

FILED
Superior Court of California
County of Los Angeles

MAY 26 2023

David W. Slayton, Executive Officer/Clerk of Court
By: N. Navarro, Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

ANN ESPINOZA and DIANA FONTANA,
individually, and on behalf of all others
similarly situated,

Plaintiffs,

v.

CICON ENGINEERING, INC., a
corporation, and DOES 1 through 10,
inclusive,

Defendants.

Case No.: 21STCV39385

me
~~TENTATIVE~~ ORDER GRANTING
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT

Date: May 26, 2023

Time: 9:00 a.m.

Dept.: SSC-17

I. BACKGROUND

Plaintiffs Ann Espinoza and Diana Fontana sue their former employer,
Defendant Cicon Engineering, Inc., for alleged wage and hour violations. Defendant is
a manufacturer specializing in wire harness and cable harness assemblies, primarily for

1 the military and space industries. Plaintiffs seek to represent a class of Defendant's
2 current and former non-exempt employees.

3 Plaintiff Espinoza filed a complaint against Defendant alleging causes of action
4 for: (1) failure to pay minimum and straight time wages (Labor Code §§ 204, 1194,
5 1194.2, and 1197); (2) failure to pay overtime wages (Labor Code §§ 1194, 1198); (3)
6 failure to provide meal periods (Labor Code §§ 226.7, 512); (4) failure to authorize and
7 permit rest periods (Labor Code § 226.7); (5) failure to timely pay final wages at
8 termination (Labor Code §§ 201-203); (6) failure to provide accurate itemized wage
9 statements (Labor Code § 226); and (7) violation of California's Unfair Competition
10 Law (Business and Professions Code §§ 17200, et seq.) on October 26, 2021.

11 On November 3, 2021, Plaintiff Espinoza filed a First Amended Complaint to
12 add Plaintiff Fontana as an additional named Plaintiff.

13 On November 1, 2022, Plaintiffs filed a Second Amended Complaint which
14 added a claim for penalties pursuant to the Labor Code Private Attorneys General Act
15 ("PAGA") (Cal. Lab. Code §§ 2699, et seq.).

16 On September 8, 2022, the parties participated in private mediation before
17 mediator Steve Cerveris, which resulted in settlement. The terms of settlement were
18 finalized in the Class Action and PAGA Settlement Agreement, a copy of which is
19 attached to the Declaration of Justin F. Marquez filed December 12, 2022 ("Marquez
20 Decl.") as Exhibit 1.

21 A hearing was held March 13, 2023 at which the Court and counsel discussed
22 items needed for preliminary approval of the settlement. A "checklist" issued. The
23 matter was continued to May 26, 2023.

Supplemental papers and an amended Stipulation of Settlement were filed May 4, 2023, attached to the Declaration of Christina M. Le as Exhibit 5. All references below are to that agreement.

II. THE TERMS OF THE SETTLEMENT

A. SETTLEMENT CLASS AND RELATED DEFINITIONS

“Class” means all persons employed by Defendant in California and classified as a nonexempt employee who worked for Defendant during the Class Period. (§1.5)

“Class Period” means the period from May 1, 2017 to November 7, 2022.
(§1.12)

“Aggrieved Employee” means a person employed by Defendant in California and classified as a nonexempt employee who worked for Defendant during the PAGA Period. (§1.4)

“PAGA Period” means the period from May 1, 2020 to November 7, 2022.
(§1.31)

“Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement. (§1.35)

“Plaintiffs” means Ana Espinoza and Diana Fontana, the named Plaintiffs in the Action. (§1.36)

B. THE MONETARY TERMS OF SETTLEMENT

The essential monetary terms are as follows:

- 1 • The Gross Settlement Amount (“GSA”) is **\$750,000** (¶3.1). This includes
2 payment of a PAGA penalty of **\$30,000** to be paid 75% to the LWDA (\$22,500)
3 and 25% to the Aggrieved Employees (\$7,500) (¶3.2.5).
 - 4 ○ Escalator Clause: Based on its records, Defendant estimates that, as of
5 August 31, 2022 there were 43,427 pay periods worked during the Class
6 Period (May 1, 2017 through August 31, 2022). In the event the number
7 of pay periods worked by class members during that May 1, 2017 through
8 August 31, 2022 period increases by more than 10% or 47,770, then the
9 Gross Settlement Amount shall be increased proportionally by the pay
10 periods worked in excess of 43,770 (e.g., if the number of pay periods
11 worked during the May 1, 2017 and August 31, 2022 period increased by
12 11%, the Maximum Settlement Amount will increase by 1%). (¶9)
- 13 • The Net Settlement Amount (“Net”) (**\$415,000**) is the GSA less:
 - 14 ○ Up to **\$250,000** (33 1/3%) for attorney fees (¶3.2.2);
 - 15 ○ Up to **\$20,000** for attorney costs (*Ibid.*);
 - 16 ○ Up to **\$20,000 total [\$10,000 each]** for service awards to the proposed
17 class representatives (¶3.2.1); and
 - 18 ○ Estimated **\$15,000** for settlement administration costs (¶3.2.3).
- 19 • Defendant will separately pay any and all employer payroll taxes owed on the
20 Wage Portions of the Individual Class Payments. (¶3.1)
- 21 • Assuming the Court approves all maximum requested deductions, approximately
22 \$415,000 will be available for automatic distribution to participating class
23 members. Assuming full participation, the average settlement share will be
24 approximately \$761.46. ($\$415,000 \text{ Net} \div 545 \text{ class members} = \761.46). In
25 addition, each Aggrieved Employee will receive a portion of the PAGA penalty,

1 estimated to be \$16.93 per Aggrieved Employee. (\$7,500 or 25% of \$30,000
2 PAGA penalty ÷ 443 Aggrieved Employees = \$ 16.93).

- 3 • There is no Claim Requirement (§3.1).
- 4 • The settlement is not reversionary (§3.1).
- 5 • Individual Settlement Share Calculation: Each Participating Class Member will
6 receive an Individual Class Payment calculated by (a) dividing the Net
7 Settlement Amount by the total number of Workweeks worked by all
8 Participating Class Members during the Class Period and (b) multiplying the
9 result by each Participating Class Member's Workweeks. (§3.2.4) Non-
10 Participating Class Members will not receive any Individual Class Payments.
11 The Administrator will retain amounts equal to their Individual Class Payments
12 in the Net Settlement Amount for distribution to Participating Class Members on
13 a pro rata basis. (§3.2.4.2)
- 14 • PAGA Payment Calculation: The Administrator will calculate each Individual
15 PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25%
16 share of PAGA Penalties (\$7,500.00) by the total number of PAGA Period Pay
17 Periods worked by all Aggrieved Employees during the PAGA Period and (b)
18 multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods.
19 (§3.2.5.1)
- 20 • Tax Withholdings: Each Participating Class Member's Individual Class Payment
21 will be allocated as 20% wages, 80% interest and penalties. (§3.2.4.1)
- 22 • Funding of Settlement: Defendant shall fully fund the Gross Settlement Amount,
23 and also fund the amounts necessary to fully pay Defendant's share of payroll
24 taxes by transmitting the funds to the Administrator no later than 30 days after
25 the Effective Date. (§4.3)

- 1 • Distribution: Within 14 days after Defendant funds the Gross Settlement
2 Amount, the Administrator will mail checks for all Individual Class Payments,
3 all Individual PAGA Payments, the LWDA PAGA Payment, the Administration
4 Expenses Payment, the Class Counsel Fees Payment, the Class Counsel
5 Litigation Expenses Payment, and the Class Representative Service Payment.
6 Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation
7 Expenses Payment and the Class Representative Service Payment shall not
8 precede disbursement of Individual Class Payments and Individual PAGA
9 Payments. (§4.4)
- 10 • Uncashed Settlement Payment Checks: The face of each check shall prominently
11 state the date (not less than 180 days after the date of mailing) when the check
12 will be voided. (§4.4.1) The parties designated Legal Aid at Work to receive any
13 unpaid residue or unclaimed or abandoned class member funds and interest
14 thereon pursuant to Cal. Code of Civ. Pro. § 384. (§4.4.3) Counsel and the
15 parties have confirmed that they have no affiliation with that entity. (Marquez
16 Decl. ¶17; Decl. of Ann Espinoza ¶10; Decl. of Diana Fontana ¶10; Declaration
17 of Golper; Declaration of Abdi Kohali).

18 19 **C. TERMS OF RELEASES**

- 20 • Releases of Claims: Effective on the date when Defendant fully funds the entire
21 Gross Settlement Amount and funds all employer payroll taxes owed on the
22 Wage Portion of the Individual Class Payments, Plaintiffs, Class Members, and
23 Class Counsel will release claims against all Released Parties as follows: (§6)
- 24 • Release by Participating Class Members Who Are Not Also Aggrieved
25 Employees: All Participating Class Members, on behalf of themselves and their

1 respective former and present representatives, agents, attorneys, heirs,
2 administrators, successors, and assigns, release Released Parties from (i) all
3 claims that were alleged, or reasonably could have been alleged, based on the
4 Class Period facts stated in the Operative Complaint, the LWDA Letter, and
5 ascertained in the course of the Action including, but not limited to claims for (a)
6 failure to pay minimum, straight time, overtime, or double time wages, and
7 failure to pay other wages of any kind during employment; (b) failure to
8 authorize and permit rest periods or pay rest period premiums; (c) failure to
9 provide meal periods or pay meal period premiums; (d) failure to provide
10 accurate and itemized wage statements; (e) failure to maintain accurate
11 employment records; (f) failure to pay timely wages; (g) failure to pay final
12 wages due at separation; (h) failure to reimburse or indemnify all necessary
13 business expenses, (i) civil penalties under PAGA based on the alleged Labor
14 Code violations and applicable Wage Orders; (j) claims brought under Business
15 & Professions Code section 17200, et seq., based on the aforementioned,
16 including, but not limited to all claims for unfair, unlawful and harmful conduct
17 to class members, the general public, and Defendant's competitors and claims of
18 unlawfully gaining an unfair advantage over other businesses, and all damages,
19 interest, penalties, attorneys' fees, costs, and other amounts recoverable based on
20 the aforementioned, to the extent permissible, including, but not limited to, the
21 California Labor Code and the applicable Wage Orders. Except as set forth in
22 Section 6.3 of this Agreement, Participating Class Members do not release any
23 other claims, including claims for vested benefits, wrongful termination,
24 violation of the Fair Employment and Housing Act, unemployment insurance,
25

1 disability, social security, workers' compensation, or claims based on facts
2 occurring outside the Class Period. (§6.2)

- 3 • Release by Non-Participating Class Members Who Are Aggrieved Employees:
4 All Non-Participating Class Members who are Aggrieved Employees are
5 deemed to release, on behalf of themselves and their respective former and
6 present representatives, agents, attorneys, heirs, administrators, successors, and
7 assigns, the Released Parties from all claims for PAGA penalties that were
8 alleged, or reasonably could have been alleged, based on the PAGA Period facts
9 stated in the Operative Complaint, and the PAGA Notice and ascertained in the
10 course of the Action including, but not limited to, any claims for civil penalties
11 based on Defendant's alleged: (a) failure to pay minimum, straight time,
12 overtime, or double time wages, and failure to pay other wages of any kind
13 during employment; (b) failure to authorize and permit rest periods or pay rest
14 period premiums; (c) failure to provide meal periods or pay meal period
15 premiums; (d) failure to provide accurate and itemized wage statements; (f)
16 failure to maintain accurate employment records; (e) failure to pay timely wages;
17 (f) failure to pay final wages due at separation; (g) and failure to reimburse or
18 indemnify all necessary business expenses. This includes, but is not limited,
19 claims for alleged violation of California Labor Code §§ 201, 202, 203, 204,
20 226, 226.7, 510, 1174. 1174.5, 1194, 1198, and 2802. (§6.3)

- 21 ○ "PAGA Notice" means Plaintiffs' October 19, 2022 letter to Defendant
22 and the LWDA providing notice pursuant to Labor Code section 2699.3,
23 subd.(a). (§1.33)

- 24 • "Released Parties" means (i) Defendant and each (ii) each of Defendant's
25 respective past, present and future parents, subsidiaries, and affiliates including,

1 without limitation, any corporation, limited liability company, partnership, trust,
2 foundation, and non-profit entity which controls, is controlled by, or is under
3 common control with Defendant; (iii) the past, present and future shareholders,
4 directors, officers, agents, attorneys, insurers, members, partners, managers,
5 contractors, agents, consultants, representatives, administrators, fiduciaries,
6 benefit plans, transferees, predecessors, successors, and assigns of any of the
7 foregoing; and (iv) any individual or entity which could be jointly liable with
8 any of the foregoing under Labor Code section 558.1 or otherwise. (§1.40)

- 9 • The named Plaintiffs will also provide a general release and a waiver of the
10 protections of Cal. Civ. Code §1542. (§6.1)
- 11 • The releases are effective on the date when Defendant fully funds the entire
12 Gross Settlement Amount, which will occur no later than 30 days after the
13 Effective Date. (§4.3)

14 15 **D. SETTLEMENT ADMINISTRATION**

- 16 • The proposed Settlement Administrator is CPT Group, Inc. (§1.2), which has
17 provided evidence that no counsel are affiliated with it and that it has adequate
18 procedures in place to safeguard the data and funds to be entrusted to it.
19 (Declaration of Julie Green)
- 20 • Settlement administration costs are estimated to be \$15,000 (§3.2.3).
- 21 • Notice: The manner of giving notice is described below.
- 22 • "Response Deadline" means 45 days after the Administrator mails Notice to Class
23 Members and Aggrieved Employees, and shall be the last date on which Class
24 Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement,
25 or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to

1 whom Notice Packets are resent after having been returned undeliverable to the
2 Administrator shall have an additional 14 calendar days beyond the Response
3 Deadline has expired. (§1.42) The same deadline applies to the submission of
4 workweek disputes. (§8.6)

- 5 ○ Non-Participating Class Members who are Aggrieved Employees are
6 deemed to release the claims identified in Paragraph 6.3 of this Agreement
7 and are eligible for an Individual PAGA Payment irrespective of their
8 submission of a Request for Exclusion. (§8.5.4)
- 9 ○ If the number of valid Requests for Exclusion identified in the Exclusion
10 List exceeds 5% of the total of all Class Members, Defendant may, but is
11 not obligated, elect to withdraw from the Settlement. (§10)
- 12 • Notice of Final Judgment will be posted on the Settlement Administrator's website
13 (§8.8.1).

14 15 **III. SETTLEMENT STANDARDS AND PROCEDURE**

16 California Rules of Court, rule 3.769(a) provides: "A settlement or compromise
17 of an entire class action, or of a cause of action in a class action, or as to a party,
18 requires the approval of the court after hearing." "Any party to a settlement agreement
19 may serve and file a written notice of motion for preliminary approval of the settlement.
20 The settlement agreement and proposed notice to class members must be filed with the
21 motion, and the proposed order must be lodged with the motion." See Cal. Rules of
22 Court, rule 3.769(c).

23 "In a class action lawsuit, the court undertakes the responsibility to assess
24 fairness in order to prevent fraud, collusion or unfairness to the class, the settlement or
25 dismissal of a class action. The purpose of the requirement [of court review] is the

1 protection of those class members, including the named plaintiffs, whose rights may not
2 have been given due regard by the negotiating parties.” *Consumer Advocacy Group,*
3 *Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal. App.4th 46, 60 [internal
4 quotation marks omitted]; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224,
5 245, disapproved on another ground in *Hernandez v. Restoration Hardware, Inc.* (2018)
6 4 Cal. 5th 260 (“*Wershba*”), [Court needs to “scrutinize the proposed settlement
7 agreement to the extent necessary to reach a reasoned judgment that the agreement is
8 not the product of fraud or overreaching by, or collusion between, the negotiating
9 parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all
10 concerned.”] [internal quotation marks omitted].

11 “The burden is on the proponent of the settlement to show that it is fair and
12 reasonable. However, “a presumption of fairness exists where: (1) the settlement is
13 reached through arm's-length bargaining; (2) investigation and discovery are sufficient
14 to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
15 litigation; and (4) the percentage of objectors is small.” *Wershba*, 91 Cal. App. 4th at
16 245 [citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802].

17 Notwithstanding an initial presumption of fairness, “the court should not give
18 rubber-stamp approval.” *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th
19 116, 130 (“*Kullar*”). “[W]hen class certification is deferred to the settlement stage, a
20 more careful scrutiny of the fairness of the settlement is required.” *Carter v. City of*
21 *Los Angeles* (2014) 224 Cal.App.4th 808, 819. “To protect the interests of absent class
22 members, the court must independently and objectively analyze the evidence and
23 circumstances before it in order to determine whether the settlement is in the best
24 interests of those whose claims will be extinguished.” *Kullar*, 168 Cal. App. 4th at 130.
25 In that determination, the court should consider factors such as “the strength of

1 plaintiffs' case, the risk, expense, complexity and likely duration of further litigation,
2 the risk of maintaining class action status through trial, the amount offered in
3 settlement, the extent of discovery completed and stage of the proceedings, the
4 experience and views of counsel, the presence of a governmental participant, and the
5 reaction of the class members to the proposed settlement.” *Id.* at 128. “Th[is] list of
6 factors is not exclusive and the court is free to engage in a balancing and weighing of
7 factors depending on the circumstances of each case.” *Wershba*, 91 Cal. App. 4th at
8 245.

9 At the same time, “[a] settlement need not obtain 100 percent of the damages
10 sought in order to be fair and reasonable. Compromise is inherent and necessary in the
11 settlement process. Thus, even if ‘the relief afforded by the proposed settlement is
12 substantially narrower than it would be if the suits were to be successfully litigated,’
13 this is no bar to a class settlement because ‘the public interest may indeed be served by
14 a voluntary settlement in which each side gives ground in the interest of avoiding
15 litigation.’” *Id.* at 250.

16 17 **IV. ANALYSIS OF SETTLEMENT AGREEMENT**

18 19 **A. THERE IS A PRESUMPTION OF FAIRNESS**

20 The settlement is entitled to a presumption of fairness for the following reasons:

21 22 **1. The settlement was reached through arm’s-length bargaining**

23 On September 8, 2022, the parties participated in private mediation before
24 mediator Steve Cerveris, which resulted in settlement. (Marquez Decl. ¶11.)
25

2. The investigation and discovery were sufficient

Class Counsel represents that following the filing of the complaint, the parties exchanged documents and information before mediating. Defendant produced a sampling consisting of all timekeeping and payroll records for all class members from approximately 4 months (randomly selected) of each year in the class period. Defendant also provided documents of their wage and hour policies and practices during the class period and information regarding the total number of current and former employees in its informal discovery responses. (*Id.* at ¶9.) Counsel further represents that they created a damages model to evaluate the realistic range of potential recovery for the class with the assistance of a statistics expert. (*Id.* at ¶20.)

Jarrett Gorlick of Berger Consulting Group, LLC, which provides data and statistical analysis based on timekeeping records and other types of employee data, performed expert analysis for Plaintiff in this matter. (Declaration of Jarrett Gorlick ¶5.) He represents that in comparing the number of shifts in Defendant's sample to the expected number of shifts in the class, the sample appears to comprise 51,491 shifts of the approximately 303,323 shifts in the putative class. At the shift level and based on a 95% confidence interval, this sample leads to about a 0.4% margin of error. (*Id.* at ¶7.) Gorlick further represents that if the sample is considered at the pay period level rather than at the shift level, this sample appears to comprise of 7,372 of the 43,427 total pay periods in the putative class. At the pay period level and based on a 95% confidence level, this sample leads to about a 1.0% margin of error. (*Id.* at ¶8.) Gorlick asserts that a 95% confidence level with a maximum margin of error of 5% is generally accepted as scientifically valid and is well supported in statistics, and that the margins of error he calculated here (0.4% and 1.0%) were far lower than the generally accepted 5% margin of error. (*Id.* at ¶9.)

1 This is sufficient to value the case for settlement purposes.

2
3 **3. Counsel is experienced in similar litigation**

4 Class Counsel represent that they are experienced in class action litigation,
5 including wage and hour class actions. (*Id.* at ¶¶43-52.)
6

7 **4. Percentage of the class objecting**

8 This cannot be determined until the final fairness hearing. Weil & Brown et al.,
9 Cal. Prac. Guide: Civ. Pro. Before Trial (The Rutter Group 2019) ¶ 14:139.18 [“Should
10 the court receive objections to the proposed settlement, it will consider and either sustain
11 or overrule them at the fairness hearing.”].
12

13 **B. THE SETTLEMENT MAY PRELIMINARILY BE CONSIDERED**
14 **FAIR, ADEQUATE, AND REASONABLE**
15

16 Notwithstanding a presumption of fairness, the settlement must be evaluated in its
17 entirety. The evaluation of any settlement requires factoring unknowns. “As the court
18 does when it approves a settlement as in good faith under Code of Civil Procedure
19 section 877.6, the court must at least satisfy itself that the class settlement is within the
20 ‘ballpark’ of reasonableness. See *Tech-Bilt, Inc. v. Woodward-Clyde & Associates* (1985)
21 38 Cal.3d 488, 499–500. While the court is not to try the case, it is ‘called upon to
22 consider and weigh the nature of the claim, the possible defenses, the situation of the
23 parties, and *the exercise of business judgment* in determining whether the proposed
24 settlement is reasonable.’ (*City of Detroit v. Grinnell Corporation, supra*, 495 F.2d at p.
25 462, italics added.)” *Kullar*, 168 Cal.App.4th at 133 (emphasis in original).

1. Amount Offered in Settlement

The most important factor is the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement.” (*Id.* at 130.)

Class Counsel estimated Defendant’s maximum exposure at \$11,543,686 and realistic exposure at \$1,375,527.40, based on the following analysis:

Violation	Maximum Exposure	Realistic Exposure
Unpaid Wages	\$552,897.00	\$276,448.50
Meal Period Violations	\$3,482,397.00	\$348,239.70
Rest Period Violations	\$3,182,423.00	\$318,242.30
Reimbursement Claim	\$27,250	2,7250.00
Waiting Time Penalties	\$764,569.00	\$76,456.90
Wage Statement Penalties	\$1,652,000.00	\$165,200.00
PAGA Penalties	\$1,909,400.00	\$190,940.00
Total	\$11,570,936.00	\$1,378,277.40

(Marquez Decl. ¶¶20-27; Le Decl. ¶2.)

Class Counsel obtained a gross settlement valued at \$750,000. This is approximately 6.5% of Defendant’s maximum exposure and 54.5% of Defendant’s realistic exposure.

2. The Risks of Future Litigation

The case is likely to be expensive and lengthy to try. Procedural hurdles (e.g., motion practice and appeals) are also likely to prolong the litigation as well as any recovery by the class members. Even if a class is certified, there is always a risk of

1 decertification. *Weinstat v. Dentsply Intern., Inc.* (2010) 180 Cal.App.4th 1213, 1226
2 ["Our Supreme Court has recognized that trial courts should retain some flexibility in
3 conducting class actions, which means, under suitable circumstances, entertaining
4 successive motions on certification if the court subsequently discovers that the propriety
5 of a class action is not appropriate."].) Further, the settlement was negotiated and
6 endorsed by Class Counsel who, as indicated above, are experienced in class action
7 litigation. Based upon their investigation and analysis, the attorneys representing
8 Plaintiff and the class are of the opinion that this settlement is fair, reasonable, and
9 adequate. (Marquez Decl. ¶31.)

10 The Court also notes that Plaintiff brings a PAGA claim on behalf of the LWDA,
11 which was sent a copy of the Settlement Agreement on December 12, 2022 and has not
12 yet objected. (Proof of Service attached to Marquez Decl. filed December 12, 2022;
13 Decl. of Le ¶ 21.) Any objection by it will be considered at the final fairness hearing.

14 15 **3. The Releases Are Limited**

16 The Court has reviewed the Releases to be given by the absent class members and
17 the named plaintiffs. The releases, described above, are tailored to the pleadings and
18 release only those claims in the pleadings. There is no general release by the absent
19 class. The named plaintiffs' general releases are appropriate given that each was
20 represented by counsel in its negotiation.

21 22 **4. Conclusion**

23 Class Counsel estimated Defendant's maximum exposure at **\$11,570,936.00** and
24 realistic exposure at \$1,378,277.40. Class Counsel obtained a gross settlement valued at
25 \$750,000. This is approximately 6.5% of Defendant's maximum exposure and 54.5% of

1 Defendant's realistic exposure, which, given the uncertain outcomes, including the
2 potential that the class might not be certified, that liability is a contested issue, and that
3 the full amount of penalties would not necessarily be assessed even if the class is certified
4 and liability found, the settlement is within the "ballpark of reasonableness."

5 6 **C. CONDITIONAL CLASS CERTIFICATION MAY BE GRANTED**

7 A detailed analysis of the elements required for class certification is not required,
8 but it is advisable to review each element when a class is being conditionally certified.

9 *Amchem Products, Inc. v. Winsor* (1997) 521 U.S. 591, 620, 622-627. The party
10 advocating class treatment must demonstrate the existence of an ascertainable and
11 sufficiently numerous class, a well-defined community of interest, and substantial
12 benefits from certification that render proceeding as a class superior to the alternatives."

13 *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021.

14 **1. The Proposed Class is Numerous**

15 There are approximately 545 putative Class Members. (Marquez Decl. ¶20.)
16 Numerosity is established. *Franchise Tax Bd. Limited Liability Corp. Tax Refund*
17 *Cases* (2018) 25 Cal.App.5th 369, 393: stating that the "requirement that there be many
18 parties to a class action is liberally construed," and citing examples wherein classes of
19 as little as 10, *Bowles v. Superior Court* (1955) 44 Cal.2d 574, and 28, *Hebbard v.*
20 *Colgrove* (1972) 28 Cal.App.3d 1017, were upheld).

21 **2. The Proposed Class Is Ascertainable**

22 "A class is ascertainable, as would support certification under statute
23 governing class actions generally, when it is defined in terms of objective
24 characteristics and common transactional facts that make the ultimate identification
25

1 of class members possible when that identification becomes necessary.” *Noel v. Thrifty*
2 *Payless, Inc.* (2019) 7 Cal.5th 955, 961 (*Noel*).

3 The class is defined above. Class Members are ascertainable through
4 Defendant’s records. (Marquez Decl. ¶20.)

5 **3. There Is A Community of Interest**

6 “The community of interest requirement involves three factors: ‘(1) predominant
7 common questions of law or fact; (2) class representatives with claims or defenses typical
8 of the class; and (3) class representatives who can adequately represent the class.’”
9 *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.

10 As to predominant questions of law or fact, Plaintiffs contend that the alleged
11 employment practices at issue are: whether Defendant had legally compliant policies and
12 practices for all hours worked, including overtime wages; whether Defendant had legally
13 compliant policies and practices to provide employees with meal periods; whether
14 Defendant had legally compliant policies and practices authorizing and permitting its
15 employees to take rest periods; whether final payment of wages was untimely and
16 excluded unpaid wages, including meal period premium and rest period premium wages;
17 whether Plaintiff had an improper rounding practice that routinely left employees
18 underpaid; and whether the wage statements were consequently non-compliant. Plaintiffs
19 contend that the factual and legal issues are the same for all of the identified class
20 members, including Plaintiffs, and that all class members are alleged to have suffered
21 from, and seek redress for, the same alleged injuries. (MPA at 19:10-20.)

22 As to typicality, Plaintiffs contend that they are each a former employee of
23 Defendant; as such, they allege that they were subject to the same policies and practices
24 as other similarly situated employees. (MPA at 20:1-3.)

1 As to adequacy, each Plaintiff represents that she has participated in the litigation
2 and is aware of the duties and risks of serving as class representative. (Declaration of
3 Ann Espinoza ¶¶4-5; Declaration of Diana Fontana ¶¶4-5.) As previously stated, Class
4 Counsel have experience in class action litigation.

5 6 **4. Substantial Benefits Exist**

7 Given the relatively small size of the individual claims, a class action is superior to
8 separate actions by the class members.

9 10 **D. THE PROPOSED NOTICE PLAN MEETS THE REQUIREMENTS** 11 **OF DUE PROCESS**

12 The purpose of notice is to provide due process to absent class members. A practical
13 approach is required, in which the circumstances of the case determine what forms of
14 notice will adequately address due process concerns. *Noel*, 7 Cal.5th at 982. California
15 Rules of Court, rule 3.766 (e) provides that in determining the manner of the notice, the
16 court must consider: (1) the interests of the class; (2) the type of relief requested; (3) the
17 stake of the individual class members; (4) the cost of notifying class members; (5) the
18 resources of the parties; (6) the possible prejudice to class members who do not receive
19 notice; and (7) the res judicata effect on class members.

20 **1. Method of class notice**

21 Not later than 15 days after the Court grants Preliminary Approval of the
22 Settlement, Defendant will simultaneously deliver the Class Data to the Administrator,
23 in the form of a Microsoft Excel spreadsheet. (¶4.2) Using best efforts to perform as
24 soon as possible, and in no event later than 14 days after receiving the Class Data, the
25 Administrator will send to all Class Members identified in the Class Data, via first-class

1 United States Postal Service (“USPS”) mail, the Class Notice with Spanish translation.

2 (§8.4.2)

3 Not later than 3 business days after the Administrator’s receipt of any Class
4 Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class
5 Notice using any forwarding address provided by the USPS. If the USPS does not
6 provide a forwarding address, the Administrator shall conduct a Class Member Address
7 Search, and re-mail the Class Notice to the most current address obtained. The
8 Administrator has no obligation to make further attempts to locate or send Class Notice
9 to Class Members whose Class Notice is returned by the USPS a second time. (§8.4.3)

10 The deadlines for Class Members’ written objections, Challenges to Workweeks
11 and/or Pay Periods, and Requests for Exclusion will be extended an additional 14 days
12 beyond the 45 days otherwise provided in the Class Notice for all Class Members
13 whose notice is re-mailed. The Administrator will inform the Class Member of the
14 extended deadline with the re-mailed Class Notice. (§8.4.4)

15 **2. Content of class notice.**

16 A copy of the proposed class notice is attached to the Settlement Agreement as
17 Exhibit A. The notice includes information such as: a summary of the litigation; the
18 nature of the settlement; the terms of the settlement agreement; the maximum
19 deductions to be made from the gross settlement amount (i.e., attorney fees and costs,
20 the enhancement award, and claims administration costs); the procedures and deadlines
21 for participating in, opting out of, or objecting to, the settlement; the consequences of
22 participating in, opting out of, or objecting to, the settlement; and the date, time, and
23 place of the final approval hearing. See Cal Rules of Court, rule 3.766(d). It is to be
24 given in both English and Spanish (§1.11).

25 **3. Settlement Administration Costs**

1 Settlement administration costs are estimated at **\$15,000**, including the cost of
2 notice (§3.2.3). Prior to the time of the final fairness hearing, the settlement
3 administrator must submit a declaration attesting to the total costs incurred and
4 anticipated to be incurred to finalize the settlement for approval by the Court.

6 **E. ATTORNEY FEES AND COSTS**

7 California Rule of Court, rule 3.769(b) states: “Any agreement, express or
8 implied, that has been entered into with respect to the payment of attorney fees or the
9 submission of an application for the approval of attorney fees must be set forth in full in
10 any application for approval of the dismissal or settlement of an action that has been
11 certified as a class action.”

12 Ultimately, the award of attorney fees is made by the court at the fairness
13 hearing, using the lodestar method with a multiplier, if appropriate. *PLCM Group, Inc.*
14 *v. Drexler* (2000) 22 Cal.4th 1084, 1095-1096; *Ramos v. Countrywide Home Loans, Inc.*
15 (2000) 82 Cal.App.4th 615, 625-626; *Ketchum III v. Moses* (2000) 24 Cal.4th 1122,
16 1132-1136. In common fund cases, the court may use the percentage method. If
17 sufficient information is provided a cross-check against the lodestar may be conducted.
18 *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 503. Despite any
19 agreement by the parties to the contrary, “the court ha[s] an independent right and
20 responsibility to review the attorney fee provision of the settlement agreement and
21 award only so much as it determined reasonable.” *Garabedian v. Los Angeles Cellular*
22 *Telephone Company* (2004) 118 Cal.App.4th 123, 128.

23 The question of class counsel’s entitlement to **\$250,000** (33 1/3%) in attorney
24 fees will be addressed at the final fairness hearing when class counsel brings a noticed
25 motion for attorney fees. If a lodestar analysis is requested class counsel must provide

1 the court with current market tested hourly rate information and billing information so
2 that it can properly apply the lodestar method and must indicate what multiplier (if
3 applicable) is being sought.

4 Class counsel should also be prepared to justify the costs sought (capped at
5 **\$20,000**) by detailing how they were incurred.

6 7 **F. SERVICE AWARDS**

8 The Settlement Agreement provides for a service award of up to **\$10,000 each**
9 for the class representatives. Trial courts should not sanction enhancement awards of
10 thousands of dollars with “nothing more than *pro forma* claims as to ‘countless’ hours
11 expended, ‘potential stigma’ and ‘potential risk.’ Significantly more specificity, in the
12 form of quantification of time and effort expended on the litigation, and in the form of
13 reasoned explanation of financial or other risks incurred by the named plaintiffs, is
14 required in order for the trial court to conclude that an enhancement was ‘necessary to
15 induce [the named plaintiff] to participate in the suit’” *Clark v. American*
16 *Residential Services LLC* (2009) 175 Cal.App.4th 785, 806-807, italics and ellipsis in
17 original.

18 The Court will decide the issue of the enhancement award at the time of final
19 approval.

20 21 **V. CONCLUSION AND ORDER**

22 The Court hereby:

- 23 (1) Grants preliminary approval of the settlement as fair, adequate, and
24 reasonable;
25 (2) Grants conditional class certification;

1 (3) Appoints Ann Espinoza and Diana Fontana as Class Representatives;

2 (4) Appoints Wilshire Law Firm as Class Counsel;

3 (5) Appoints CPT Group, Inc. as Settlement Administrator;

4 (6) Approves the proposed notice plan; and

5 (7) Approves the proposed schedule of settlement proceedings as follows:

- 6 • Preliminary approval hearing: May 25, 2023
- 7 • Deadline for Defendant to provide class list to settlement administrator: June 9,
- 8 2023 (within 15 calendar days from preliminary approval)
- 9 • Deadline for settlement administrator to mail notices: June 23, 2023 (within 14
- 10 calendar days from receipt of the class list)
- 11 • Deadline for class members to opt out: August 7, 2023 (45 calendar days from
- 12 the initial mailing of the Notice Packets)
- 13 • Deadline for class members to object: August 7, 2023 (45 calendar days from the
- 14 initial mailing of the Notice Packets)
- 15 • Deadline for class counsel to file motion for final approval:
- 16 7/7, 2023 (16 court days prior to final fairness hearing)
- 17 • Final fairness hearing: 10/2, 2023, at 9:10.

18
19 Dated:

5/24/2023

Maren E. Nelson

MAREN E. NELSON

Judge of the Superior Court