



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

**MAY 20 2021**

Sherri R. Cary, ..... Officer/Clerk  
*Alfredo Morales* deputy  
**ALFREDO MORALES**

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

DAVID CONTRERAS, on behalf of  
himself, all others similarly situated,

Plaintiff,

v.

HTX SERVICES LLC, a Delaware limited  
liability company; HTX HOLDINGS LLC,  
a Delaware limited liability company; and  
DOES 1 through 50, inclusive,

Defendants.

Case No.: 19STCV43405

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

Date: May 20, 2021  
Dept.: SSC-7  
Time: 11:00 a.m.

**I. BACKGROUND**

Plaintiff David Contreras sues his former employer, Defendants HTx Services LLC and HTx Holdings LLC (collectively “Defendants”) for alleged wage and hour violations. Defendants are providers of ATM and IT Infrastructure services. Plaintiff seeks to represent a class of Defendants’ current and former non-exempt employees.

1 On December 4, 2019, Plaintiff filed the Class Action Complaint in the Los  
2 Angeles Superior Court against Defendants on behalf of himself and others similarly  
3 situated, alleging causes of action on a class-wide basis for violations of the Labor Code  
4 and Business and Professions Code. On March 10, 2020, Plaintiff filed the First  
5 Amended Complaint adding a claim under the Labor Code Private Attorneys General  
6 Act of 2004, Labor Code §§ 2698, et seq. (“PAGA”). Plaintiff subsequently filed the  
7 Second Amended Complaint on February 9, 2021, and Third Amended Complaint on  
8 February 25, 2021. The operative Third Amended Complaint states the following  
9 causes of action: (1) Failure to Pay All Wages Earned for All Hours Worked (Lab.  
10 Code §§ 510, 1194, 1197, and 1198); (2) Failure to Provide Rest Breaks (Lab. Code §§  
11 226.7 and 1198); (3) Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512 and  
12 1198); (4) Failure to Indemnify (Lab. Code §§ 1198 and 2802); (5) Wage Statement  
13 Penalties (Lab. Code §§ 226 and 226.2); (6) Waiting Time Penalties (Lab. Code §§  
14 201-203); (7) Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.); and (8) Civil  
15 Penalties under PAGA.

16 On July 2, 2020, the Parties attended a mediation session with Steve Pearl, Esq.,  
17 which did not result in a settlement. With the continued assistance of Mr. Pearl, the  
18 Parties reached a settlement on August 31, 2020. The terms are finalized in the *Joint*  
19 *Stipulation of Class Action Settlement* (“Settlement Agreement”), a copy of which was  
20 filed with the Court.

21 On March 1, 2021, the Court issued a checklist of issues regarding deficiencies  
22 in the Settlement Agreement. In response, the parties filed supplemental briefing,  
23 including the First Amended Settlement Agreement attached to the Supplemental  
24 Declaration of David Spivak as Exhibit 16.

1 On May 13, 2021, the Court issued a tentative ruling proposing to grant  
2 preliminary approval for the settlement on condition that the parties address the  
3 following:

- 4 1. Remove the conclusive presumption that notice has been received if not  
5 returned within 30 days of mailing. (See Settlement Agreement at 10:25-26.)  
6 Efforts to locate updated addresses for returned notices should continue  
7 throughout the 60-day notice period.
- 8 2. Provide an extended response deadline for Class Members who receive re-  
9 mailed Notices.
- 10 3. Remind Class Members in bold print to keep the Settlement Administrator  
11 advised of any change of address.
- 12 4. How will notice of final judgment be given to the class? (Cal. Rules of Court,  
13 rule 3.771(b)) (e.g. Posted on claims administrator’s website.)
- 14 5. Provide information regarding any fee splitting agreement and whether the  
15 client has given written approval. (*Mark v. Spencer* (2008) 166 Cal.App.4th  
16 219; Rules Prof. Conduct, rule 1.5.1; Cal. Rules of Court, rule 3.769.)

17 On May 19, 2021, the parties filed supplemental papers addressing each of these  
18 conditions. The Court therefore GRANTS approval.

19  
20 **II. THE TERMS OF THE SETTLEMENT**

21 **A. SETTLEMENT CLASS AND RELATED DEFINITIONS**

22 “Class” or “Class Members” means all current and former non-exempt, hourly-  
23 paid delivery service and field service employees of Defendants in California during the  
24 Class Period. “Class Member” means a single, non-exempt employee who worked for  
25 Defendants in California during the Class Period. (Settlement Agreement at 2:13-16.)

1 “Class Period” means the time from December 4, 2015 through December 31,  
2 2020. (2:20.)

3 “PAGA Members” means all current and former non-exempt, hourly-paid  
4 delivery service and field service employees of Defendants in California during the  
5 PAGA Period. “PAGA Member” means a single, non-exempt employee who worked  
6 for Defendants in California during the PAGA Period. (3:23-26.)

7 “PAGA Period” means the time from December 4, 2018 through December 31,  
8 2020. (3:27.)

## 9 10 **B. THE MONETARY TERMS OF SETTLEMENT**

11 The essential monetary terms are as follows:

12 The Gross Settlement Amount (“GSA”) is **\$195,000** (6:7). This includes payment  
13 of a PAGA penalty of **\$5,000** to be paid 75% to the LWDA (\$3,750) and 25% to the  
14 Aggrieved Employees (\$1,250) (6:15-17);

15 The Net Settlement Amount (“Net”) (**\$91,000**) is the GSA less:

- 16 ○ Up to **\$65,000** (33 1/3%) for attorney fees (6:11-13);
- 17 ○ Up to **\$15,000** for attorney costs (*Ibid.*);
- 18 ○ Up to **\$15,000** for a service award to the proposed class representative  
19 (6:14-15); and
- 20 ○ Estimated **\$4,000** for settlement administration costs (6:14).

- 21 ● Defendants will be responsible for paying their share of the payroll taxes and  
22 they will not be deducted from the Gross or Net Settlement Amount. (6:19-21.)
- 23 ● Assuming the Court approves all maximum requested deductions, approximately  
24 \$91,000 will be available for automatic distribution to participating class  
25 members. Assuming full participation, the average settlement share will be

1 approximately \$1,318.84. ( $\$91,000 \text{ Net} \div 69 \text{ class members} = \$1,318.84$ ). In  
2 addition, each class member will receive a portion of the PAGA penalty,  
3 estimated to be \$18.12 per class member. ( $\$1,250 \text{ or } 25\% \text{ of } \$5,000 \text{ PAGA}$   
4  $\text{penalty} \div 69 \text{ class members} = \$18.12$ .)

- 5 • There is no Claim Requirement. (Notice pg. 2.)
- 6 • The settlement is not reversionary. (6:9-10.)
- 7 • Individual Settlement Share Calculation: The Settlement Administrator will  
8 calculate the individual settlement payments to Class Members and PAGA  
9 Members by taking these steps: (14:27-28.)
  - 10 ○ For each Class Member, the Settlement Administrator shall determine the  
11 number or portion of Eligible Workweeks worked during the Class  
12 Period. Partial weeks will be rounded up to the nearest full week. The  
13 sum of the Eligible Workweeks worked by all Class Members shall be the  
14 “Total Workweeks.” The Net Settlement Amount will then be divided by  
15 the Total Workweeks. The resulting figure will be the “Workweek Dollar  
16 Value.” The Settlement Administrator shall then multiply the number of  
17 Eligible Workweeks worked by each Class Member during the Class  
18 Period by the Workweek Dollar Value. The resulting figure shall be the  
19 “Gross Allocated Amount.” (15:1-8.)
  - 20 ○ After the notice process and prior to the Final Approval Hearing, the  
21 Gross Allocated Amount will be adjusted revised to account for Opt-Outs.  
22 Those persons who submit an Opt-Out shall still receive a share of the  
23 settlement amount allocated for PAGA based upon their workweeks  
24 worked. This will be referred to as the “Final Workweek Dollar Value.”  
25 The adjusted Final Workweek Dollar Value will be used to calculate final

1 individual payouts to Class Members, subject to Court approval. (15:9-  
2 14.)

- 3 • Tax Withholdings: 33 1/3% as wages, 33 1/3% for interest, 44 1/3% for  
4 penalties. (15:15-16.)
- 5 • Uncashed Settlement Payment Checks: If any settlement check(s) remains  
6 uncashed after 180 days from issuance, the Settlement Administrator shall  
7 transfer the value of the uncashed checks, plus any interest that has accrued  
8 thereon, to the State Controller's Office — Unclaimed Property Fund, under the  
9 unclaimed property laws in the name of the Class Member. (15:26-16:1.)

10  
11 **C. TERMS OF RELEASES**

- 12 • Plaintiff and Class Members will be deemed to have released the Released  
13 Parties of and from all of the Released Class Claims during the Class Period on  
14 the date the individual and proportionate payment from the Net Settlement  
15 Amount is made to each Class Member. These claims include all claims alleged  
16 or could have been alleged in the Third Amended Complaint during the Class  
17 Period, including but not limited to all claims under Labor Code sections 201,  
18 202, 203, 204, 204.1, 204.2, 210, 226, 226(a), 226(e), 510, 558, 1174, 1174.5,  
19 1194, 1197, 1197.1, 1198, 2699, 2699(a), 2699(f), 2699(g), 2699.3, 2802,  
20 Industrial Welfare Commission Order No. 4-2001 and other applicable Wage  
21 Orders, Business and Professions Code sections 17200 et seq. and 17203, Code  
22 of Civil Procedure section 1021.5, and all claims for violation of PAGA and all  
23 related claims for penalties, to the extent such claims are predicated on the other  
24 claims released herein, during the Class Period. These claims further include  
25 without limitation: failure to pay all wages earned for all hours worked including

1 minimum wages and overtime wages, failure to provide accurate written wage  
2 statements, waiting time penalties, unfair competition violations, failure to pay  
3 for all hours worked at the correct rates of pay, failure to timely pay wages,  
4 failure to timely pay wages upon termination, failure to maintain accurate  
5 employment records, failure to pay overtime, meal period violations and claims  
6 for meal period premium pay, rest period violations and claims for rest period  
7 premium pay, failure to reimburse necessary business expenses, damages,  
8 unpaid costs, penalties, premium pay, liquidated damages, interest, attorney fees,  
9 litigation costs, restitution, or equitable relief, which Plaintiff, the Class and any  
10 Class Members had, or may claim to have, against the Released Parties, that  
11 were alleged or could have been alleged in the Third Amended Complaint during  
12 the Class Period. (17:7-27.)

- 13 ○ “Released Class Claims” means all claims for wages, including but not  
14 limited to failure to pay all wages earned for all hours worked including  
15 minimum wages and overtime wages, failure to provide accurate written  
16 wage statements, waiting time penalties, unfair competition violations,  
17 failure to pay for all hours worked at the correct rates of pay, failure to  
18 timely pay wages, failure to timely pay wages upon termination, failure to  
19 maintain accurate employment records, failure to pay overtime, failure to  
20 provide meal periods, meal period violations and claims for meal period  
21 premium pay, failure to provide rest periods, rest period violations and  
22 claims for rest period premium pay, failure to reimburse necessary  
23 business expenses, damages, unpaid costs, penalties, premium pay,  
24 liquidated damages, interest, attorney fees, litigation costs, restitution, or  
25 equitable relief, which Plaintiff, the Class and any Class Members had, or

1 may claim to have, against the Released Parties, that were alleged or  
2 could have been alleged in the Complaint during the Class Period,  
3 including but not limited to all claims under PAGA and Labor Code  
4 sections 201 , 202, 203, 204, 204.1, 204.2, 210, 226, 226(a), 226(e), 510,  
5 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 2699, 2699(a), 2699(f),  
6 2699(g), 2699.3, 2802, Industrial Welfare Commission Order No. 4-2001  
7 and other applicable Wage Orders, Business and Professions Code  
8 sections 17200 et seq. and 17203, Code of Civil Procedure section  
9 1021.5, and all claims for violation of PAGA and all related claims for  
10 penalties, to the extent such claims are predicated on the other claims  
11 released herein, during the Class Period. (4:8-25.)

12 ○ “Complaint” means the Third Amended Complaint, which is the  
13 operative complaint filed in the Action. (2:21-22.)

14 ● Plaintiff and PAGA Members will be deemed to have released the Released  
15 Parties of and from all of the Released PAGA Claims during the PAGA Period  
16 on the date the individual and proportionate payment from the Net Settlement  
17 Amount is made to each PAGA Member. (18:2-4.)

18 ○ “Released PAGA Claims” means all representative PAGA claims for  
19 wages, including but not limited to, failure to pay all wages earned for all  
20 hours worked including minimum wages and overtime wages, failure to  
21 provide accurate written wage statements, waiting time penalties, unfair  
22 competition violations, failure to pay for all hours worked at the correct  
23 rates of pay, failure to timely pay wages, failure to timely pay wages upon  
24 termination, failure to maintain accurate employment records, failure to  
25 pay overtime, failure to provide meal periods, meal period violations and



1 claims for meal period premium pay, failure to provide rest periods, rest  
2 period violations and claims for rest period premium pay, failure to  
3 reimburse necessary business expenses, damages, unpaid costs, penalties,  
4 premium pay, liquidated damages, interest, attorney fees, litigation costs,  
5 restitution, or equitable relief, which Plaintiff, the Class and any Class  
6 Members had, or may claim to have, against the Released Parties, that  
7 were alleged or could have been alleged in the Complaint during the  
8 PAGA Period. Released PAGA Claims include claims for violations of  
9 California Labor Code sections 201, 202, 203, 204, 204.1, 204.2, 210,  
10 226, 226(a), 226(e), 510, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198,  
11 2699, 2699(a), 2699(f), 2699(g), 2699.3, and 2802 during the PAGA  
12 Period. The Released PAGA Claims include the right to bring a future  
13 PAGA action based on the facts and alleged in the Third Amended  
14 Complaint, but do not include the release of a PAGA Member's  
15 individual Labor Code claims against Defendants. (4:28-5:19.)

- 16 • “Released Parties” means HTx Services LLC, HTx Holdings LLC, and all of  
17 their past and present owners, officers, directors, shareholders, employees,  
18 agents, assigns, attorneys, insurers, parent companies, subsidiaries, and affiliates,  
19 and their respective predecessors, successors, and assigns, without limitation.  
20 (5:20-23.)
- 21 • The named Plaintiff will also provide a general release and a waiver of the  
22 protections of Cal. Civ. Code §1542. (18:5-19:3.)
- 23 • The Released Class Claims and Released PAGA Claims for each Class Member  
24 shall become effective once the Settlement Administrator has sent the individual  
25

1 settlement payment from the Gross Settlement Amount to that Class Member  
2 who has not timely submitted his/her Opt-Out. (4:25-27; 5:16-19.)

- 3 ○ Any Class Member who timely submits an Opt-Out request will not be  
4 entitled to recovery under the Settlement, other than his or her respective  
5 proportionate and individual payment from the funds allocated to the  
6 PAGA portion of the Gross Settlement Amount, and will not be bound by  
7 the Settlement, judgment, or order in this Action. (11:24-27.)
- 8 ○ Defendants will fund the Gross Settlement Amount within seven (7)  
9 business days after the Effective Date. (6:9-10.) The settlement payments  
10 to Class Members will be paid within seven (7) business days after the  
11 Effective Date. (15:21-22.)

12  
13 **D. SETTLEMENT ADMINISTRATION**

- 14 ● The proposed Settlement Administrator is CPT Group, Inc., which has provided  
15 evidence that it has adequate procedures in place to safeguard the data and funds  
16 to be entrusted to it. (See Declaration of Julie Green.)
- 17 ● Settlement administration costs are estimated to be \$4,000. (*Id.* at ¶7.)
- 18 ● Notice: The manner of giving notice is described below.
- 19 ● Opt Out/Objection Dates: Class Members will have 60 calendar days from the date  
20 the Notice Packet is first mailed to Opt-Out of the Class (11:7-8), submit a written  
21 objection (13:4-5), or submit a workweek dispute (see Workweek Dispute Form  
22 attached to Notice).
  - 23 ○ If the number of Class Members who submit Opt-Out Forms exceeds 3%,  
24 within 14 days of being notified of this fact by the Class Administrator,  
25 Defendants may rescind the Settlement Agreement. (19:14-16.)

- 1       • Notice of Final Judgment will be posted on the website maintained by the  
2       Administrator.

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 July 2, 2020, the Parties attended a mediation session with Steve Pearl, Esq.,  
14 which did not result in a settlement. With the continued assistance of Mr. Pearl, the  
15 Parties reached a settlement on August 31, 2020. (Declaration of David Spivak  
16 (“Spivak Decl.”) ¶8.)

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

19 Class Counsel represents that in advance of the mediation, and before agreeing  
20 to the terms of the Settlement, the Parties engaged in informal discovery. Through  
21 informal discovery, Defendants produced their employee handbook, copies of  
22 Defendants’ relevant company written policies, timekeeping records, and time and  
23 payroll data for a random sample of putative class members specifically selected by  
24 Plaintiff’s counsel. (*Id.* at ¶9.) This is sufficient to value the case for settlement  
25 purposes.

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

2  
3           Class Counsel represent that are experienced in class action litigation, including  
4 wage and hour class actions. (*Id.* at ¶23.)

5  
6                   **4. Percentage of the class objecting**

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

11  
12                   **B. THE SETTLEMENT MAY PRELIMINARILY BE CONSIDERED**  
13 **FAIR, ADEQUATE, AND REASONABLE**

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

24                   **1. Amount Offered in Settlement**

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

3 Class Counsel estimated Defendant’s maximum exposure at \$1,629,556.41, based  
4 on the following analysis:

Violation	Maximum Exposure
Unpaid Wages	\$192,794.19
Wage Statement Penalties	\$141,150.00
Waiting Time Penalties	\$219,362.22
PAGA Penalties	\$1,076,250.00
<b>Total</b>	<b>\$1,629,556.41</b>

5  
6  
7  
8  
9  
10  
11  
12 (Motion ISO Prelim at 13:11-21.)

13 Class Counsel obtained a gross settlement valued at \$195,000. This is 12% of  
14 Defendant’s maximum exposure.

15  
16 **2. The Risks of Future Litigation**

17 The case is likely to be expensive and lengthy to try. Procedural hurdles (e.g.,  
18 motion practice and appeals) are also likely to prolong the litigation as well as any  
19 recovery by the class members. Even if a class is certified, there is always a risk of  
20 decertification. *Weinstat v. Dentsply Intern., Inc.* (2010) 180 Cal.App.4th 1213, 1226  
21 [“Our Supreme Court has recognized that trial courts should retain some flexibility in  
22 conducting class actions, which means, under suitable circumstances, entertaining  
23 successive motions on certification if the court subsequently discovers that the propriety  
24 of a class action is not appropriate.”].) Further, the settlement was negotiated and  
25 endorsed by Class Counsel who, as indicated above, are experienced in class action

1 litigation. Based upon their investigation and analysis, the attorneys representing  
2 Plaintiff and the class are of the opinion that this settlement is fair, reasonable, and  
3 adequate. (Settlement Agreement at 20:2-5.)

4 The Court also notes that Plaintiff brings a PAGA claim on behalf of the LWDA,  
5 which was sent a copy of the Settlement Agreement on April 27, 2021 and has not yet  
6 objected. (Supp. Spivak Decl., Exhibit 20.) Any objection by it will be considered at the  
7 final fairness hearing.

### 8 **3. The Releases Are Limited**

9  
10 The Court has reviewed the Releases to be given by the absent class members and  
11 the named plaintiffs. The releases, described above, are tailored to the pleadings and  
12 release only those claims in the pleadings. There is no general release by the absent  
13 class. The named plaintiff's general release is appropriate given that he was represented  
14 by counsel in its negotiation.

### 15 **4. Conclusion**

16  
17 Class Counsel estimated Defendant's maximum exposure at \$1,629,556.41. Class  
18 Counsel obtained a gross settlement valued at \$195,000. This is approximately 12% of  
19 Defendant's maximum exposure, which, given the uncertain outcomes, including the  
20 potential that the class might not be certified, that liability is a contested issue, and that  
21 the full amount of penalties would not necessarily be assessed even if the class is certified  
22 and liability found, the settlement is within the "ballpark of reasonableness."

### 23 **C. CONDITIONAL CLASS CERTIFICATION MAY BE GRANTED**

24  
25



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

### 8 **1. The Proposed Class is Numerous**

9 There are 69 putative Class Members. (Spivak Decl. ¶11.) Numerosity is  
10 established. *Franchise Tax Bd. Limited Liability Corp. Tax Refund Cases* (2018) 25  
11 Cal.App.5th 369, 393: stating that the “*requirement that there be many parties to a*  
12 *class action is liberally construed,*” and citing examples wherein classes of as little as  
13 10, *Bowles v. Superior Court* (1955) 44 Cal.2d 574, and 28, *Hebbard v. Colgrove*  
14 (1972) 28 Cal.App.3d 1017, were upheld).

### 15 **2. The Proposed Class Is Ascertainable**

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

21 The class is defined above. Class Members are ascertainable through  
22 Defendants’ records. (Spivak Decl. ¶10.)

### 23 **3. There Is A Community of Interest**

24 “The community of interest requirement involves three factors: ‘(1) predominant  
25 common questions of law or fact; (2) class representatives with claims or defenses typical

1 of the class; and (3) class representatives who can adequately represent the class.’”

2 *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.

3 As to predominant questions of law or fact, Plaintiff asserts all class members  
4 were subject to the same or similar operations and employment policies, practices, and  
5 procedures. The claims arise from Defendants’ alleged uniform policy of failing to  
6 properly account for all time worked and failing to, among other things, properly pay  
7 minimum and overtime wages, provide off-duty meal and rest periods, indemnify Class  
8 Members for business expenses, timely pay wages upon termination, and provide  
9 compliant wage statements, all of which Plaintiff claims constitute unfair business  
10 practices and give rise to PAGA penalties. Plaintiff asserts that common questions  
11 include, but are not limited to: (1) whether Defendants failed to pay all wages earned to  
12 class members for all hours worked at the correct rates of pay; (2) whether Defendants  
13 failed to provide the class with all meal and rest periods in compliance with California  
14 law; (3) whether Defendants failed to pay the class one additional hour of pay on  
15 workdays they failed to provide the class with one or more meal or rest periods in  
16 compliance with California law; (4) whether Defendants failed to indemnify the class for  
17 all necessary business expenditures incurred during the discharge of their duties  
18 including, but not limited to, mandatory employee uniforms; (5) whether Defendants  
19 knowingly and intentionally failed to provide the class with accurate wage statements; (6)  
20 whether Defendants willfully failed to provide the class with timely final wages; and (7)  
21 whether Defendants engaged in unfair competition within the meaning of Business and  
22 Professions Code section 17200, et seq., with respect to the class. (Spivak Decl. ¶12.)

23 As to typicality, Plaintiff contends that his claims are typical for the purposes of  
24 certifying the Settlement Class. Plaintiff, like absent Class Members was subject to the  
25 same relevant policies and procedures governing his compensation, hours of work, and

1 meal and rest periods. Because Plaintiff contends that he was subject to the same general  
2 course of conduct as absent Class Members, resolving the common questions as they  
3 apply to Plaintiff will determine Defendants' prima facie liability to all the Class  
4 Members. Moreover, Plaintiff's claims could potentially be subject to the same primary  
5 affirmative defenses as those of absent Class Members. (*Id.* at ¶13.)

6 As to adequacy, Plaintiff represents that he has no conflicts with the Class and  
7 understands his duties in his fiduciary role to the class as well as the risks of serving as  
8 class representative. (See Declaration of David Contreras.) As previously stated, Class  
9 Counsel have experience in class action litigation.

#### 10 **4. Substantial Benefits Exist**

11  
12 Given the relatively small size of the individual claims, a class action is superior to  
13 separate actions by the class members.

#### 14 **D. THE PROPOSED NOTICE PLAN MEETS THE REQUIREMENTS** 15 **OF DUE PROCESS**

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

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

1           Within 14 calendar days of Preliminary Approval, Defendants will provide the  
2 Settlement Administrator with the following information about each Class Member: (1)  
3 name; (2) last known mailing address; (3) Social Security Number; and (4) dates of  
4 employment during the Class Period.

5           Within 14 calendar days after the Settlement Administrator's receipt of the class  
6 data, it will calculate the estimated payouts to the Class Members assuming all Class  
7 Members participate in the Settlement and it will mail the Notice Packet to Class  
8 Members via first-class regular U.S. mail.

9           Prior to mailing, the Settlement Administrator will perform a search based on the  
10 National Change of Address Database for information to update and correct any known  
11 or identifiable address changes. If a new address is obtained by way of a returned  
12 Notice Packet, then the Settlement Administrator will promptly forward the original  
13 Notice Packet to the updated address via first-class regular U.S. mail, indicating on the  
14 original packet the date of such re-mailing. A returned Notice Packet will be forwarded  
15 only once by the Settlement Administrator. (10:16-11:2.) The deadline for class  
16 members who receive re-mailed notices will be extended by 15 days.

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

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

1 Defendants have provided information to Class Counsel that only an English  
2 version of the Notice Packet is required. (11:10-11.)  
3

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

5 Settlement administration costs are estimated at **\$4,000**, including the cost of  
6 notice. Prior to the time of the final fairness hearing, the settlement administrator must  
7 submit a declaration attesting to the total costs incurred and anticipated to be incurred to  
8 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 **\$65,000** (33 1/3%) in attorney fees  
4 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 Fee Split:

10 Class counsel represents that the Plaintiff has approved a fee splitting agreement  
11 under a written retainer agreement. Class Counsel should also be prepared to justify the  
12 costs sought (capped at **\$15,000**) by detailing how they were incurred.

13  
14 **F. SERVICE AWARDS**

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

1 In connection with the final fairness hearing, the named Plaintiffs must submit a  
2 declaration attesting to why they should be compensated for the expense or risk they  
3 have incurred in conferring a benefit on other members of the class. *Id.* at 806.

4 The Court will decide the issue of the enhancement award at the time of final  
5 approval.

6  
7 **V. CONCLUSION AND ORDER**

8 The Court hereby:

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

11 (2) Grants conditional class certification;

12 (3) Appoints David Contreras as Class Representative;

13 (4) Appoints The Spivak Law Firm and United Employees Law Group as Class  
14 Counsel;

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

16 (6) Approves the proposed notice plan; and

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

- 18 • Preliminary approval hearing: May 20, 2021
  - 19 • Deadline for Defendant to provide class list to settlement administrator: June 3,  
20 2021 (within 14 calendar days of preliminary approval)
  - 21 • Deadline for settlement administrator to mail notices: June 17, 2021 (within 28  
22 calendar days from preliminary approval)
  - 23 • Deadline for class members to opt out: August 16, 2021 (60 calendar days from  
24 the initial mailing of the Notice Packets)
- 25

- Deadline for class members to object: August 16, 2021 (60 calendar days from the initial mailing of the Notice Packets)
- Deadline for class counsel to file motion for final approval is 16 court days prior to final fairness hearing.
- Final fairness hearing: Sept. 22, 2021, at 11:00 a.m.

Dated: **MAY 20 2021**



**AMY D. HOGUE**

Amy D. Hogue  
Judge of the Superior Court