks spent in the mail. DLSE guidance on practice provides that, if final paychecks are mailed, then "the day [the employee] received the wages, and not the day they were mailed, is the date of payment and the day when the penalty stops accruing." See https://www.dir.ca.gov/dlse/faq_waitingtimepenalty.htm (FAQ No. 2). (Brouillette Decl., ¶ 48.)

Plaintiffs also alleged derivative violations of Labor Code sections 226 and §§ 201-203, in addition to the alleged facial violations above. As far as the derivative claims, they will rise or fall along with the primary unpaid wage claims, in addition to being subject to "good faith" and other defenses available to Defendants. Amaral v. Cintas Corp. No. 2 (2008) 163 Cal.App.4th 1157, 1203-04 (holding employer did not willfully fail to pay wages under Labor Code § 203 even though the class prevailed on the merits on the underlying claim for failing to pay living wages). Without accounting for any of Defendants' counterarguments, Plaintiffs estimated the waiting time penalties at about $33,008,472 (2,394 former employees x 30 days' x 8 hours x $57.45). (Brouillette Decl., ¶ 49.)

As far as potential PAGA liability, the theoretical civil penalties likely exceed $71 million should Plaintiffs prevail on all claims and establish violations of the multiple Labor Code sections at issue, and recover the maximum penalty for every single pay period at issue. (Brouillette Decl., ¶ 50.) As with the class claims, Plaintiffs discounted the potential PAGA penalties based on Defendants' various defenses on the merits and also accounted for the Court's wide discretion to reduce such penalties, or to decline to award penalties at all. Labor Code § 2699(e)(2); *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504 (trial court awarded penalties of $5 per pay period after a bench trial, which decision was upheld on appeal); *In re Taco Bell Wage and Hour Actions* (E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. LEXIS 48557 (PAGA penalties denied after trial). Accordingly, the Parties allocated $75,000 to PAGA penalties.

Plaintiffs submit this amount is reasonable under the circumstances and in line with comparable settlements in other wage and hour class actions in California. *E.g.*, *Van Kempen v. Matheson Tri-Gas, Inc.* (N.D. Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182 (granting final approval of $5,000 PAGA penalty from $370,000 settlement, or 1.4 percent of total settlement); *Slavkov v. First Water Heater Partners I* (N.D. Cal. July 25, 2017) 2017 U.S. Dist. LEXIS 116303 (finding a $7,500 PAGA payment reasonable when measured against the overall settlement of $345,000 and the possible weaknesses in plaintiffs' case, or 2.2 percent of total settlement). Additionally, the LWDA has been informed of the terms of the PAGA portion of the settlement, and will be able to weigh in as necessary. *Jennings v. Open Door Mktg. Inc.* (N.D. Cal. Oct. 3, 2018) 2018 U.S. Dist. LEXIS 171356, at *27 (approving settlement with PAGA penalties of 0.6% where "[p]laintiffs [have] submitted the settlement agreement to the LWDA, and the LWDA has not objected to the settlement.

Thus, Plaintiffs and their counsel discounted the value of the class claims consistent with the risks discussed above, as well as the potential applicability of arbitration agreements signed by many Settlement Class Members. They carefully weighed the likelihood of the class receiving substantially greater benefit if the litigation continued, and concluded – in light of these very real and substantial risks – settlement on the proposed terms and without prolonged and costly litigation was in the best interests of the class. The overall $1,775,000 recovery represents a significant percentage of Defendants' potential exposure and, given Defendants' multi-layered defenses and all other potential risks of continued litigation, a total recovery for the class of $1,775,000, which will result in average award of some $308 per class member, plus additional sums under PAGA, is a significant result well within the range of reasonableness considering all potential outcomes, and it will provide direct monetary awards to all Settlement Class Members without further delay. (Brouillette Decl., ¶ 51; Gomez Decl., ¶¶ 4-6, 16.)

Importantly, the mere fact that a settlement does not provide the same recovery as might be achieved at trial is not a proper indicator of whether the settlement is fair, reasonable, and adequate. *Wershba,* 91 Cal.App.4th at 246, 250 ("Compromise 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 ground in the interest of avoiding litigation"); *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1150 ("The fact that a proposed settlement may amount to only a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved"); *White v. Experian Information Solutions, Inc.* (C.D. Cal. 2011) 803 F.Supp.2d 1086, 1098 (rejecting contention settlement was not fair and reasonable even though it represented 99% discount off the maximum value of the claims); *Lane v. Facebook, Inc.* (9th Cir. 2012) 696 F.3d 811, 819 ("[T]he question whether a settlement is fundamentally fair . . . is different from the question whether the settlement is perfect in the estimation of the reviewing court"). Importantly as well, the proposed settlement is non-reversionary and will provide immediate benefits to the Settlement Class Members without a claims process. *White*, 803 F.Supp.2d at 1098; c.f., Federal Judicial Center, *Managing Class Action Litigation: A Pocket Guide for Judges* (3d ed. 2010) at 20, available at http:// www.fjc.gov/sites/default/files/2012/ClassGd3.pdf (reversionary provisions and/or cumbersome claims process may indicate lack of fairness). Plaintiffs and their counsel submit the settlement is within the "range of reasonableness," and is fair and adequate for the Class.

F. Provisional Class Certification Should be Granted

A class action is appropriate when the class is ascertainable and there is "a well-defined community of interest in the questions of law and fact involved affecting the parties to be represented." Code Civ. Proc. § 382. Class certification requirements under Section 382 follow Rule 23 of the Federal Rules of Civil Procedure, and require*:* numerosity, typicality of the class representatives' claims, adequacy of representation, predominance of common issues, and superiority. Fed.R.Civ.Pro. 23(b)(3); *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1019. While a court must certify a class for settlement purposes if a class has not already been certified, "it is well established that trial courts should use different standards to determine the propriety of a settlement class, as opposed to a litigation class certification. Specifically, a lesser standard of scrutiny is used for settlement cases." *Glob. Minerals & Metals Corp. v. Superior Court* (2013) 113 Cal.App.4th 836, 859 *citing Dunk*, Cal.App.4th 1794, 1807, n.19; *Wershba v. Apple Computer* (2001) 91 Cal.App.4th 224, 237-38.

1. The Proposed Class is Sufficiently Numerous and Ascertainable

First, the class is both sufficiently numerous, consisting of approximately 3,300 individuals, and ascertainable by reference to Defendants' personnel and payroll records. (Brouillette Decl., ¶ 52.) "There is no set number required to maintain a class action, and the statutory test is whether a class is so numerous that 'it is impracticable to bring them all before the court.'" *Hebbard v. Colgrove* (1972) 28 Cal. App. 3d 1017, 1030 (noting that there is no set minimum to meet the numerosity prerequisite, but that a class of as few as 28 is acceptable); *Bowles v. Superior Court* (1995) 44 Cal. 2d 574 (upholding a class of ten members); *Rose v. City of Hayward* (1981) 126 Cal. App. 3d 926, 932 (finding that "Settlement Class Members are 'ascertainable' where they may be readily identified without unreasonable expense or time by reference to official records."). Thus, the ascertainability requirement is met.

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2. The Typicality and Adequacy Requirements Are Met

The typicality requirement is met if the claims of the named representative are typical of those of the Class, though, “they need not be substantially identical.” *Classen v. Weller* (1983) 145 Cal.App.3d 27, 46-47. Here, Plaintiffs contends their claims all are typical of the Settlement Class Members’ claims because they arise from the same factual basis and are based on the same legal theories applicable to the Settlement Class Members. Plaintiffs further contend Defendants’ policies applied to all Settlement Class Members and each Class Member is challenging the same policies and practices. As such, the typicality requirement is satisfied for purposes of settlement. (Cruz Decl., ¶¶ 2-9; Prince Decl., ¶¶ 2-19; Brouillette Decl. ¶ 53.)

Adequacy requires that the Plaintiffs have no interests adverse to the interests of the proposed Settlement Class Members and be committed to vigorously prosecuting the case on behalf of the Class. *McGhee v. Bank of America* (1976) 70 Cal.App.3d 442, 450-51. Plaintiffs all have been and will continue to be committed to vigorously prosecuting this case, and they have no conflicts of interest with the Class. (Cruz Decl., ¶¶ 2-9; Prince Decl., ¶¶ 2-19; Brouillette Decl. ¶ 54.) Further, their counsel are experienced class action counsel. (Brouillette Decl. ¶¶ 4-14; Gomez Decl., ¶¶ 3, 9-15, Exh. 2.) For these reasons, Plaintiffs contend they are adequate class representatives.

3. The Commonality Requirement is Met

Next, common questions of law and fact predominate – particularly for purposes of a settlement class – as the Settlement Class Members all were subject to the same meal and rest break policies and alleged “de facto” policies resulting in meal period violations, and similarly subject to the same alleged time keeping policies that resulted in off the clock work. Since the focus of the claims against Defendants concern the legality of common policies applied uniformly to the entire class, common issues predominate over individualized inquiries concerning liability. For instance, Defendants’ meal and rest break policy is company-wide policy applied equally and consistently to all Settlement Class Members, and this policy is either compliant with California law or it is not. Regardless of that determination, it will decide liability for all Settlement Class Members one way or another. (Brouillette Decl., ¶ 55.)

By now it is well-settled a theory of recovery asserting the existence of a uniform policy violating California law is sufficient to satisfy the requirements for class certification. *Jones v. Farmers Ins. Exch.* (2013) 221 Cal.App.4th 986, 996 ("Claims alleging that a uniform policy consistently applied to a group of employees is in violation of the wage and hour laws are of the sort routinely, and properly, found suitable for class treatment"); *Williams v. Superior Court* (2013) 221 Cal.App.4th 1353 ("A company-wide practice can sustain a common question of fact or law that supports commonality for class certification"). Lastly, a class action is superior to other means for the fair and efficient adjudication of this controversy. (Brouillette Decl., ¶ 56.)

G. CPT Should be Appointed as the Settlement Administrator

The Parties agreed to use CPT Settlement Administrators as the Settlement Administrator in this matter. (Agreement, § 7.1.) CPT is highly qualified and experienced as a settlement administrator, committed to the security of data (having experienced no data breaches at all), carries insurance for the theft of money or data, and has no relationship with Counsel. (Declaration of Julie Green, ¶¶ 2-11; Exhs. A-B; Brouillette Decl., ¶ 57.)

H. Notice to Settlement Class Members Complies With California Rule of Court 3.769(f)

California Rule of Court 3.769(f), provides: "If the court has certified the action as a class action, notice of the final approval hearing must be given to Settlement Class Members in the manner specified by the court. The notice must contain an explanation of the proposed settlement and procedures for Settlement Class Members to follow in filing written objections to it and in arranging to appear at the settlement hearing and state any objections to the proposed settlement." Here, the proposed Notice meets all of these requirements, as it advises Settlement Class Members of their rights to participate in the settlement, how to and when to object to or request exclusion from the settlement, and the date, time, and location of the final approval hearing. Settlement Class Members need not do anything to receive their *pro rata* share of the settlement. (Brouillette Decl., ¶ 58; Exh. 3.)

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V. CONCLUSION

Plaintiffs respectfully submit that the proposed settlement is in the best interests of the Settlement Class Members, as it is fair, adequate, and reasonable. Plaintiffs accordingly request the Court certify the class for settlement purposes, appoint Plaintiffs as the Class Representatives, appoint Plaintiffs' Counsel as Class Counsel, appoint CPT as Settlement Administrator, approve the method of notice and the Notice to be sent to the Class, preliminarily approve the Settlement Agreement, enter the proposed order filed herewith, and set a Final Approval hearing date.

Dated: August 21, 2026 **CROSNER LEGAL, PC**

By: /s/ Brandon Brouillette
Brandon Brouillette, Esq.
Zachary M. Crosner, Esq.
Attorneys for Plaintiffs,
ISMAEL CRUZ and PRINCE RAY

Dated: August 21, 2026 **Ferraro Vega Employment Lawyers, Inc.**

By: /s/ Nicola J. Ferraro
Nicolas J. Ferraro
Nicolas P. Ahadzadeh
ISMAEL CRUZ and PRINCE RAY