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Rudolph Jackson, on behalf of themselves and others
7 similarly situated

8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SAN JOAQUIN**
11

12 YOGESHKUMAR MISTRY and RUDOLPH
JACKSON, on behalf of themselves and others
13 similarly situated,

14 Plaintiffs,

15 v.

16 UST GLOBAL INC; and DOES 1 through 100,
17 inclusive,

18 Defendants.
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Case No.: STK-CV-UOE-2025-0008591

Assigned for all purposes to:
Hon. Robert T. Waters, Dept. 11B

CLASS ACTION

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

[Declaration of Anthony J. Orshansky and
Proposed Order submitted concurrently
herewith]

Preliminary Approval Hearing

Date: TBD
Time: 9:00 a.m.
Dept. 11B

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN that, on _____, 2025, at 9:00 a.m., or as soon thereafter as the matter may be heard before the Honorable Robert T. Waters in Department 11B of the above-captioned court located at 180 E. Weber Ave., 2nd Floor, Stockton, California 95202, Plaintiffs Yogeshkumar Mistry and Rudolph Jackson (“Plaintiffs”) individually, and on behalf of all others similarly situated, will and hereby do move this Court for an entry of an order granting preliminary approval of the parties’ proposed settlement pursuant to Cal. Civ. Proc. Code § 382, California Rules of Court, Rule 3.769(c) and Cal. Lab. Code § 2699(g)(1):

1. Preliminarily certifying the proposed class of all current and former employees who worked for Defendant UST Global Inc (“Defendant”) in California during the Class Period¹ for purposes of settlement;

2. Preliminarily appointing Plaintiffs Yogeshkumar Mistry and Rudolph Jackson as Class Representatives for purposes of settlement;

3. Preliminarily appointing CounselOne, PC as Class Counsel for purposes of settlement;

4. Preliminarily approving the settlement as fair, adequate, and reasonable based upon the terms set forth in the Stipulation of Class and Representative Action Settlement (“Settlement Agreement”), including payment by Defendant of the non-reversionary Gross Settlement Amount of Two Million Seven Hundred Thousand Dollars (\$2,700,000);

5. Preliminarily approving Class Counsel’s request for up to thirty-five percent (35%) of the Gross Settlement Amount as attorneys’ fees, plus reimbursement of actual litigation costs up to \$30,000;

6. Appointing CPT Group, Inc. as the third-party Settlement Administrator, responsible for, among other tasks, mailing notices of the settlement and overall settlement administration, and approving up to \$25,000 be deducted from the Gross Settlement Amount for its expenses;

///

¹ “Class Period” is defined as the period from October 23, 2020 through August 15, 2025.

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

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

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

15
16 Dated: October 10, 2025

Respectfully submitted,

COUNSELONE, PC

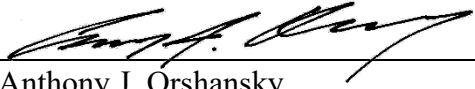
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18 By: 
19 Anthony J. Orshansky
20 P. Bartholomew Quintans
21 Attorneys for Plaintiffs and the Class
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Yogeshkumar Mistry and Rudolph Jackson (“Plaintiffs”), on behalf of themselves
4 and a putative class of current and former employees of Defendant UST Global Inc (“Defendant;”
5 together with Plaintiffs, the “Parties”) during the applicable limitations period, seeks preliminary
6 approval of the Stipulation of Class and Representative Action Settlement (“Settlement
7 Agreement”) reached in this action following arm’s length settlement negotiations before a neutral
8 mediator. If approved, the Settlement Agreement, attached as **Exhibit 1** to the Declaration of
9 Anthony J. Orshansky (“Orshansky Decl.”) filed concurrently herewith, will resolve all claims of
10 Plaintiffs and participating Class Members, as well as Plaintiffs’ claims for penalties under the
11 Private Attorneys General Act of 2004, Cal. Lab. Code § 2698 et seq. (“PAGA”) on behalf of
12 themselves and all similarly-situated aggrieved employees and the California Labor and Workforce
13 Development Agency (“LWDA”).

14 In this wage-and-hour class and representative action, the Parties reached the proposed
15 settlement following an investigation of Plaintiffs’ claims, an exchange of information, and arm’s-
16 length settlement negotiations, including a full-day mediation with the Hon. Peter D. Lichtman
17 (Ret.) of Signature Resolution. The settlement entails a non-reversionary payment by Defendant of
18 the Gross Settlement Amount of Two Million Seven Hundred Thousand Dollars (\$2,700,000). After
19 deducting for Class Counsel’s attorneys’ fees, an estimated \$30,000 in costs to Class Counsel, a
20 \$20,000 service award to each of the two named Plaintiffs, \$25,000 for Settlement Administration
21 Costs, and \$300,000 for penalties pursuant to the PAGA, the remaining amount of \$1,360,000 will
22 be distributed to participating Class Members following the Court’s final approval thereof.

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

II. SUMMARY AND STATUS OF THE LITIGATION

Plaintiffs and Class Members¹ were employed by Defendant in California. Through this lawsuit, Plaintiffs alleged that Defendant: failed to pay class members all minimum and overtime wages due, in violation of Cal. Lab. Code §§ 510, 558, 1194, 1194.2, 1197.5 and California Industrial Welfare Commission (“IWC”) Wage Order No. 4-2001, as well as in violation of the California Fair Employment and Housing Act (“FEHA”), codified at Cal. Gov’t Code § 12940 et seq.; the prohibitions against race discrimination codified at 29 U.S.C. § 1981; and the Equal Pay Act of 1963, codified at 29 U.S.C. § 206(d); failed to pay proper premium wages to class members who were denied meal and/or rest periods, in violation of Cal. Lab. Code §§ 226.7, 512, and 558, and IWC Wage Order No. 4-2001; failed to provide sick pay and/or supplemental sick leave in violation of Cal. Lab. Code §§ 245-248.6; failed to provide class members with wage statements that fully and accurately itemized the requirements set forth in Cal. Lab. Code § 226(a); failed to pay them all wages within a timely manner and upon the separation of their employment based on the time frames required by Cal. Lab. Code §§ 201-204 and 210; failed to reimburse business expenses required by Cal. Lab. Code § 2802 et seq.; failed to maintain payroll records as required by Cal. Lab. Code § 1174(d); and violated California’s Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 et seq. Plaintiffs additionally sought recovery of penalties under the PAGA for the foregoing Labor Code violations as to themselves and similarly-situated aggrieved employees (“PAGA Group Members”) occurring during the PAGA Period.² *See generally* Complaint.

A. Procedural History

On October 23, 2024, CounselOne, PC (herein, “Class Counsel”) provided pre-filing written notice to LWDA and by certified mail to Defendant of the above-identified allegations on behalf of Plaintiff Mistry and similarly situated aggrieved employees in accord with the PAGA. Orshansky Decl. ¶ 22 and Exh. 2. On November 4, 2024, Class Counsel provided an amended pre-filing written

¹ The “Class” or “Class Members” are defined as all current and former employees who worked for Defendant in California during the Class Period. Settlement Agreement ¶ 4. “Class Period” is defined as the period from October 23, 2020 through August 15, 2025. *Id.* at ¶ 7.

² *See* Settlement Agreement ¶ 21. “PAGA Period” is defined as the period from October 23, 2023 through August 15, 2025. *Id.* at ¶ 23.

1 notice to LWDA and by certified mail to Defendant of the above-identified allegations on behalf of
2 both Plaintiffs and similarly situated aggrieved employees in accord with the PAGA. *Id.* On June
3 24, 2025, Plaintiffs filed their Class and PAGA Representative Action Complaint in the instant
4 action.

5 Defendant denies Plaintiffs' allegations of wrongdoing. Defendant does not believe that any
6 liability to Plaintiffs or other Class Members exists, or that Plaintiffs or Class Members are entitled
7 to any recovery. Orshansky Decl. ¶ 24. In settling, Defendant does not admit liability with respect
8 to the alleged claims made by Plaintiffs and makes no admission regarding any facts or law related
9 to the lawsuit. *Id.*

10 **B. Discovery and Investigation**

11 Prior to initiating this lawsuit, since at least August 2024, Class Counsel thoroughly
12 investigated the claims and considered the facts and circumstances underlying the pertinent issues
13 and applicable law. This required thorough discussions and interviews with Plaintiffs and other
14 Class Members as well as research into the various legal issues involved in the case. Orshansky
15 Decl. ¶¶ 11, 21. After conducting their initial investigation, Class Counsel determined that the
16 claims were well suited for class action adjudication owing to what appeared to be a common
17 course of conduct affecting a similarly situated group of employees. *Id.* at ¶ 21.

18 Class Counsel spent a significant amount of time investigating both factual and legal issues
19 present in the case, including researching the enforceability of arbitration agreements, identifying
20 potential claims, identifying patterns of potential harm or misconduct, reviewing Defendant's
21 policies and procedures, and analyzing job classifications. Orshansky Decl. ¶ 11; Settlement
22 Agreement ¶ 35. Class Counsel requested production of and reviewed key information and
23 documents such as Plaintiffs' personnel files, the total number of putative class members and
24 aggrieved employees, relevant wage and hour policies, time and payroll records of Class Members,
25 rates of pay, among other things. Orshansky Decl. ¶ 11. Class Counsel analyzed time and payroll
26 records and interviewed Class Members to determine violation rates. *Id.* Class Counsel further
27 retained a damages expert. *Id.* The Parties met and conferred at length regarding the information
28

1 and documents produced. The Parties entered into a tolling agreement pending preliminary
2 settlement discussions. *Id.*

3 **C. Mediation and Settlement**

4 The Parties participated in a full-day mediation session with the Hon. Peter D. Lichtman
5 (Ret.) of Signature Resolution. Orshansky Decl. ¶ 25. During the mediation, the Parties exchanged
6 further information and discussed all aspects of the case, including the risks and delays of litigation
7 and the risk to both Parties for proceeding with a motion for class certification and liability under
8 the claims asserted. *Id.* These were contentious issues because of the factual and legal complexity
9 of the case. *Id.* Though the matter did not settle at mediation, the Parties continued to negotiate with
10 the assistance of Judge Lichtman, and ultimately accepted a mediator’s proposal to settle the action.
11 *Id.*

12 **III. SUMMARY OF THE SETTLEMENT TERMS**

13 From Class Counsel’s review of the facts, strengths, and weaknesses of the case, the risks
14 and delays posed by further litigation, and Class Counsel’s own prior litigation experience, Class
15 Counsel believe that the recovery being made available to Class Members is fair, reasonable, and
16 adequate, taking into consideration the amounts received in other wage and hour class and
17 representative actions, the risks inherent in litigation of this genre, and the reasonable tailoring of
18 each Class Members’ claim to the settlement award he or she will receive. Orshansky Decl. ¶ 26.
19 Class Counsel believe that the Settlement serves the best interests of Class Members. *Id.*

20 Under the terms of the settlement, Defendant agrees to pay a non-reversionary amount of
21 Two Million Seven Hundred Thousand Dollars (\$2,700,000) to settle the claims asserted in the
22 lawsuit (again, “Gross Settlement Amount”). The Gross Settlement Amount shall be inclusive of all
23 settlement payments to Settlement Class Members,³ the Service Awards to Plaintiffs,
24 Administration Costs to the Settlement Administrator, CPT Group, Inc. (“CPT”), Attorneys’ Fees
25 and Costs to Class Counsel, and penalties pursuant to the PAGA (“PAGA Payment”), including
26

27 ³ “Settlement Class” or “Settlement Class Members” are defined as Class Members who have not
28 submitted a timely and valid Opt-Out/Request for Exclusion from the settlement. *See* Settlement
Agreement ¶ 31.

1 payment to the LWDA (“LWDA Payment”) and to PAGA Group Members. Settlement Agreement
2 ¶ 15. The amount available for distribution to Settlement Class Members is determined by deducting
3 the following from the Gross Settlement Amount:

- 4 • Up to thirty-five percent (35%) of the Gross Settlement Amount in attorneys’ fees (*i.e.*,
5 \$945,000) and up to \$30,000 in litigation costs to Class Counsel (Settlement Agreement
6 ¶ 43(a));
- 7 • Up to \$20,000 to each of the two Plaintiffs (\$40,000 in the aggregate) as a service award, in
8 recognition of their services as Class Representatives, and in exchange for their general
9 release of claims (*id.* at ¶ 43(c));
- 10 • Up to \$25,000 to the Settlement Administrator to notify members of the Class and administer
11 the settlement (*id.* at ¶ 43(b)); and
- 12 • \$300,000 in penalties pursuant to the PAGA (“PAGA Payment”), of which 75% (or
13 \$225,000) is allocated to the LWDA (“LWDA Payment”), and 25% (or \$75,000) is allocated
14 to PAGA Group Members (*id.* at ¶ 43(d)).

15 *See* Orshansky Decl. ¶ 6. The amount remaining after the foregoing deductions, approximately
16 \$1,360,000, is called the “Net Settlement Amount.” *Id.*; Settlement Agreement ¶ 19. The entire Net
17 Settlement Amount will be paid out to Settlement Class Members. Settlement Class Members will
18 automatically receive payments without the need to submit a claim form, and PAGA Group
19 Members shall receive their pro rata share of the 25% of the PAGA Payment irrespective of whether
20 they opt out of the class settlement. Orshansky Decl. ¶ 6; Settlement Agreement ¶ 21.

21 **A. The Settlement Provides for Reasonable Monetary Payments**

22 If all of the approximate 550 Class Members estimated at the time of mediation participate
23 in the settlement (*i.e.*, do not submit a request for exclusion/opt-out), and assuming hypothetically
24 that distribution was on an individual pro rata basis, then each individual settlement payment would
25 be an estimated \$2,472.73 per Class Member. Orshansky Decl. ¶ 7. In actuality, each Class Member
26 will receive a proportional share of the Net Settlement Amount (“Individual Settlement Share”)
27 based on his or her eligible workweeks during the Class Period. *Id.* The Settlement Administrator
28 will determine each Settlement Class Member’s Individual Settlement Share based on his or her

1 proportionate workweeks worked during the Class Period compared to the total number of
2 workweeks worked by all Settlement Class Members during the Class Period. Each Class Member's
3 estimated workweeks worked shall be identified in the Class Notice. If there are any valid and timely
4 Requests for Exclusion/Opt-Outs as to the class settlement, the Settlement Administrator shall
5 increase the payments distributable to Settlement Class Members so that the amount actually
6 distributed to Settlement Class Members equals 100% of the Net Settlement Amount. *See* Settlement
7 Agreement ¶¶ 19, 43(e). In addition, each PAGA Group Member will receive a proportional share
8 of the 25% of the PAGA Payment based on his or her pay periods during the PAGA Period.
9 Specifically, each PAGA Group Member shall receive a portion of the \$75,000 PAGA Payment
10 proportionate to the number of pay periods worked by the PAGA Group Member during the PAGA
11 Period compared to the total number of pay periods worked by all PAGA Group Members during
12 the PAGA Period. *See* Settlement Agreement ¶ 43(d); Orshansky Decl. ¶ 8.

13 After reduction for the employee's share of taxes on the wage portion,⁴ the net payment to
14 each Settlement Class Member ("Individual Settlement Payment") will be the sum of his or her
15 Individual Settlement Share, plus his or her individual PAGA Payment if they are an PAGA Group
16 Member. As a result of the distribution formula, the consideration paid to each Participating Class
17 Member and PAGA Group Member is tailored to the impact of Defendant's alleged violations as
18 well as to the claims he or she is releasing. *See* Settlement Agreement ¶ 43(e). Furthermore, Class
19 Members may submit a written letter to the Settlement Administrator disputing the number of
20 workweeks credited if he or she believes that count is inaccurate. *See id.* at ¶ 48. Finally, any Class
21 Member who prefers to preserve his or her right to pursue relief or seek an alternative recovery may
22 opt out.⁵ *See id.* at ¶ 49.

23 24 **B. Class Representative Service Awards; Attorneys' Fees and Costs**

25
26 ⁴ The Parties agreed that each Individual Settlement Share shall be allocated 25%, to wages to be
reported on an IRS Form W2, and 75% to interest, penalties, and other non-wage damages, to be
reported on an IRS Form 1099, if required. *See* Settlement Agreement ¶ 45(a).

27 ⁵ Again, if approved, all PAGA Group Members will receive their individual share of the 25% of
28 the PAGA Payment irrespective of whether they opt out of the class settlement. *See* Settlement
Agreement ¶ 43(d).

At the time of seeking final approval of the settlement, Plaintiffs will each apply for a service award payment at the time of seeking final approval in the amount of \$20,000 (\$40,000 in the aggregate) for their services to the Class and in exchange for a general release of all claims against Defendant. *See* Settlement Agreement ¶ 43(c); Orshansky Decl. ¶ 9. “[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*, 186 Cal. App. 4th 1380, 1393-94 (2010). Plaintiffs’ requested service awards 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 Class Members and PAGA Group Members, 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 documents, and reviewing the Settlement Agreement, as well as the significant risks Plaintiffs undertook by agreeing to serve as named plaintiffs, and the fact that Plaintiffs agreed to a general release of all claims subject to a waiver of Cal. Civ. Code § 1542. *See* Settlement Agreement ¶¶ 42, 43(c); Orshansky Decl. ¶ 10.

Class Counsel will apply at the time of seeking final approval of the settlement for an attorneys’ fees award of thirty-five percent (35%) of the Gross Settlement Amount and reimbursement of litigation costs in an amount up to \$30,000. *See* Settlement Agreement ¶ 43(a); Orshansky Decl. ¶ 11. Class Counsel submit that the requested fee is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent fee basis. *Id.* Class Counsel began their investigation into the at-issue allegations well in advance of filing the complaint, since at least August 2024. *See* Settlement Agreement ¶ 35; Orshansky Decl. ¶¶ 11, 21. Class Counsel have devoted substantial attorney time to: pre-filing investigation; analyzing Plaintiffs’ claims; conducting legal research and analysis; preparing and submitting notices to the LWDA; preparing and filing the Complaint; meeting and conferring over pre-mediation information and data; engaging a consultant; interviewing Class Members; preparing for and attending mediation; negotiating and preparing the Settlement Agreement and Class Notice; preparing this Motion; and otherwise litigating the case. Class Counsel will also expend future

1 attorney time in attending the hearing on this Motion, overseeing the notice and administration
2 process, drafting the Final Approval Motion and supporting documents, and attending the Final
3 Approval hearing, among other tasks, such as addressing questions from Class Members. Orshansky
4 Decl. ¶ 11.

5 Both California and federal courts have recognized that an appropriate method for awarding
6 attorneys' fees in class actions is to award a percentage of the "common fund" created as a result of
7 the settlement. *See Laffitte v. Robert Half International, Inc.*, 1 Cal. 5th 480, 506 (2016) ("the
8 percentage of fund method survives in California class action cases"); *Wershba v. Apple Computer,*
9 *Inc.*, 91 Cal. App. 4th 224, 254 (2001) (recognizing both the "percentage of recovery" and
10 "lodestar/multiplier" methods). Historically, courts have awarded percentage fees up to 50%,
11 depending on the circumstances of the case. *See* 4 A. Conte & H. Newberg, *Newberg on Class*
12 *Actions* § 14.6 (4th Ed. 2002) ("No general rule can be articulated on what is a reasonable percentage
13 of a common fund. Usually 50% of the fund is the upper limit on a reasonable fee award from a
14 common fund in order to assure that the fees do not consume a disproportionate part of the recovery
15 obtained for the class, although somewhat larger percentages are not unprecedented."); *Banda v.*
16 *Verizon California, Inc.*, L.A. Cty. Super. Court Case No. BC434587 (35% fee awarded on
17 \$15,000,000 settlement of mixed PAGA/class claims); *Birch v. Office Depot*, U.S. District Court,
18 S.D. Cal. Case No. 06-cv-1690-DMS (40% fee awarded on \$16,000,000 settlement of mixed
19 PAGA/class claims); *Zelada v. Majestic Terminal Services*, San Bernardino Cty. Super. Court Case
20 No. CIVDS1916968 (38% fee awarded on \$1,800,000 settlement of PAGA-only claims).

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

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

2 Express judicial policy favors maintaining wage and hour actions as class actions. *Prince v.*
3 *CLS Transp., Inc.*, 118 Cal. App. 4th 1320, 1328 (2004); *Richard v. Dart Industries, Inc.*, 29 Cal.
4 3d 462 (1981) (finding that California public policy “encourages the use of the class action device”).
5 Any doubt as to the appropriateness of class treatment should be resolved in favor of class
6 certification, subject to later modification if necessary. *Id.* at 473-75. The decision to certify a class
7 is purely a procedural one, and should be based on the allegations in the operative complaint, and
8 not in the perceived factual or legal merit of the class claims. *Linder v. Thrifty Oil Co.*, 23 Cal. 4th
9 429, 439-41 (2000).

10 To certify a settlement class, the trial court must find the two primary requirements for
11 maintaining a class action: (1) there must be an ascertainable class; and (2) there must be a well-
12 defined community of interest in the questions of law and fact involving the parties to be
13 represented. *Vasquez v. Superior Court*, 4 Cal. 3d 800, 805-809 (1971); *Daar v. Yellow Cab*
14 *Company*, 67 Cal. 2d 695, 704 (1967); *Daniels v. Centennial Capital Group*, 16 Cal. App. 4th 467,
15 471 (1993); *B.W.I. Custom Kitchen v. Owens-Illinois*, 191 Cal. App. 3d 1341 (1987). These criteria
16 are met here for the reasons set forth below.

17 **A. There is an Ascertainable and Sufficiently Numerous Class**

18 Whether a class is ascertainable is determined by examining the class definition, the size of
19 the class and the means available for identifying class members. *See Vasquez*, 4 Cal. 3d at 821-22;
20 *Reyes v. Bd. of Supervisors*, 196 Cal. App. 3d 1263, 1271 (1987); *Miller v. Woods*, 148 Cal. App.
21 3d 862, 873 (1983). Class members are “ascertainable” where they may be readily identified without
22 unreasonable expense or time.

23 Here, the class definition is “precise, objective and presently ascertainable.” *Sevidal v.*
24 *Target Corp.*, 189 Cal. App. 4th 905, 919 (2010). Class Members are comprised of all current and
25 former employees who worked for Defendant in California during the Class Period. Settlement
26 Agreement ¶ 4. Defendant is required to and does maintain employment records of such persons,
27 including contact information and social security numbers. Documents and information exchanged
28 at the time of mediation reflect a Class of approximately 550 employees during the relevant period.

Orshansky Decl. ¶ 52. As a result, the proposed Class satisfies the ascertainability and numerosity requirements. *See, e.g., Rose v. City of Hayward*, 126 Cal. App. 3d 926, 934 (1981) (stating that “[n]o set number is required as a matter of law for the maintenance of a class action,” and citing examples where classes as little as 10 (*Bowles v. Superior Court*, 44 Cal. 2d 574 (1955)), and 28 (*Hebbard v. Colgrove*, 28 Cal. App. 3d 1017 (1972)) were upheld); *see also Collins v. Rocha*, 7 Cal. 3d 232 (1972) (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*, 4 Cal. 3d at 811. “The community of interest requirement involves three factors: (1) predominant common questions of law or fact; (2) class representatives with claim or defenses typical of the class; and (3) class representatives who can adequately represent the class.” *Linder*, 23 Cal. 4th at 435.

1. Common Issues of Law and Fact Predominate

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

Here, common issues of fact and law predominate as to each of the claims alleged by Plaintiffs and Class Members. This litigation is predicated on uniform company policies and systemic top-down business practices revolving principally around Defendant’s pay practices including misclassification of employees as exempt from overtime compensation, resulting in repeated and widespread failures to: (a) pay minimum and overtime wages; (b) provide meal periods; (c) authorize and permit duty-free rest breaks; (d) provide accurate itemized wage statements; and (e) make correct timely payments to Plaintiffs and employees throughout the relevant time period, among other things. Orshansky Decl. ¶ 53. Plaintiffs also alleged a common policy and practice whereby Defendant willfully discriminated on the basis of national origin and gender in setting pay and other terms and conditions of employment. *Id.* These allegations have

1 given rise to the following claims: failure to pay minimum and overtime wages; meal period
2 liability; rest break liability; failure to provide sick pay and/or supplemental sick leave; failure to
3 provide accurate itemized wage statements; failure to pay all wages within a timely manner and
4 upon the separation of their employment; failure to reimburse business expenses; failure to maintain
5 required payroll records; and derivative UCL and PAGA claims arising therefrom. *Id.*

6 Because Plaintiffs have alleged a single top-down compensation scheme—which Defendant
7 vigorously disputes—“the relevant proof [does] not vary among class members” and “clearly
8 presents a common question fundamental to all class members.” *See In Re NASDAQ Market-Makers*
9 *Antitrust Litigation*, 172 F.R.D. 119, 123 (S.D.N.Y. 1997) (citing *In Re NASDAQ Market-Makers*
10 *Antitrust Litigation*, 169 F.R.D. 493, 518 (S.D.N.Y. 1997)). California courts show “no hesitancy”
11 in inferring class-wide causation, class-wide injury, and class-wide damages when a common course
12 of action has been shown. *B.W.I. Custom Kitchen*, 191 Cal. App. 3d at 1350 (granting class
13 certification in a manufacturing defect case when a common course of action had been proven). This
14 inference “eliminates the need for each class member to prove individually the consequences of the
15 defendants’ actions to him or her.” *Id.* at 1351. Thus, the outcome of this matter depends upon
16 questions that are common to members of the Class. These types of claims are commonly held to
17 be proper for class certification. *See, e.g., Bluford v. Safeway, Inc.*, 216 Cal. App. 4th 864, 871
18 (2013) (reversing denial of rest period claim); *Benton v. Telecom Network Specialists, Inc.*, 220 Cal.
19 App. 4th 701, 726 (2013) (certifying meal period claim).

20 2. Plaintiffs’ Claims Are Typical of the Claims of the Settlement Class

21 The typicality requirement is satisfied where class representatives have claims that are
22 typical of the rest of the class. *B.W.I. Custom Kitchen*, 191 Cal. App. 3d at 1347. Here, Plaintiffs’
23 claims are typical of those held by members of the proposed Class. Like all other Class Members,
24 Plaintiffs were employees working for Defendant in California during the Class Period. Orshansky
25 Decl. ¶ 55. Like Class Members, Plaintiffs allege they were discriminated against as to pay and
26 other terms and conditions of employment, and were not paid for all hours worked due to being
27 wrongly misclassified as exempt by Defendant, resulting in, among other things, unpaid minimum
28

1 and overtime wages, non-compliant meal and rest periods and non-payment of the required
2 premiums for the same, and inaccurate wage statements. *Id.*

3 **3. Plaintiffs and Their Counsel Meet the Adequacy Requirements**

4 The adequacy of representation requirement examines conflicts of interest between named
5 parties and the class(es) they seek to represent. *Capitol People First v. State Dep’t of Developmental*
6 *Servs.*, 155 Cal. App. 4th 676, 697 (2007). Here, Plaintiffs will adequately represent the settlement
7 class, as there are no conflicts between the Plaintiffs and the Class they seek to represent. Orshansky
8 Decl. ¶ 56; *see McGhee v. Bank of America*, 60 Cal. App. 3d 442, 450 (1976) (finding adequacy
9 satisfied where there was no indication that plaintiff’s counsel were not qualified and the named
10 plaintiff had no interests antagonistic to those of the proposed class). Class Counsel also have
11 extensive experience in wage and hour litigation. Orshansky Decl. ¶¶ 46-50.

12 **C. A Class Action is Superior to a Multiplicity of Litigation**

13 In making its class certification decision, the court must determine that a class action would
14 be superior to alternative means for the fair and efficient adjudication of the litigation. By
15 consolidating potentially hundreds of individual actions into a single proceeding, this Court’s use
16 of the class action device enables it to manage this litigation in a manner that serves the efficiency
17 interests of the litigants and the judicial system. Absent class treatment, the only alternative would
18 be to force numerous employees to file individual actions. *Sav-On Drug Stores, Inc. v. Superior*
19 *Court*, 34 Cal. 4th 319, 339 n.10 (2004) (stating “[t]he relevant comparison lies between the costs
20 and benefits of adjudicating plaintiffs’ claims in a class action and the costs and benefits of
21 proceeding by numerous separate actions—not between the complexity of a class suit that must
22 accommodate some individualized inquiries and the absence of any remedial proceeding
23 whatsoever.”) (emphasis in original). Finally, in the context of settlement, superiority concerns are
24 essentially non-existent. Orshansky Decl. ¶ 57.

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

26 Any settlement of class action litigation must be reviewed and approved by a court. This is
27 accomplished in two steps: (1) an early (preliminary) review by the trial court, and (2) a detailed
28 review after the notice has been distributed to the class members for their comments or objections.

1 “A court may preliminarily approve a settlement and direct notice to the class if ‘the proposed
2 settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious
3 deficiencies, does not improperly grant preferential treatment to class representatives or segments
4 of the class, and falls within the range of possible approval.’” *Draney v. Westco Chems., Inc.*, No.
5 2:19-cv-01405-ODW (AGRx), 2021 U.S. Dist. LEXIS 187250, at *11 (C.D. Cal. Sep. 29, 2021)
6 (citing *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007)).

7 The preliminary approval of the class action settlement by the trial court is simply a
8 conditional finding that the settlement appears to be within the range of acceptable settlements. *See*,
9 *e.g.*, 4 A. Conte & H. Newberg, *Newberg on Class Actions*, § 11.25 (4th Ed. 2002); *North County*
10 *Contractor’s Assn., Inc. v. Touchstone Ins. Services*, 27 Cal. App. 4th 1085, 1094-95 (1994). Thus,
11 the preliminary approval of the class action settlement by the Court is simply a conditional finding
12 that the settlement appears to be within the range of acceptable settlements. A review of the
13 preliminary approval criteria demonstrates a substantial basis for granting the preliminary approval
14 requested by this Motion and proceeding to a full settlement hearing.

15 VI. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE

16 As a matter of public policy, courts both encourage the use of the class action device and
17 favor settlement over continued litigation. *See, e.g., Linder*, 23 Cal. 4th at 434 (“Courts have long
18 acknowledged the importance of class actions as a means to prevent a failure of justice in our judicial
19 system.”); *State v. Levi Strauss & Co.*, 41 Cal. 3d 460, 471 (1986); *Class Plaintiffs v. City of Seattle*,
20 955 F.2d 1268, 1276 (1992) (“[S]trong judicial policy . . . favors settlements, particularly where
21 complex class action litigation is concerned.”); 4 A. Conte & H. Newberg, *Newberg on Class*
22 *Actions* § 11.41 (4th Ed. 2002). Settlement is favored, and settlement agreements are realistically
23 assessed. *Stamburgh v. Superior Court*, 62 Cal. App. 3d 231, 236 (1976); *Priddy v. Edelman*, 883
24 F.2d 438, 447 (6th Cir. 1989) (“The fact that plaintiff might have received more if the case had been
25 fully litigated is no reason not to approve the settlement.”).

26 In sum, the settlement here is fair because it offers payment to each Class Member for
27 releasing his or her claims, extinguishes the risk of litigation, and provides a fair and adequate
28 distribution of the settlement proceeds whereby the Net Settlement Amount is allocated to

1 Settlement Class Members proportionally based on his or her eligible workweeks worked during
2 the Class Period.

3 **A. The Settlement is Entitled to a Presumption of Fairness**

4 Courts presume the absence of fraud or collusion in the negotiation of a settlement unless
5 evidence to the contrary is offered. In short, there is a presumption that the negotiations were
6 conducted in good faith. *See* 4 A. Conte & H. Newberg, *Newberg on Class Actions* § 11.51 (4th Ed.
7 2002); *Rodriguez v. West Publ. Corp.*, 2007 U.S. Dist. LEXIS 74767, at *24-25 (C.D. Cal. August
8 10, 2007); *In re Chicken Antitrust Litigation*, 560 F. Supp. 957, 962 (N.D. Ga. 1980); *Priddy*, 883
9 F.2d at 447; *Mars Steel Corp. v. Cont'l Ill. Nat'l Bank & Tr. Co.*, 834 F.2d 677, 681 (7th Cir. 1987).
10 Courts do not substitute their judgment for that of the proponents, particularly when settlement has
11 been reached by experienced counsel familiar with the litigation. *Rodriguez*, 2007 U.S. Dist. LEXIS
12 74767, at *24. As detailed at length in Class Counsel's accompanying declaration, the settlement is
13 the result of extensive settlement negotiations between the Parties, conducted at arm's length, and
14 informed by substantial factual and legal investigations. Orshansky Decl. ¶¶ 11, 21, 25-26.

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

16 The Parties participated in a full-day mediation session before the Hon. Peter D. Lichtman
17 (Ret.) of Signature Resolution. Orshansky Decl. ¶ 25. Judge Lichtman is a highly experienced class
18 action mediator. *Id.* With the assistance of the mediator, and pursuant to a mediator's proposal, the
19 Parties agreed to resolve the matter and reached the terms of settlement. *Id.*

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

21 Prior to initiating the lawsuit, since at least August 2024, Class Counsel independently and
22 thoroughly investigated the claims and considered the facts and circumstances underlying the
23 pertinent issues and applicable law. Orshansky Decl. ¶ 11, 21. This required thorough discussions
24 and interviews with Plaintiffs and other Class Members as well as research into the various legal
25 issues involved in the case. *Id.* After conducting their initial investigation, Class Counsel determined
26 that the claims were well suited for class action adjudication owing to what appeared to be a common
27 course of conduct affecting a similarly situated group of employees. *Id.* Class Counsel has devoted
28 substantial attorney time to: pre-filing investigation; analyzing Plaintiffs' claims; conducting legal

1 research and analysis; preparing and submitting notices to the LWDA; preparing and filing the
2 Complaint; meeting and conferring over pre-mediation information and data; interviewing Class
3 Members; engaging a consultant; preparing for and attending mediation; negotiating and preparing
4 the Settlement Agreement and Class Notice; preparing this Motion; and otherwise litigating the case.
5 *Id.* at ¶ 11.

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

7 Class Counsel believe that the settlement is fair and reasonable and serves the best interests
8 of the Class Members. Orshansky Decl. ¶ 26. Although the recommendations of counsel proposing
9 the class settlement are not conclusive, the Court can properly take these recommendations into
10 account, particularly if counsel have been involved in litigation for some period of time, appear to
11 be competent, have experience with this type of litigation, and significant discovery has been
12 completed. *See* 4 A. Conte & H. Newberg, *Newberg on Class Actions* § 11.47 (4th Ed. 2002). Here,
13 Plaintiffs are represented by competent and experienced counsel who possess extensive experience
14 litigating wage and hour class actions and have been appointed as class counsel in numerous cases
15 alleging similar claims. Orshansky Decl. ¶¶ 46-50.

16 **B. The Settlement is Fair, Reasonable, and Adequate**

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

25 **1. The Strength of Plaintiffs’ Case**

26 Class Counsel carefully vetted the claims at issue. Orshansky Decl. ¶ 27. Although Plaintiffs
27 steadfastly maintain that their claims are meritorious, they acknowledge that there are substantial
28 risks and uncertainty in proceeding with class certification and trial. *Id.* As explained in further

1 detail below, Defendant presented numerous defenses to Plaintiffs' claims, both on the merits and
2 with respect to class certification. *Id.* For example, as to Plaintiffs' claim that they were
3 misclassified as exempt (thereby resulting in the various wage-and-hour violations described in
4 section IV(C)(1), *supra*), Defendant maintained that it met the requirements for properly exempting
5 Class Members under the various exemptions applicable to its employees as set forth under
6 California law, including the exemption for computer professionals.⁶ *Id.* at ¶ 28. Defendant also
7 vehemently argued that it had fully compliant Equal Employment Opportunity policies and
8 practices, and denied that it had any policy or practice of discriminating between employees as to
9 pay or other terms and conditions of employment on the basis of any protected characteristic. *Id.* at
10 ¶ 29.

11 Further, Defendant contended Plaintiffs would face significant hurdles to certification given
12 that Class Members signed arbitration agreements with class action waivers as a condition of their
13 employment, which if enforceable would convert a putative class action (with the potential for class-
14 wide damages) into an individual dispute and action—effectively forcing Class Members to retain
15 their own counsel and proceed on the basis of individual claims only. Orshansky Decl. ¶ 30.

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

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

22 Absent settlement, the Parties would have needed to conduct substantial additional
23 discovery, such as the production of voluminous records and taking and defending numerous
24 depositions of experts and percipient witnesses, and prepare the case for class certification and trial.
25

26 ⁶ IWC Wage Order No. 4-2001 (Cal. Code Regs., tit. 8, § 11040) provides four separate grounds for
27 exempting computer workers. These are called the executive, administrative, professional and
28 computer software exemptions. Pursuant to Cal. Lab Code § 515.5, the computer software
exemption applies if an employee's salary exceeds an amount set each year by the California
Department of Labor.

Orshansky Decl. ¶ 32. The Parties would have had to depose a number of people such as executives, managers, supervisors, human resource representatives, and other employees in order to establish liability. *Id.* Discovery disputes would have no doubt arisen, and liability likely would have entailed a battle of experts. *Id.* This settlement avoids the considerable time, attorneys’ fees and costs, and party resources associated with conducting additional discovery, moving for class certification and potentially summary judgment or adjudication, and ultimately, trial, as well as the risks and the accompanying burden of continued litigation on the Court. *Id.* Thus, this factor supports preliminary approval of the settlement.

3. Risk of Maintaining Class Action Status

Here, settlement was reached prior to class certification and the result was a successful outcome for the Class. Orshansky Decl. ¶ 33. Yet, class certification was by no means a foregone conclusion. *Id.*

As to Plaintiffs’ misclassification claim underlying the bulk of the wage-and-hour liability in this case, Defendant argued that Class Members worked in different job positions and had different job duties and supervisors, and as a result, Defendant contended that defeating applicable overtime exemptions on a class-wide basis would prove difficult for Plaintiffs. In *Benedict v Hewlett-Packard Co.*, 314 F.R.D. 457 (N.D. Cal. Apr. 8, 2016), the plaintiffs were former Hewlett-Packard employees who similarly sought certification of a putative class of computer professionals holding several different job titles. The plaintiffs argued that all of the putative class members performed the same “limited troubleshooting role” pursuant to “regimented procedural guidelines” and that Hewlett-Packard had misclassified them as exempt, which resulted in unpaid overtime wages and other violations of federal and state labor laws. *See id.* at 461. Although the court held that commonality existed for certification purposes, it ultimately denied certification on the grounds that it would require “individualized inquiries to determine whether or not a [given employee] qualifies for an exemption.” *Id.* at 477. In a similar case involving the computer professionals exemption, another court denied class certification, holding that “Defendant has submitted evidence that provides some support for its position that there is a substantial variance among the job titles

1 and tasks performed by members of the putative class.” *See Payala v. Wipro Techs., Inc.*, 2016 WL
2 6094158, at *11 (C.D. Cal. Aug. 23, 2016).

3 Plaintiffs’ claims of systemic discrimination as to pay and other job conditions would also
4 potentially prove difficult to certify on a class basis. Such a disparate impact claim requires “(1) the
5 existence of a policy, not a one-time decision, that is outwardly neutral; (2) a significant, adverse,
6 and disproportionate effect on a protected class; and (3) robust causality that shows, beyond mere
7 evidence of a statistical disparity, that the challenged policy, and not some other factor or policy,
8 caused the disproportionate effect.” *S.W. Fair Hous. Council, Inc. v. Maricopa Dom. Water*
9 *Improvement Dist.*, 17 F.4th 950, 962 (9th Cir. 2021). The United States Supreme Court has
10 emphasized that “a disparate-impact claim that relies on a statistical disparity must fail if the plaintiff
11 cannot point to a defendant’s policy or policies causing that disparity.” *Texas Dept. of Hous. and*
12 *Comty. Affairs v. Inclusive Comtys. Project, Inc.*, 576 U.S. 519, 542 (2015). “A robust causality
13 requirement ensures that racial imbalance does not, without more, establish a prima facie case of
14 disparate impact and thus protects defendants from being held liable for racial disparities they did
15 not create.” *Id.* (internal quotations omitted). Notably, in *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S.
16 338, 347 (2011), the Supreme Court reversed the certification of a disparate impact discrimination
17 claim relating to pay and job promotions. The court held that the plaintiffs could not establish
18 commonality even with the use of statistical evidence, where the claims turned on “discretion
19 exercised by their local supervisors over pay and promotion matters.” *Id.* at 342; *see also id.* at 356
20 (noting that the plaintiffs had “not identified a common mode of exercising discretion that pervades
21 the entire company”); *see also, e.g., Moussouris v. Microsoft Corp.*, 799 F. App’x 459, 462 (9th Cir.
22 2019) (affirming denial of class certification as to disparate impact equal pay claims, noting
23 “allegedly discriminatory pay and promotion decisions in the instant case do not present common
24 questions”) (unpublished). Absent proof that the “entire class was subject to the same allegedly
25 discriminatory practice, there is no question common to the class.” *Ellis v. Costco Wholesale Corp.*,
26 657 F.3d 970, 983 (9th Cir. 2011).

27 Perhaps most clearly illustrating both the potential merits as well as the potential difficulties
28 in certifying and ultimately proving Plaintiffs’ systemic discrimination claims, a California federal

1 jury returned a verdict finding that Cognizant Technology Solutions Corporation and a related entity
2 engaged in a pattern or practice of intentional discrimination against “non-South Asian employees
3 on the basis of race who were terminated from the bench [of active but unassigned employees in
4 between consulting projects],” as well as against “non-Indian employees on the basis of national
5 origin who were terminated from the bench.” See *Palmer v. Cognizant Tech. Sols. Corp.*
6 (“*Cognizant*”), Case No. CV 17-6848-DMG (PLAx), Verdict Form, ECF No. 666 (C.D. Cal. Oct.
7 4, 2024). Previously in that case, the court had certified a class of individuals who had been hired
8 by the defendants, completed a project and thereafter placed on a “bench” awaiting further
9 assignment, from which they were terminated after a certain amount of time of non-assignment. See
10 *Palmer v. Cognizant Tech. Sols. Corp.*, 2022 WL 18214014, at *3 (C.D. Cal. Oct. 27, 2022). The
11 court had found that “[t]hese individuals’ failure to find a new placement is more plausibly related
12 to Cognizant’s visa policies [*i.e.*, preferring the employment of H-1B visa holders predominantly
13 from South Asia], while avoiding potential questions about their basic qualifications, since these
14 class members had already been hired by and worked for Cognizant by the time they were placed
15 on the bench.” See *id.* at *29. At the same time, however, the court in *Cognizant* had also denied
16 certification as to a much larger “hiring” subclass. *Id.* at *26-28 (noting that, “[e]ven if every hiring
17 manager was bound by the ‘visa utilization’ and ‘visa readiness’ policies, it is clear that additional
18 factors would have gone into a large number of the hiring decisions at issue in this case. These
19 additional factors include basic questions, such as whether an individual met the minimal
20 qualifications for the position in question, and more complex questions, such as the quality of the
21 applicant’s interview and how much influence the client had over an applicant’s rejection.”). Thus,
22 while the defendants in *Cognizant* ultimately faced some liability for the systemic discrimination
23 claims, it was on a much narrower basis than originally alleged by the plaintiffs following the
24 court’s partial grant and partial denial of class certification.

25 In opposition to certification in *Cognizant*, the defendants had argued that “hiring and
26 terminations [sic] decisions at Cognizant are decentralized, highly subjective, individualized
27 processes that rely on the discretion of thousands of decisionmakers (including *clients*).” See
28 *Cognizant*, Defendants’ Opposition to Motion for Class Certification, ECF No. 273 at 13 (C.D. Cal.

June 6, 2022) (emphasis in original). Cognizant also argued that it “does not have any ‘policy’ to hire visa holders and replace U.S. workers,” and that “[e]ven *if* such a policy existed, it would be inapplicable (even under Plaintiffs’ theory) to large swaths of the proposed class[.]” *Id.* The defendants also observed that the plaintiffs’ counsel in that case had “tried (and failed) twice before to certify [at least in part] a . . . class on the same pattern-or-practice theory of alleged prioritization of visa-holding Indian nationals for U.S. jobs.” *Id.* at 25 (citing *Handloser v. HCL Techs. Ltd.*, 2021 WL 879802, at *3 (N.D. Cal. Mar. 9, 2021) and *Buchanan v. Tata Consultancy Servs., Ltd.*, 2017 WL 6611653, at *20 (N.D. Cal. Dec. 27, 2017)).

Here, Plaintiffs would face the same difficulties in certifying a class as the plaintiffs in *Handloser*, *Buchanan*, and *Cognizant*, where significant resources were expended with mixed results. Orshansky Decl. ¶ 38. Moreover, Defendant vehemently maintains it has a zero-tolerance policy for discrimination, retaliation, or attempted retaliation on any protected basis, including but not limited to sex, gender, ethnicity, race, national origin, age, citizenship, religion, marital status, sexual orientation, or disability in its hiring or personnel practices. *Id.* The company provides employees with several avenues to report complaints of discrimination or retaliation, including the employee’s supervisor, human resources, or the Values Hotline. *Id.*

Here, if the Court either denied class certification or certified a class but later decertified it, the Class would recover nothing and Class Members would be forced to retain their own counsel and proceed on the basis of individual claims only. Orshansky Decl. ¶ 39. 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. *Id.* Through the proposed settlement, Class Members may avoid all of these risks and receive substantial monetary benefits, which also weighs in favor of preliminary approval. Certification is therefore entirely consistent with maximizing recovery to the Class—all Class Members who feel that their award fairly compensates them for the released class claims may accept their award and be so bound, and any Class Member who wishes to opt out of the settlement and pursue individual claims may do so.

1 Finally, \$300,000 of the \$2,700,000 Gross Settlement Amount is allocated toward Plaintiffs’
2 claims for PAGA penalties on behalf of PAGA Group Members. Orshansky Decl. ¶ 41. The Parties
3 exchanged sufficient data and information such that the potential liability and exposure to PAGA
4 penalties could be analyzed. *Id.* The success of Plaintiffs’ PAGA claim is wholly dependent upon
5 the success of the underlying claims occurring within the one-year statute of limitations applicable
6 to the PAGA. *Id.* Defendant contended that these penalties are derived from the underlying wage
7 and hour violations discussed above, which Defendant disputes. *Id.*

8 Pursuant to Cal. Lab. Code § 2699(f)(2), Defendant argued that it would only face a
9 maximum PAGA penalty amount of \$100 per each aggrieved employee per pay period. Defendant
10 maintained, furthermore, that it had legally compliant employment policies and practices throughout
11 the statutory period, and that it took “all reasonable steps to be in compliance” with applicable Labor
12 Code provisions, such that PAGA penalties would be capped at a maximum of 15% of the penalties
13 sought, pursuant to Cal. Lab. Code § 2699(g)(1). Orshansky Decl. ¶ 42. Based on the 12,972 pay
14 periods Defendant proffered to be at issue during the PAGA Period at the time of mediation, the
15 \$300,000 allocation to PAGA penalties in the proposed settlement represents an estimated recovery
16 of \$23.13 per PAGA Group Member per pay period (*i.e.*, \$300,000 divided by 12,972 pay periods),
17 which is arguably more than Plaintiffs could have recovered had Defendant succeeded in
18 establishing its defenses under Cal. Lab. Code § 2699(f)(2) and (g)(1), assuming that Plaintiffs
19 would even be able to establish a violation in each and every pay period as to each and every PAGA
20 Group Member. Orshansky Decl. ¶ 42.

21 Although, strictly speaking, class certification requirements are not required to be satisfied
22 in order to adjudicate a PAGA claim, the state of the law with respect to the adjudication and
23 valuation of a PAGA claim is uncertain.⁷ Moreover, the LWDA has released data on PAGA

24 ⁷ Instead, what is clear is that the purpose of the PAGA is not to generate revenue for the State but
25 rather to facilitate the enforcement of the labor laws. *See, e.g., Williams v. Superior Court*, 3 Cal.
26 5th 531, 546 (2017); *Arias v. Superior Court*, 46 Cal. 4th 969, 986 (2009); Cal. Lab. Code § 2699(i).
27 In assessing the adequacy of the recovery under a PAGA claim, the focus is not the amount which
28 the LWDA and the aggrieved employees are to receive formally in the form of monetary civil
penalties but instead whether the total settlement amount achieves the PAGA’s objectives. When
PAGA claims are settled, courts consider whether the proposed PAGA settlement is fair and
adequate “in view of the purposes and policies of the statute[,]” and those purposes and policies

1 settlement amounts, showing that the settlement secured by Plaintiffs here is greater than other
2 PAGA penalty awards approved by California state courts even prior to the recent legislative
3 reforms that significantly limited PAGA exposure for cases filed after June 1, 2024. These
4 settlements often range between \$7,500 and \$15,000 for PAGA claims impacting hundreds or
5 thousands of individuals, resulting in much lower PAGA penalty payments on a per capita basis.
6 *See, e.g., Penaloza v. PPG Industries Inc.*, No. BC471369, 2013 WL 2917624, at *2 (Super. Ct.
7 L.A. County May 20, 2013) (approving PAGA penalties of \$5,000.00 to class of 667 members);
8 *Cabrera v. Advantage Sale & Marketing, LLC*, No. BC485259, 2013 WL 1182822 (Super. Ct. L.A.
9 County March 12, 2013) (approving PAGA penalties of \$10,000.00 for class of approximately 3,000
10 members).

11 Establishing violations for purposes of the PAGA would be difficult in this matter. After
12 analyzing the claims, Class Counsel concluded that the value of this settlement is fair, adequate, and
13 reasonable. Orshansky Decl. ¶ 44.

14 **4. Amount Offered in Settlement Given Realistic Value of Claims**

15 A settlement is not judged against what might have been recovered had a plaintiff prevailed
16 at trial, nor does the settlement have to provide 100% of the damages to be fair and reasonable.
17 *Wershba*, 91 Cal. App. 4th at 246, 250 (acknowledging that “[c]ompromise is inherent and necessary
18 in the settlement process . . . even if the relief afforded by the proposed settlement is substantially
19 narrower than it would be if the suits were successfully litigated, this is no bar to a class settlement
20 because the public interest may indeed be served by a voluntary settlement in which each side gives
21 in the interest of avoiding litigation.”). The settlement provides a fair and reasonable monetary
22 recovery for the Settlement Class in the face of disputed claims.

23
24 include “benefit[ing] the public by augmenting the state’s enforcement capabilities, encouraging
25 compliance with California Labor Code provisions, and deterring noncompliance.” *O’Connor v.*
26 *Uber Techs., Inc.*, 201 F. Supp. 3d 1110, 1132-33, 1134 (N.D. Cal. 2016). A “[c]ourt does not review
27 the PAGA allocation in isolation, but rather reviews the settlement as a whole, to determine whether
28 it is fundamentally fair, reasonable and adequate, with primary consideration for the interests of
absent class members.” *O’Connor v. Uber Techs. Inc.*, No. 13-CV-03826-EMC, LWDA’s
Comments on Proposed PAGA Settlement, ECF No. 736 at 4:17-19 (N.D. Cal. July 29, 2016).
“PAGA penalties must be evaluated in terms of their public policy objective and not just through
the prism of what private relief has been sought or obtained.” *Id.* at 4:14-16.

1 The proposed recovery of the Gross Settlement Amount of \$2,700,000, and an estimated
2 average award of close to \$2,500 per class member, represents a significant portion of any realistic
3 exposure to Defendant as to each Class Member (and indeed, such exposure might have resulted to
4 be zero for the reasons described above), while avoiding the further expense and serious risk of
5 proceeding toward class certification and trial. Orshansky Decl. ¶ 40. “The fact that a proposed
6 settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean
7 that the proposed settlement is grossly inadequate and should be disapproved.” *Linney v. Cellular*
8 *Alaska P’ship*, 151 F.3d 1234, 1242 (9th Cir. 1998) (internal quotations omitted); *see also, e.g.,*
9 *Altamirano v. Shaw Industries, Inc.*, 2015 WL 4512372, at *9 (N.D. Cal. 2015) (preliminarily
10 approving wage and hour class action settlement stating, “[a]lthough 15% represents a modest
11 fraction of the hypothetical maximum recovery estimated by Plaintiff, that figure is sufficient for
12 the Court to grant preliminary approval given the merits of Plaintiff’s claims”). Taking into account
13 the risk of non-certification or a failure to prevail on the merits, and the Court’s power to reduce the
14 civil penalties, the proposed settlement falls within the realm of being fair, reasonable, and adequate.
15 Orshansky Decl. ¶ 45.

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

17 This Court should order that the Settlement Administrator distribute the Class Notice (*see*
18 Orshansky Decl. ¶ 58 and Exh. 1 at internal Exhibit 1) to the Class by first class U.S. mail, postage
19 prepaid, using the last known mailing address information provided by Defendant. This manner of
20 giving notice is the “best notice practicable” under the circumstances, because it provides
21 “individual notice to all members who can be identified though reasonable effort.” *Eisen v. Carlisle*
22 *and Jacqueline*, 417 U.S. 156, 173 (1974). Here, Plaintiffs propose that the settlement be
23 administered by CPT, an experienced class action settlement administrator. *See* Settlement
24 Agreement ¶ 46(a). Class Members’ addresses will be ascertainable through Defendant’s personnel
25 and payroll records, which Defendant will provide to the Settlement Administrator within 10
26 calendar days of preliminary approval of the settlement. *Id.* at ¶ 46(b). The Settlement Administrator
27 will run all addresses through the National Change of Address database and, to the extent that any
28

1 notices are returned, will conduct further skip traces to obtain current address information. *Id.* at ¶
2 46(e).

3 The content of the proposed notice satisfies California Rules of Court, Rule 3.766(d) because
4 it advises Class Members of the nature of the claims, the basic contentions and denials of the Parties,
5 the key terms of the settlement, the uniform 45-day deadline to submit a workweek dispute, request
6 for exclusion/opt-out, or object to the settlement and the procedure by which to do so, and explains
7 the recovery formula and credited number of workweeks for each Class Member. The proposed
8 notice will also notify Class Members of the final approval hearing date, provide the contact
9 information for Class Counsel, and advise Class Members that they may enter an appearance
10 through counsel if they wish. This manner of giving notice satisfies California Rules of Court, Rule
11 3.766(e) as the best notice practicable under the circumstances. Thus, the proposed method of notice
12 is reasonably calculated to reach Class Members by the best means practicable and should be
13 approved.

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

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

18 **IX. CONCLUSION**

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

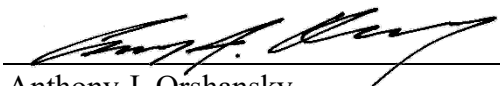
- 21 1. Preliminarily approving the Settlement Agreement as fair, reasonable, and adequate;
- 22 2. Preliminarily approving the form and content of the Class Notice;
- 23 3. Provisionally certifying the Settlement Agreement's proposed Class comprised of
24 the Class Members identified during the Class Period under Cal. Civ. Code § 382 for settlement
25 purposes only;
- 26 4. Appointing Plaintiffs as Class Representatives;
- 27 5. Appointing CounselOne, PC as Class Counsel;
- 28 6. Appointing CPT 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: October 10, 2025

Respectfully submitted,

COUNSELONE, PC

By: 

Anthony J. Orshansky

P. Bartholomew Quintans

Attorneys for Plaintiffs and the Class