

**FILED**  
Superior Court of California  
County of Los Angeles

**JUL 14 2023**

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

**SUPERIOR COURT OF CALIFORNIA**  
**COUNTY OF LOS ANGELES**

GERARDO SANCHEZ, as an individual  
and on behalf of all others similarly situated,


Plaintiff,

v.

DUTTON HOME SERVICES, LLC, a  
California corporation; and DOES 1 through  
100,

Defendants.

Case No.: 22STCV01834

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

Date: July 13, 2023  
Time: 9:00 a.m.  
Dept.: SSC-17

**I. BACKGROUND**

Plaintiff Gerardo Sanchez sues his former employer, Defendant Dutton Home Services, LLC, for alleged wage and hour violations. Defendant operates a plumbing repair service in Los Angeles. Plaintiff seeks to represent a class of Defendant's current and former non-exempt employees.

1 On January 14, 2022, Plaintiff filed a complaint against Defendant alleging  
2 causes of action for: (1) failure to pay all overtime wages (Labor Code §§ 204, 510,  
3 558, 1194, 1198); (2) minimum wage violations (Labor Code §§ 1182.12, 1194, 1194.2,  
4 1197); (3) meal period violations (Labor Code §§ 226.7, 512, 558); (4) rest period  
5 violations (Labor Code §§ 226.7, 516, 558); (5) failure to reimburse necessary business  
6 expenses (Labor Code §§ 2802, 2804); (6) wage statement violations (Labor Code §  
7 226 et seq.); (7) waiting time penalties (Labor Code §§ 201-203); and (8) unfair  
8 competition (Bus. & Prof. Code § 17200 et seq.). On March 21, 2022, Plaintiff filed  
9 the operative First Amended Complaint adding a cause of action for civil penalties  
10 under the Private Attorneys General Act (Labor Code §§ 2698, et seq).

11 On August 24, 2022, the parties participated in a mediation with Louis Marlin,  
12 Esq., which resulted in a settlement. The terms were finalized in the Class Action and  
13 PAGA Settlement Agreement, a copy of which was attached to the Declaration of  
14 Fletcher W. Schmidt (“Schmidt Decl.”) filed January 25, 2023 as Exhibit 1.

15 The settlement was preliminarily reviewed and a “checklist” issued May 22,  
16 2023. In response thereto the parties executed an amended settlement agreement  
17 attached to the Supplemental Declaration of Andrew Rowbotham filed June 20, 2023.  
18 All references below are to that Agreement.

19 For the reasons set forth below, the Court preliminarily grants approval for the  
20 settlement.

## 21 **II. THE TERMS OF THE SETTLEMENT**

### 22 **A. SETTLEMENT CLASS AND RELATED DEFINITIONS**

23 "Class" means “all current and former non-exempt employees of Defendant  
24 and/or its predecessor, Dutton Plumbing, Inc., in California who worked at any time  
25

1 between January 14, 2018, and the date of preliminary approval or November 22, 2022,  
2 whichever is sooner.” (§1.5)

3 "Class Period" means the period from January 14, 2018, and the date of  
4 preliminary approval or November 22, 2022, whichever is sooner. (§1.12)

5 "PAGA Group Members" means "all current and former non-exempt employees  
6 of Defendant in California who worked at any time between January 14, 2021, and the  
7 date of preliminary approval or November 22, 2022, whichever is sooner.” (§1.4)

8 "PAGA Period" means the period from January 14, 2021, and the date of  
9 preliminary approval, or November 22, 2022, whichever is sooner. (§1.31)

10 "Participating Class Member" means a Class Member who does not submit a  
11 valid and timely Request for Exclusion. (§1.35)

## 12

### 13 **B. THE MONETARY TERMS OF SETTLEMENT**

14 The essential monetary terms are as follows:

- 15 • The Gross Settlement Amount ("GSA") is **\$450,000** (§3.1). This includes  
16 payment of a PAGA penalty of **\$50,000** to be paid 75% to the LWDA (\$37,500)  
17 and 25% to the Aggrieved Employees (\$12,500) (§3.2.5).

- 18 ○ Escalator Clause: Based on its records, Defendant estimates Class  
19 Members collectively worked a total of 15,205 Workweeks as of August  
20 24, 2022. If the actual number of Workweeks worked as of August 24,  
21 2022, is greater than 10% of this figure (i.e., if there are 16,726 or more  
22 Workweeks worked as of August 24, 2022), Defendant agrees to increase  
23 the Gross Settlement Amount on a proportional basis over the 10%  
24 threshold (i.e., if there was 15% increase in the number Workweeks  
25

1 worked, Defendant would increase the Gross Settlement Amount by 5%).

2 (¶9)

- 3 • The Net Settlement Amount (“Net”) (\$206,250) is the GSA less:
  - 4 ○ Up to \$150,000 (33 1/3%) for attorney fees (¶3.2.2);
  - 5 ○ Up to \$30,000 for attorney costs (*Ibid.*);
  - 6 ○ Up to \$5,000 for a service award to the proposed class representative
  - 7 (¶3.2.1); and
  - 8 ○ Up to \$8,750 for settlement administration costs (¶3.2.3).
- 9 • Defendant will separately pay any and all employer payroll taxes owed on the
- 10 Wage Portions of the Individual Class Payments (¶3.1).
- 11 • Assuming the Court approves all maximum requested deductions, approximately
- 12 \$206,250 will be available for automatic distribution to participating class
- 13 members. Assuming full participation, the average settlement share will be
- 14 approximately \$750. ( $\$206,250 \text{ Net} \div 275 \text{ class members} = \$750$ ). In addition,
- 15 each PAGA Group Member will receive a portion of the PAGA penalty,
- 16 estimated to be \$84.45 per PAGA Group Member. ( $\$12,500 \text{ or } 25\% \text{ of } \$50,000$
- 17  $\text{PAGA penalty} \div 148 \text{ PAGA Group Members} = \$84.45$ ).
- 18 • There is no Claim Requirement (¶3.1).
- 19 • The settlement is not reversionary (¶3.1).
- 20 • Individual Settlement Share Calculation: Each Participating Class Member’s
- 21 Individual Class Payment will be calculated by (a) dividing the Net Settlement
- 22 Amount by the total number of Workweeks worked by all Participating Class
- 23 Members during the Class Period and (b) multiplying the result by each
- 24 Participating Class Member's Workweeks. (¶3.2.4) Non-Participating Class
- 25 Members will not receive any Individual Class Payments. The Administrator

1 will retain amounts equal to their Individual Class Payments in the Net  
2 Settlement Amount for distribution to Participating Class Members on a pro rata  
3 basis. (§3.2.4.2)

- 4 • **PAGA Payment Calculation:** The Administrator will calculate each Individual  
5 PAGA Payment by (a) dividing the amount of the PAGA Group Members' 25%  
6 share of Gross PAGA Payment (\$12,500.00) by the total number of PAGA  
7 Period Pay Periods worked by all PAGA Group Members during the PAGA  
8 Period and (b) multiplying the result by each Aggrieved Employee's PAGA  
9 Period Pay Periods. (§3.2.5.1)
- 10 • **Tax Withholdings:** Each Participating Class Member's Individual Class Payment  
11 will be allocated as 1/3 to wages; 2/3 to interest and penalties (§3.2.4.1). The  
12 Administrator will report the Individual PAGA Payments on IRS 1099 Forms.  
13 (§3.2.5.2)
- 14 • **Funding of Settlement:** Defendant shall fully fund the Gross Settlement Amount,  
15 and also fund the amounts necessary to fully pay Defendant's share of payroll  
16 taxes by transmitting the funds to the Administrator no later than thirty (30) days  
17 after the Effective Date. (§4.3)
- 18 • **Distribution:** Within ten (10) business days after Defendants funds the Gross  
19 Settlement Amount, the Administrator will mail checks for all Individual Class  
20 Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the  
21 Administration Expenses Payment, the Class Counsel Fees Payment, the Class  
22 Counsel Litigation Expenses Payment, and the Class Representative Service  
23 Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel  
24 Litigation Expenses Payment and the Class Representative Service Payment  
25

1 shall not precede disbursement of Individual Class Payments and Individual  
2 PAGA Payments. (§4.4)

- 3 • **Uncashed Settlement Payment Checks:** The face of each check shall prominently  
4 state the date (180 days after the date of mailing) when the check will be voided.  
5 (§4.4.1) For any Class Member whose Individual Class Payment check or  
6 Individual PAGA Payment check is uncashed and cancelled after the void date,  
7 the Administrator shall transmit the funds represented by such checks to the  
8 California Controller's Unclaimed Property Fund in the name of the Class  
9 Member thereby leaving no unpaid residue subject to the requirements of  
10 California Code of Civil Procedure Section 384, subd. (b). (§4.4.3)

11  
12 **C. TERMS OF RELEASES**

- 13 • **Releases of Claims:** Effective on the date when Defendant fully funds the entire  
14 Gross Settlement Amount and funds all employer payroll taxes owed on the  
15 Wage Portion of the Individual Class Payments, Plaintiff, Class Members, and  
16 Class Counsel will release claims against all Released Parties as follows: (§6)
- 17 • **Release by Participating Class Members:** All Participating Class Members, on  
18 behalf of themselves and their respective former and present representatives,  
19 agents, attorneys, heirs, administrators, successors, and assigns, release Released  
20 Parties from any and all federal and California state law wage-and-hour claims,  
21 rights, demands, liabilities, and/or causes of action, whether known or unknown,  
22 arising from or related to any and all claims that were asserted or could have  
23 been asserted based on the facts alleged in the Action or Plaintiff's letter to the  
24 LWDA dated January 14, 2022, including, without limitation, statutory,  
25 constitutional, contractual, and/or common law claims for unpaid wages,

1 reimbursements, damages, unpaid costs, penalties, liquidated damages, punitive  
2 damages, interest, attorneys fees, litigation costs, restitution, or equitable relief  
3 that arose during the Class Period. Except as set forth in Section 6.3 of this  
4 Agreement, Participating Class Members do not release any other claims,  
5 including claims for vested benefits, wrongful termination, violation of the Fair  
6 Employment and Housing Act, unemployment insurance, disability, Social  
7 Security, Workers Compensation, or claims based on facts occurring outside the  
8 Class Period. The time period covered by this release will mirror the Class  
9 Period. (§6.2)

- 10 • Release by PAGA Group Members: All PAGA Group Members are deemed to  
11 release, on behalf of themselves and their respective former and present  
12 representatives, agents, attorneys, heirs, administrators, successors, and assigns,  
13 the Released Parties from all claims, demands, rights, liabilities and causes of  
14 action under the PAGA, premised on the facts, claims, causes of action or legal  
15 theories pled in the Operative Complaint in the Action (or Plaintiff's letter to the  
16 LWDA dated January 14, 2022), or which could have been alleged based on the  
17 factual allegations therein, that arose during the PAGA Period. The time period  
18 covered by this release will mirror the PAGA Period. (§6.3)
- 19 • "Released Parties" means: Defendant, its past and present officers, directors,  
20 shareholders, managers, exempt employees, agents, principals, heirs,  
21 representatives, accountants, auditors, consultants, and its respective successors  
22 and predecessors in interest, subsidiaries, affiliates, parents and attorneys,  
23 including, without limitation Dutton Plumbing, Inc. (§1.41)
- 24 • The named Plaintiff will also provide a general release and a waiver of the  
25 protections of Cal. Civ. Code §1542. (§6.1)

- The releases are effective on the date when Defendant fully funds the entire Gross Settlement Amount, which will occur no later than thirty (30) days after the Effective Date. (¶4.3)

#### **D. SETTLEMENT ADMINISTRATION**

- The proposed Settlement Administrator is CPT Group, Inc. (¶1.2), which has provided evidence that no counsel are affiliated with it and that it has adequate procedures in place to safeguard the data and funds to be entrusted to it. (See Declaration of Julie Green.)
- Settlement administration costs are estimated to be \$8,750 (¶3.2.3).
- Notice: The manner of giving notice is described below.
- Opt Out/Objection Dates: "Response Deadline" means sixty (60) calendar days after the Settlement Administrator mails the Notice to the Class Members and the PAGA Group Members, and shall be the last date on which the Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional fourteen (14) calendar days beyond the Response Deadline has expired. (¶1.43) The same deadline applies to the submission of workweek disputes. (¶8.6)
  - Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are PAGA Group Members are deemed to release the claims identified in Paragraph 6.3 of this Agreement and are eligible for an Individual PAGA Payment. (¶8.5.4)



- 1       • Notice of Final Judgment will be posted on the Settlement Administrator’s website  
2       (¶8.8.1).

3  
4   **III.   SETTLEMENT STANDARDS AND PROCEDURE**

5           California Rules of Court, rule 3.769(a) provides: “A settlement or compromise  
6   of an entire class action, or of a cause of action in a class action, or as to a party,  
7   requires the approval of the court after hearing.” “Any party to a settlement agreement  
8   may serve and file a written notice of motion for preliminary approval of the settlement.  
9   The settlement agreement and proposed notice to class members must be filed with the  
10   motion, and the proposed order must be lodged with the motion.” See Cal. Rules of  
11   Court, rule 3.769(c).

12           “In a class action lawsuit, the court undertakes the responsibility to assess  
13   fairness in order to prevent fraud, collusion or unfairness to the class, the settlement or  
14   dismissal of a class action. The purpose of the requirement [of court review] is the  
15   protection of those class members, including the named plaintiffs, whose rights may not  
16   have been given due regard by the negotiating parties.” *Consumer Advocacy Group,*  
17   *Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal. App.4th 46, 60 [internal  
18   quotation marks omitted]; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224,  
19   245, disapproved on another ground in *Hernandez v. Restoration Hardware, Inc.* (2018)  
20   4 Cal. 5th 260 (“*Wershba*”), [Court needs to “scrutinize the proposed settlement  
21   agreement to the extent necessary to reach a reasoned judgment that the agreement is  
22   not the product of fraud or overreaching by, or collusion between, the negotiating  
23   parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all  
24   concerned.”] [internal quotation marks omitted].  
25

1           “The burden is on the proponent of the settlement to show that it is fair and  
2 reasonable. However, “a presumption of fairness exists where: (1) the settlement is  
3 reached through arm's-length bargaining; (2) investigation and discovery are sufficient  
4 to allow counsel and the court to act intelligently; (3) counsel is experienced in similar  
5 litigation; and (4) the percentage of objectors is small.” *Wershba*, 91 Cal. App. 4<sup>th</sup> at  
6 245 [citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802 ].

7           Notwithstanding an initial presumption of fairness, “the court should not give  
8 rubber-stamp approval.” *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th  
9 116, 130 (“*Kullar*”). “[W]hen class certification is deferred to the settlement stage, a  
10 more careful scrutiny of the fairness of the settlement is required.” *Carter v. City of*  
11 *Los Angeles* (2014) 224 Cal.App.4th 808, 819. “To protect the interests of absent class  
12 members, the court must independently and objectively analyze the evidence and  
13 circumstances before it in order to determine whether the settlement is in the best  
14 interests of those whose claims will be extinguished.” *Kullar*, 168 Cal. App. 4<sup>th</sup> at 130.  
15 In that determination, the court should consider factors such as “the strength of  
16 plaintiffs' case, the risk, expense, complexity and likely duration of further litigation,  
17 the risk of maintaining class action status through trial, the amount offered in  
18 settlement, the extent of discovery completed and stage of the proceedings, the  
19 experience and views of counsel, the presence of a governmental participant, and the  
20 reaction of the class members to the proposed settlement.” *Id.* at 128. “Th[is] list of  
21 factors is not exclusive and the court is free to engage in a balancing and weighing of  
22 factors depending on the circumstances of each case.” *Wershba*, 91 Cal. App. 4<sup>th</sup> at  
23 245.

24           At the same time, “[a] settlement need not obtain 100 percent of the damages  
25 sought in order to be fair and reasonable. Compromise is inherent and necessary in the

1 settlement process. Thus, even if ‘the relief afforded by the proposed settlement is  
2 substantially narrower than it would be if the suits were to be successfully litigated,’  
3 this is no bar to a class settlement because ‘the public interest may indeed be served by  
4 a voluntary settlement in which each side gives ground in the interest of avoiding  
5 litigation.’” *Id.* at 250.

6  
7 **IV. ANALYSIS OF SETTLEMENT AGREEMENT**

8  
9 **A. THERE IS A PRESUMPTION OF FAIRNESS**

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

11  
12 **1. The settlement was reached through arm’s-length bargaining**

13 On August 24, 2022, the parties participated in a mediation with Louis Marlin,  
14 Esq. With the help of Mr. Marlin, the parties ultimately reached a class-wide  
15 settlement at the conclusion of mediation. (Schmidt Decl. ¶23.)

16  
17 **2. The investigation and discovery were sufficient**

18 Plaintiff’s counsel represents that in connection with mediation, but prior to  
19 responding to formal written discovery, Defendant provided Plaintiff with timekeeping  
20 and payroll data for 1/3 of the putative class who worked during the Class Period.  
21 Defendant also provided the employee handbook and other relevant policies in effect  
22 during the Class Period. Plaintiff, with the help of an expert, J. Michael Dumond,  
23 Ph.D. Dumond opines the sample had a 8.67% margin of error , assuming a confidence  
24 level of 95%. Dumond Dec. dated June 6, 2023. The expert conducted an analysis of  
25

1 this data and created a damages model to calculate the likely exposure that Defendant  
2 faced on each claim. (Schmidt Dec. at ¶22; Dumond Dec. ¶3.)

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

4  
5 **3. Counsel is experienced in similar litigation**

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

8  
9 **4. Percentage of the class objecting**

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

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

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

1 settlement is reasonable.’ (*City of Detroit v. Grinnell Corporation, supra*, 495 F.2d at p.  
2 462, italics added.)” *Kullar*, 168 Cal.App.4th at 133 (emphasis in original).

3  
4 **1. Amount Offered in Settlement**

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

7 Class Counsel estimated Defendant’s maximum exposure at \$3,219,956 and  
8 discounted exposure at \$540,188, based on the following analysis:

9 Violation	Maximum Exposure	Discounted Exposure
10 Expense Reimbursements	Nominal value	Nominal value
11 Unpaid Wages	\$467,098.00	\$58,387.00
12 Meal Period Violations	\$691,255.00	\$172,814.00
13 Rest Period Violations	\$363,578.00	\$68,171.00
14 Wage Statement Penalties	\$464,400.00	\$116,100.00
15 Waiting Time Penalties	\$761,825.00	\$95,228.00
16 PAGA Penalties	\$471,800.00	\$29,488.00
17 <b>Total</b>	<b>\$3,219,956.00</b>	<b>\$540,188.00</b>

18 (Schmidt Decl. ¶¶10-21.)

19 Class Counsel obtained a gross settlement valued at \$450,000. This is  
20 approximately 14% of Defendant’s maximum exposure and 83.3% of Defendant’s  
21 discounted exposure.

22 //

23 //

24 //

25 //

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

The Court also notes that Plaintiff brings a PAGA claim on behalf of the LWDA, which was sent a copy of the Settlement Agreement on January 25, 2023 and has not yet objected. (Exhibit 3 to Schmidt Decl.) Any objection by it will be considered at the final fairness hearing.

## 3. The Releases Are Limited

The Court has reviewed the Releases to be given by the absent class members and the named plaintiff. The releases, described above, are tailored to the pleadings and release only those claims in the pleadings. There is no general release by the absent class. The named plaintiff’s general release is appropriate given that he was represented by counsel in its negotiation.

1                   **4. Conclusion**

2           Class Counsel estimated Defendant’s maximum exposure at \$3,219,956 and  
3 discounted exposure at \$540,188. Class Counsel obtained a gross settlement valued at  
4 \$450,000. This is approximately 14% of Defendant’s maximum exposure and 83.3% of  
5 Defendant’s discounted exposure which, given the uncertain outcomes, including the  
6 potential that the class might not be certified, that liability is a contested issue, and that  
7 the full amount of penalties would not necessarily be assessed even if the class is certified  
8 and liability found, the settlement is within the “ballpark of reasonableness.”

9  
10                   **C.       CONDITIONAL CLASS CERTIFICATION MAY BE GRANTED**

11           A detailed analysis of the elements required for class certification is not required,  
12 but it is advisable to review each element when a class is being conditionally certified.  
13 *Amchem Products, Inc. v. Winsor* (1997) 521 U.S. 591, 620, 622-627. The party  
14 advocating class treatment must demonstrate the existence of an ascertainable and  
15 sufficiently numerous class, a well-defined community of interest, and substantial  
16 benefits from certification that render proceeding as a class superior to the alternatives.”  
17 *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021.

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

19           There are approximately 275 putative Class Members. (Schmidt Decl. ¶24.)  
20 Numerosity is established. *Franchise Tax Bd. Limited Liability Corp. Tax Refund*  
21 *Cases* (2018) 25 Cal.App.5th 369, 393: stating that the “requirement that there be many  
22 parties to a class action is liberally construed,” and citing examples wherein classes of  
23 as little as 10, *Bowles v. Superior Court* (1955) 44 Cal.2d 574, and 28, *Hebbard v.*  
24 *Colgrove* (1972) 28 Cal.App.3d 1017, were upheld).

25           //



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

2                   “A class is ascertainable, as would support certification under statute  
3 governing class actions generally, when it is defined in terms of objective  
4 characteristics and common transactional facts that make the ultimate identification  
5 of class members possible when that identification becomes necessary.” *Noel v. Thrifty*  
6 *Payless, Inc.* (2019) 7 Cal.5th 955, 961 (*Noel*).

7                   The class is defined above. Class Members are ascertainable through  
8 Defendant’s records. (Schmidt Decl. ¶24.)

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

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

14                  As to predominant questions of law or fact, Plaintiff contends that his claims are  
15 predicated on uniform company policies, principally revolving around Defendant’s  
16 overtime and minimum wage policies and practices, meal and rest period policies and  
17 practices, as well as expense reimbursement policies, which are types of claims that are  
18 commonly held to be proper for class certification. (MPA at 18:8-18.)

19                  As to typicality, Plaintiff asserts that like other Settlement Class members, he was  
20 employed by Defendant in California during the Class Period. Plaintiff asserts that he  
21 was required to clock out for a meal period when one was not actually provided and was  
22 thus not provided a full 30-minute meal periods and was not compensated for such work,  
23 was also not authorized and permitted to take any rest periods during his shift, and was  
24 therefore impacted by the same challenged policies that allegedly injured the Settlement  
25



1 Class as a whole and subject to the same defenses forwarded by Defendant as to the  
2 Settlement Class. (*Id.* at 18:20-19:2.)

3 As to adequacy, Plaintiff represents that he has participated in the litigation and is  
4 aware of the risks and duties of serving as class representative. (See Declaration of  
5 Gerardo Sanchez.) As previously stated, Class Counsel have experience in class action  
6 litigation.

#### 7 8 **4. Substantial Benefits Exist**

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

#### 11 12 **D. THE PROPOSED NOTICE PLAN MEETS THE REQUIREMENTS 13 OF DUE PROCESS**

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

#### 22 **1. Method of class notice**

23 Not later than ten (10) business days after the Court grants Preliminary Approval  
24 of the Settlement, Defendant will simultaneously deliver the Class Data to the  
25 Administrator, in the form of a Microsoft Excel spreadsheet. (¶4.2) Using best efforts to

1 perform as soon as possible, and in no event later than ten (10) business days after  
2 receiving the Class Data, the Administrator will send to all Class Members identified in  
3 the Class Data, via first-class United States Postal Service ("USPS") mail, the Class  
4 Notice with Spanish translation (if applicable). Before mailing Class Notices, the  
5 Administrator shall update Class Member addresses using the National Change of  
6 Address database. (§8.4.2)

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

14 The deadlines for Class Members' written objections, Challenges to Workweeks  
15 and/or Pay Periods, and Requests for Exclusion will be extended an additional fourteen  
16 (14) days beyond the sixty (60) days otherwise provided in the Class Notice for all  
17 Class Members whose notice is re-mailed. The Administrator will inform the Class  
18 Member of the extended deadline with the re-mailed Class Notice. (§8.4.4)

## 19 **2. Content of class notice.**

20 A copy of the proposed class notice is attached to the Settlement Agreement as  
21 Exhibit A. The notice includes information such as: a summary of the litigation; the  
22 nature of the settlement; the terms of the settlement agreement; the maximum  
23 deductions to be made from the gross settlement amount (i.e., attorney fees and costs,  
24 the enhancement award, and claims administration costs); the procedures and deadlines  
25 for participating in, opting out of, or objecting to, the settlement; the consequences of

1 participating in, opting out of, or objecting to, the settlement; and the date, time, and  
2 place of the final approval hearing. See Cal Rules of Court, rule 3.766(d). It is to be  
3 given in both English and Spanish (§8.4.2).

### 4 **3. Settlement Administration Costs**

5 Settlement administration costs are capped at **\$8,750**, including the cost of notice  
6 (§3.2.3). Prior to the time of the final fairness hearing, the settlement administrator  
7 must submit a declaration attesting to the total costs incurred and anticipated to be  
8 incurred to finalize the settlement for approval by the Court.

### 9 10 **E. ATTORNEY FEES AND COSTS**

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

16 Ultimately, the award of attorney fees is made by the court at the fairness  
17 hearing, using the lodestar method with a multiplier, if appropriate. *PLCM Group, Inc.*  
18 *v. Drexler* (2000) 22 Cal.4<sup>th</sup> 1084, 1095-1096; *Ramos v. Countrywide Home Loans, Inc.*  
19 (2000) 82 Cal.App.4<sup>th</sup> 615, 625-626; *Ketchum III v. Moses* (2000) 24 Cal.4<sup>th</sup> 1122,  
20 1132-1136. In common fund cases, the court may use the percentage method. If  
21 sufficient information is provided a cross-check against the lodestar may be conducted.  
22 *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5<sup>th</sup> 480, 503. Despite any  
23 agreement by the parties to the contrary, “the court ha[s] an independent right and  
24 responsibility to review the attorney fee provision of the settlement agreement and  
25

1 award only so much as it determined reasonable.” *Garabedian v. Los Angeles Cellular*  
2 *Telephone Company* (2004) 118 Cal.App.4<sup>th</sup> 123, 128.

3 The question of class counsel’s entitlement to **\$150,000** (33 1/3%) in attorney  
4 fees will be addressed at the final fairness hearing when class counsel brings a noticed  
5 motion for attorney fees. If a lodestar analysis is requested class counsel must provide  
6 the court with current market tested hourly rate information and billing information so  
7 that it can properly apply the lodestar method and must indicate what multiplier (if  
8 applicable) is being sought.

9 Class counsel should also be prepared to justify the costs sought (capped at  
10 **\$30,000**) by detailing how they were incurred.

#### 11

12 **F. SERVICE AWARD**

13 The Settlement Agreement provides for a service award of up to **\$5,000** for the  
14 class representative (§3.2.1). Trial courts should not sanction enhancement awards of  
15 thousands of dollars with “nothing more than *pro forma* claims as to ‘countless’ hours  
16 expended, ‘potential stigma’ and ‘potential risk.’ Significantly more specificity, in the  
17 form of quantification of time and effort expended on the litigation, and in the form of  
18 reasoned explanation of financial or other risks incurred by the named plaintiffs, is  
19 required in order for the trial court to conclude that an enhancement was ‘necessary to  
20 induce [the named plaintiff] to participate in the suit . . . .’” *Clark v. American*  
21 *Residential Services LLC* (2009) 175 Cal.App.4<sup>th</sup> 785, 806-807, italics and ellipsis in  
22 original.

23 The Court will decide the issue of the enhancement award at the time of final  
24 approval.

1 **V. CONCLUSION AND ORDER**

2 The Court hereby:

3 (1) Grants preliminary approval of the settlement as fair, adequate, and  
4 reasonable;

5 (2) Grants conditional class certification;

6 (3) Appoints Gerardo Sanchez as Class Representative;

7 (4) Appoints Haines Law Group, APC as Class Counsel;

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

9 (6) Approves the proposed notice plan; and

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

- 11 • Preliminary approval hearing: July ~~13~~<sup>14</sup>, 2023
- 12 • Deadline for Defendant to provide class list to settlement administrator: July ~~27~~<sup>28</sup>,  
13 2023 (within 10 business days from preliminary approval)
- 14 • Deadline for settlement administrator to mail notices: August ~~10~~<sup>11</sup>, 2023 (within  
15 10 business days after receiving the Class Data)
- 16 • Deadline for class members to opt out: ~~September 25~~<sup>October 10</sup>, 2023 (60 calendar days  
17 from the initial mailing of the Notice Packets)
- 18 • Deadline for class members to object: ~~September 25~~<sup>October 10</sup>, 2023 (60 calendar days  
19 from the initial mailing of the Notice Packets)
- 20 • Deadline for class counsel to file motion for final approval:  
21 \_\_\_\_\_, 2023 (16 court days prior to final fairness hearing)
- 22 • Final fairness hearing: \_\_\_\_\_, 2023, at 10:00

23 Dated: 7/14/23

Maren E. Nelson

24 MAREN E. NELSON

25 Judge of the Superior Court