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10
 11 **IN THE UNITED STATES DISTRICT COURT**
 12 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

13 JASON CRAIG and MICHAEL ROSS,
 individually and on behalf of all similarly situated
 14 current and former employees,

15 Plaintiffs,

16 v.

17 CORTEVA, INC., E.I. DU PONT DE NEMOURS
 & COMPANY, DOW AGROSCIENCES LLC,
 18 THE DOW CHEMICAL CO., DOWDUPONT,
 INC. n/k/a DUPONT DE NEMOURS, INC.,
 19 DOW INC., and DOES 1 through 10, inclusive,

20 Defendants.

Case No. 3:19-cv-07923-JCS

CLASS ACTION

**NOTICE OF MOTION AND MOTION FOR
 ORDER GRANTING PRELIMINARY
 APPROVAL OF CLASS ACTION
 SETTLEMENT, CONDITIONAL
 CERTIFICATION, APPROVAL OF NOTICE
 OF SETTLEMENT, AND SETTING OF
 FINAL APPROVAL HEARING;
 MEMORANDUM OF POINTS AND
 AUTHORITIES IN SUPPORT THEREOF**

DATE: April 23, 2021

TIME: 9:30 a.m.

Ctrm: F-15th Floor

Judge: Hon. Joseph C. Spero

Chief Magistrate Judge

Complaint Filed: December 3, 2019

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1 PLEASE TAKE NOTICE that on April 23, 2021, at 9:30 a.m., or as soon thereafter as the
2 matter may be heard, in Courtroom F, 15th Floor, of the above-entitled court located at 450 Golden
3 Gate Avenue, San Francisco, California 94102, Plaintiffs Jason Craig and Michael Ross, individually
4 and on behalf of all similarly situated current and former employees (collectively “Plaintiffs”), and
5 Defendants Dow Agrosiences, LLC and The Dow Chemical Company (“Defendants”) will and hereby
6 do move this Court to:

7 1. Preliminarily approve the non-reversionary \$3,800,000 class action settlement described
8 in the Joint Stipulation of Class Action Settlement and Release (“Settlement Agreement” or “SA”),
9 attached as Exhibit 1 to the Declaration of Randy Renick submitted in support herewith;

10 2. Conditionally certifying the Class (as defined in the Settlement Agreement ¶ 5) as a
11 Federal Rules of Civil Procedure 23 settlement class;

12 3. Approve and appoint Plaintiffs Jason Craig and Michael Ross as representatives for the
13 proposed Class for purposes of settlement;

14 4. Approve and appoint Hadsell Stormer Renick & Dai LLP and Gilbert & Sackman, A
15 Law Corporation, as Class Counsel for purposes of settlement;

16 5. Approve and appoint CAC Services Group, LLC as the Settlement Administrator;

17 6. Preliminarily approve the application for payment to Class Counsel of reasonable
18 attorneys’ fees of up to \$950,000 (25% of the common fund created) and reasonable costs of up to
19 \$30,000;

20 6. Preliminarily approve a Service Payment award in the amount of \$5,000 to each of the
21 two named Plaintiffs for their service, efforts, risks, and burdens of acting on behalf of the Class;

22 7. Approve as to form and content the proposed Notice of Class Action Settlement
23 (Settlement Agreement, Exhibit A) and directing its distribution to all members of the Class; and

24 8. Set a date, time, and place to conduct the Final Approval Hearing on the question of
25 whether the proposed Settlement should be finally approved as fair, reasonable, and adequate.

26 This motion is brought pursuant to Federal Rule of Civil Procedure 23 on the grounds that the
27 proposed Settlement is fair, reasonable, and adequate, and that all requirements for class certification
28 have been met.

1 The motion is based upon this Notice, the Memorandum of Points and Authorities submitted
2 herewith, the Declarations of Randy Renick and Joshua Young, the proposed Joint Stipulation of Class
3 Action Settlement and Release, its exhibits and the other records, pleadings, and papers filed in this
4 action, and upon such other documentary and oral evidence or argument as may be presented to the
5 Court at the hearing on this motion.

6
7 DATED: March 19, 2021

Respectfully submitted,

8 HADSELL STORMER RENICK & DAI LLP

9 GILBERT & SACKMAN, A LAW CORPORATION

10
11 /s/ Randy Renick

Randy Renick

12 Attorneys for Plaintiffs and the Proposed Class

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Jason Craig and Michael Ross (“Plaintiffs”) seek preliminary approval of a proposed \$3,800,000 wage and hour class action settlement on behalf of an estimated 207 class members, which will pay an average of \$13,350 to each class member without the need to return a claim form. The proposed Class consists of the following individuals who worked for Defendants Dow Agrosciences, LLC and The Dow Chemical Company (“Defendants”), at any time during the period from December 3, 2015 through the date of Preliminary Approval:

all current and former hourly employees of Defendants who worked a 12-hour rotating shift at the chemical manufacturing plant in Pittsburg, California.

Joint Stipulation of Class Action Settlement and Release (“Settlement Agreement” or “SA”) ¶ 5 (p. 3), a true and correct copy of which is attached as Exhibit 1 to the Declaration of Randy Renick (“Renick Decl.”), filed concurrently herewith. Plaintiffs contend that members of the class did not receive off-duty rest breaks as required by California law. Defendants deny any violations were committed and contend they complied with all relevant laws.

Subject to approval of this Court, the Parties have agreed to settle this action on an all-cash, non-reversionary basis for \$3,800,000. Before settlement, Plaintiffs conducted extensive investigation of Defendants’ wage and hour practices at the chemical manufacturing plant, particularly in regard to the provision of meal and rest breaks. The investigation included interviews of operators, review of relevant documents, including workplace policies, emergency procedures and rules, and work schedules. In addition, Defendants provided, and Plaintiffs reviewed, Defendants’ payroll data, which included the number of shifts worked by each putative Class Member from the beginning of the Class Period and the applicable hourly wages, time records, and shift schedules. This discovery allowed Plaintiffs to thoroughly evaluate liability and to determine the amount incurred in damages, providing a sufficient basis upon which to negotiate a settlement. The resolution was the result of arm’s-length negotiations following a full-day mediation session with highly skilled mediator in Los Angeles with expertise in wage and hour law, Steve Pearl.

Overall, the Settlement is an excellent result for the Class in light of all the relevant

1 circumstances. Accordingly, Plaintiffs respectfully request that the Court conditionally certify the
2 Class for settlement purposes, grant preliminary approval of the Settlement, and enter the proposed
3 order filed concurrently herewith.

4 **II. PLAINTIFFS' FACTUAL ALLEGATIONS**

5 Defendants The Dow Chemical Company and Dow AgroSciences, LLC own and/or operate the
6 Pittsburg plant, located in Contra Costa County, California, which manufactures products for agricultural
7 operations and pest control services. The plant operates continuously, 24-hours per day, seven days per
8 week. The plant processes hazardous and flammable chemicals that must be constantly monitored in
9 order to ensure safety of those on-site and in the nearby communities. The chemicals must be maintained
10 in a stable state to prevent toxic spills and fires, which requires, among other things, constant monitoring
11 and adjusting of temperatures and pressures, prevention of reactive chemical issues, and monitoring and
12 prevention of chemical leaks. Renick Decl. ¶¶ 33-34.

13 Certain employees, principally operators, who are scheduled to work 12-hour shifts ("12-hour
14 shift employees"), are required to operate and/or monitor the production process at all times. 12-hour
15 shift employees are required to monitor their units, respond to upsets and critical events, and maintain
16 the safe and stable operation of the units. There are eight units, seven of which operate by sending and
17 receiving materials to other units, processing materials, and shipping out product. The remaining unit
18 provides security and emergency services. Approximately four to eight operators work a given day or
19 night 12-hour shift depending on the size of the unit. An operator must be qualified and certified for his
20 or her position in a unit. Renick Decl. ¶ 35.

21 Because the chemical production process requires non-stop monitoring, Plaintiffs and the other
22 operators work continuous 12-hour shifts on a rotating shift schedule. Their duties include: monitoring
23 the chemical production process, responding to upsets and critical events, maintaining safe and stable
24 operation of their units, being attentive, being reachable during work hours, responding to audible
25 alarms/pages on the intercom system/communications on handheld radios, and being in contact with
26 their supervisors and other employees in their unit during work hours. Renick Decl. ¶ 36.

27 Plaintiffs contend that they and the other operators are not relieved of their duties during the
28 entirety of their 12-hour shifts. They are constantly and continuously responsible for their units, which

1 includes monitoring the work in their unit, responding to all work-related calls, pages, radio
2 communications and alarms, receiving and taking on continuous work demands, assisting maintenance
3 workers and contractors with projects, and being in communication with supervisors and other
4 employees. As a result, Plaintiffs and the other operators do not receive off-duty 10-minute rest breaks
5 or 30-minute off-duty meal breaks during their shifts. Renick Decl. ¶ 37.

6 Plaintiffs further contend that throughout the class period, Plaintiffs and the other operators have
7 neither been scheduled for 10-minute rest breaks nor provided designated relief in order to take such
8 breaks. Similarly, they have neither been scheduled for 30-minute meal breaks nor provided designated
9 relief in order to take such breaks. Defendants do not have a policy, practice, or system for providing
10 relief to Plaintiffs and the other putative class members to allow them to take off-duty rest or meal
11 breaks. Renick Decl. ¶ 38.

12 Defendants contend that they had valid rest and meal break policies throughout the class period.
13 Plaintiffs contend that Operators continued to be on-duty their entire shift as no process or system for
14 providing relief was implemented. Renick Decl. ¶ 39.

15 **III. THE PARTIES**

16 Defendants. The Dow Chemical Company has owned and/or operated the Pittsburg plant,
17 located in Contra Costa County, California, since prior to the beginning of the class period, December
18 3, 2015. Following a merger in or about 2017, Defendant Dow AgroSciences, LLC became a legal
19 owner and/or operator of the plant. The plant manufactures products for agricultural operations and pest
20 control services and operates under the brand Corteva. Renick Decl. ¶ 33.

21 Plaintiffs/Class Representatives. Plaintiffs Jason Craig and Michael Ross are Operators who
22 work 12-hour shifts and have worked at the plant for over 15 and 13 years, respectively. Renick Decl. ¶
23 40.

24 **IV. PROCEDURAL HISTORY**

25 On December 3, 2019, Plaintiffs filed this action in the Northern District of the United States
26 District Court of California. Dkt. 1. The complaint asserted, among other things, that Defendants
27 require Plaintiffs and the putative class members, as operators at its Pittsburg chemical manufacturing
28 plant, to monitor the chemical production process, respond to upsets and critical events, maintain the

1 safe and stable operation of their units, and remain attentive and reachable at all times during their
2 shifts. Thus, Plaintiffs never receive duty-free 10-minute rest breaks or 30-minute meal breaks because
3 they are constantly and continuously responsible for their units and were never relieved of these duties.
4 Dkt. 1 at 4.

5 The Complaint alleged the following legal claims: (1) Failure to Authorize and Permit Rest
6 Periods (Lab. Code § 226.7; Wage Order 1-2001); (2) Failure to Provide Meal Periods (Lab. Code §§
7 226.7, 512; Wage Order 1-2001); (3) Private Attorneys General Act (“PAGA”)(Lab. Code § 2698 et
8 seq.); and (4) Violation of the Unfair Competition Law (“UCL”)(Bus. & Profs. Code §17200 et seq.
9 Plaintiffs sought unpaid wages, statutory and civil penalties, restitution, attorneys’ fees and costs,
10 interest, and injunctive and declaratory relief for the time period from December 3, 2015 to the present.
11 See Dkt. 1.

12 On March 2, 2020, the Court granted the parties’ stipulation to dismiss without prejudice
13 defendants Corteva, Inc., E.I. Du Pont de Nemours & Company, DowDuPont, Inc. n/k/a Dupont de
14 Nemours, Inc., and Dow Inc, leaving The Dow Chemical Company and Dow Agrosiences, LLC
15 remaining as defendants. See Dkt. 32. That same day, Defendants The Dow Chemical Company and
16 Dow Agrosiences filed their Answer to the Complaint. Dkt. 33.

17 **V. DISCOVERY AND MEDIATION**

18 On February 28, 2020, the parties filed their Joint Rule 26(f) Report and Case Management
19 Conference Statement, identifying, among other things, their disagreement over whether discovery
20 should be phased and the categories of discovery that should be produced. Dkt. 31 at 6. On March 6,
21 2020, the Court ordered no bifurcation of discovery and the production by Defendants on an
22 anonymized basis, of payroll records, timecards, policies, and procedures. Dkt. 40. On May 12, 2020,
23 June 22, 2020, and July 13, 2020, Defendants produced payroll records, timecards, policies, and
24 procedures, pursuant to the Court’s order. Renick Decl. ¶ 41.

25 On July 17, 2020, and July 27, 2020, Plaintiffs served their opening round of discovery upon
26 Defendants The Dow Chemical Company and Dow AgroSciences LLC, which included Special
27 Interrogatories and Requests for Production of Documents. Through this discovery, Plaintiffs primarily
28 sought contact information for the putative Class during the relevant Class Period, as well as their job

1 titles and employee numbers, and documents relevant to the Plaintiffs' claims for rest break and meal
 2 break violations, and defenses thereto, and the Named Plaintiffs' adequacy as class representatives.
 3 Renick Decl. ¶ 42.

4 Plaintiffs conducted an extensive investigation of Defendants' wage and hour practices at the
 5 Pittsburgh chemical manufacturing plant, particularly as to the provision of meal and rest breaks, both
 6 before and after filing suit on December 3, 2019. In May 2020, the parties agreed to attend a mediation
 7 with Steve Pearl, a well-respected mediator located in Los Angeles with expertise in wage and hour law,
 8 on August 17, 2020. Meanwhile, Defendants produced, and Plaintiffs reviewed, over a thousand pages
 9 of documents in PDF and Excel, including Defendants' payroll data and time records for the class
 10 members, shift schedules, policies and related training materials, related correspondence, and personnel
 11 files of the Named Plaintiffs. Renick Decl. ¶ 43.

12 With sufficient investigation, research, written discovery, class member interviews on relevant
 13 topics such as job assignments, work duties, and responsibilities, policies and practices, particularly
 14 regarding meal and rest breaks, and document analysis to allow Plaintiffs to evaluate Defendants'
 15 liability and damage exposure for the Class Period, the parties moved forward with mediation with Steve
 16 Pearl on April 17, 2020. After a full day of negotiations, the parties were able to reach an agreement.
 17 Renick Decl. ¶ 43.

18 **VI. THE PROPOSED SETTLEMENT**

19 Total Settlement Fund. The Parties have agreed that the action may be settled and compromised
 20 for the Gross Settlement Amount ("GSA") of \$3,800,000, which includes, subject to and contingent
 21 upon the approval of this Court, (a) Plaintiffs' request for reasonable attorneys' fees of up to 25% of the
 22 settlement fund (i.e., \$950,000); (b) litigation expenses (estimated to be less than \$30,000); (c) class
 23 representative service award payments to Plaintiffs Jason Craig and Michael Ross, each in the sum of
 24 \$5,000; (d) administration fees and expenses to CAC Services Group, LLC, in the amount of up to
 25 \$10,000; and (e) the payment to the California Labor and Workplace Development Agency of \$30,000
 26 (75% of \$40,000) allocated for the payment of applicable civil penalties under PAGA. Renick Decl.,
 27 Exhibit 1 (hereinafter "Settlement Agreement" or "SA") ¶¶ 20, 26, 31, 37, 38. Defendants will pay, in
 28 addition to the GSA, the employers' share of withholdings and taxes. SA ¶ 23. The Settlement is non-

1 reversionary. SA ¶ 24. Uncashed settlement funds, if any, will be awarded *cy pres* to the University of
 2 California Hastings Law School Clinical Programs subject to court approval. SA ¶ 79.

3 Settlement Class. The settlement class members (“Class” or “Class Members”), as stipulated to
 4 by the Parties, are the following individuals:

5 all current and former hourly employees of Defendants who worked a 12-hour rotating
 6 shift at the chemical manufacturing plant in Pittsburg, California, for the period
 7 December 3, 2015 through preliminary approval of the Settlement, who do not request to
 8 exclude themselves (i.e. opt out) from the settlement.

9 SA ¶ 5 (p. 3). Plaintiffs seek conditional certification of the Class for settlement purposes, approval of
 10 which is required by the terms of the Agreement. SA ¶¶ 56-57. For purposes of settlement
 11 distributions, “Class Members” will be those class members who do not timely exercise their right to
 12 opt out of the Class. SA ¶ 5.

13 Distribution to Class Members. After all Court-approved deductions from the Settlement Fund,
 14 the remaining sum (“Net Settlement Proceeds” or “NSA”), estimated at \$2,770,000, will be distributed
 15 to all Class Members who do not request to be excluded from Settlement. SA ¶ 12; Renick Decl., ¶ 4.
 16 The primary mechanism for distribution of the Settlement involves cash payment to members of the
 17 settlement class according to the number of “workweeks.” “Workweeks” shall mean the number of
 18 weeks worked by a participating Class Member during the Class Period while assigned a 12-hour
 19 rotating shift at the Pittsburg, California manufacturing plant. The Settlement Administrator will
 20 calculate the number of workweeks, excluding leaves, worked by the Class Members during the Class
 21 Period, by dividing the total days employed as a Class Member during the Class Period by seven (7).
 22 Partial workweeks will not be counted; however, if a Class Member worked less than one week as a
 23 Class Member, such Class Member will be credited with having worked one workweek for purposes of
 24 the Settlement. The amount to be paid per workweek to Class Members will be calculated by dividing
 25 the Net Settlement Proceeds by the total number of workweeks for all Class Members; any person who
 26 opts out of the Settlement is not a Class Member. SA ¶¶ 21, 43(a)-(b). On average, each Class Member
 27 will receive an estimated \$13,350.¹ Renick Decl. ¶ 4.

28 Payment of PAGA Claims. The total amount of the Settlement Fund allocated to PAGA

¹ Class Members’ Individual Settlement Payments will be allocated 20% to wages subject to
 withholdings for which an IRS Form W-2 will be issued, 40% to interest, and 40% to penalties under the
 California Labor Code for which an IRS Form 1099 will be issued. SA ¶ 45.

1 penalties is forty thousand dollars (\$40,000), with seventy-five percent (75%) of the PAGA penalties,
 2 or \$30,500, being paid to the California Labor and Workforce Development Agency (“LWDA”) and
 3 twenty-five percent (25%) of the PAGA penalties, or \$10,000, being paid to the Class Members. SA ¶
 4 38.

5 Additional Payment to Named Plaintiffs. The Settlement Agreement provides for a Service
 6 Payment for each of the two Named Plaintiffs in an amount not to exceed \$5,000 for their service in
 7 bringing and prosecuting the class actions on behalf of the Class, risks undertaken for the payment of
 8 costs in the event of an unsuccessful outcome, and a waiver of the protections under Code of Civil
 9 Procedure section 1542. SA ¶¶ 26, 52-53. Each Named Plaintiff will agree to a general release of all
 10 claims, including waiver of California Civil Code section 1542. SA ¶¶ 26-27. This payment shall be in
 11 addition to whatever portion of the settlement proceeds each Named Plaintiff is otherwise entitled to
 12 receive. Renick Decl. ¶ 25.

13 Attorneys’ Fees and Costs. The Settlement Agreement provides for an award of reasonable
 14 attorneys’ fees and costs from the Settlement Fund. SA ¶ 31. Defendants have agreed not to oppose a
 15 reasonable request for attorneys’ fees and costs. *Id.* Plaintiffs intend to seek by motion, filed and posted
 16 online at least 35 days before the deadline to object or opt out of the Settlement, an award of 25% of the
 17 Settlement Fund, or \$950,000, and litigation costs of up to \$30,000. SA ¶ 32; Renick Decl. ¶¶ 22-24.

18 Settlement Administration. The parties have agreed to retain CAC Services Group, LLC
 19 (“CAC” or “Settlement Administrator”), located in Eden Prairie, Minnesota, to act as the impartial
 20 Settlement Administrator. Renick Decl. ¶ 12; SA ¶¶ 19, 25. CAC’s fees, for which it has provided a bid
 21 of \$7,479.39, are to be paid out of the Settlement Fund. Renick Decl. ¶¶ 12, 14; SA ¶ 37. CAC’s duties
 22 shall include, among others: timely mailing the Notice of Settlement to the class members; establishing
 23 and maintaining a website containing the key documents in the case, including the Notice of Class
 24 Settlement, Settlement Agreement, Motion for Preliminary Approval, Motion for Final Approval, and
 25 Motion for Attorneys’ Fees and Costs, as they become available; communicating with Class Member
 26 communications; calculating each Class Member’s number of weeks worked during the Class Period
 27 (“Workweeks”), including resolving any disputes about the number of Workweeks worked by any
 28 Class Member; determining the amount of payroll taxes owed by Defendants; calculating and

1 distributing the individual settlement checks, the PAGA payment, the service awards, and the
 2 attorneys' fees and costs payment, as approved by the Court; forwarding sums of uncashed checks as *cy*
 3 *pres* to the University of California Hastings Law School Clinical Programs; and preparing a due
 4 diligence declaration regarding mailing of the Notice and attempts to locate Class Members for the
 5 Court. SA ¶¶ 43-47, 61-69, 75-82.

6 Class Notice and Notice Plan. The Settlement Agreement contemplates, among other things,
 7 that this Court will conditionally certify a settlement class and grant preliminary approval of the
 8 Settlement. SA ¶¶ 56-67. After preliminary approval and class certification, the Settlement Agreement
 9 requires that the court-approved Class Notice be disseminated to the Class no later than 15 calendar
 10 days after the Settlement Administrator receives the "class list" from Defendants (which must be
 11 provided by Defendants to the Administrator within 30 calendar days after the Preliminary Approval
 12 Order). SA ¶ 61. The Notice Distribution Plan relies on U.S. Mail. SA ¶ 63(a); Renick Decl. ¶ 19.

13 The Class Notice also advises the Class Members of: (1) their right to participate in the
 14 Settlement; (2) that each will receive a payment without a claim form; (3) the amount of estimated
 15 payment he or she will receive, and the formula used to calculate that payment; (4) how to object to the
 16 Settlement; (6) how to opt out of the Settlement; (7) how to challenge the information upon which their
 17 payment will be calculated; (8) the procedures and timing for doing each of these acts; and (9) and the
 18 date set for the final approval hearing.² SA ¶ 63(b); *see* Notice of Settlement, attached as Exhibit A to
 19 Exhibit 1 to Renick Decl. ("Notice").

20 The Class Notice also provides the following: (1) contact information for class counsel to
 21 answer questions; (2) the address for a website, maintained by the Settlement Administrator or class
 22 counsel, that has links to the notice, motions for approval and for attorneys' fees and any other
 23 important documents in the case; (3) instructions on how to access the case docket via PACER or in
 24 person at any of the court's locations. The Notice states the date of the final approval hearing and
 25 clearly states that the date may change without further notice to the class. The Notice also states that

26 _____
 27 ² The language suggested by the Northern District Procedural Guidance for inclusion in class notices
 28 (i.e., a summary of the proposed settlement; reference to the Administrator's website and to PACER
 where the settlement documents will be available, and an advisement that Class members not call the
 Court), has been included in the proposed Notice. *See* Notice, pp. 7-8.

1 class members should check the settlement website to confirm that the date has not been changed. *See*
 2 Notice, pp. 2, 3, 7, 8.

3 Released Claims. Class Members who do not request to be excluded by returning a valid and
 4 timely request as described in the Notice of Settlement will release those claims under state, federal and
 5 local law that were or could have been asserted based on the facts and allegations made in the action,
 6 and any amendments thereto, as well as all claims and allegations alleged in the action, against the
 7 “Released Parties,” which includes: Defendants, each of Defendants’ past, present, and future direct
 8 and indirect parents; the respective past, present, and future direct and indirect subsidiaries and
 9 affiliates of any of the foregoing; the past, present, and future shareholders, directors, officers, agents,
 10 employees, attorneys, insurers, members, partners, managers, contractors, agents, consultants,
 11 representatives, administrators, fiduciaries, benefit plans, transferees, predecessors, successors and
 12 assigns of any of the foregoing; and any individual or entity which could be jointly liable with any of
 13 the foregoing. SA ¶¶ 16, 48-50; Notice, p. 5.

14 Proposed Schedule and Final Fairness Hearing. The following schedule sets forth a proposed
 15 sequence for the relevant dates and deadlines. This schedule is also stated in the proposed order filed
 16 concurrently herewith.

17 18 19 20 21 22	15 calendar days after the Settlement Administrator’s receipt of “class list” Notice of Settlement is mailed to all Class Members. SA ¶ 61. (The “class list” containing the information specified in the Settlement Agreement must be provided by Defendants to the Administrator within 30 calendar days after the Preliminary Approval Order. SA ¶ 61.)
23 24 25 26 27	35 calendar days prior to Notice Response Deadline: Plaintiffs’ Motion for Attorneys’ Fees and Costs is posted on case website. SA ¶ 67; Renick Decl. ¶ 24.
28	45 calendar days after Notice of Settlement is mailed: Last day for Class Members to file a dispute regarding the number of Workweeks on their Notice of Settlement. SA ¶ 65.
	60 calendar days after Notice of Settlement is mailed: Last day for Class Members to file written objections to the settlement with the Court. SA ¶ 14, 70.

60 calendar days after Notice of Settlement is mailed:	Last day for Class Members to submit requests for exclusion to the Settlement Administrator. SA ¶ 14, 64.
14 calendar days before Final Fairness Hearing:	Plaintiffs file their memorandum of points and authorities in support of final approval. SA ¶ 32.
**Set by Court	Final Approval/Fairness Hearing.

VII. THE COURT SHOULD PRELIMINARILY APPROVE THE CLASS ACTION SETTLEMENT

Class action settlements are subject to court review and approval under the Federal Rules of Civil Procedure. A class action may not be dismissed, compromised, or settled without the approval of the Court. FRCP Rule 23(e). The decision to approve or reject a proposed settlement is committed to the Court's sound discretion. *Dunleavy v. Nadler*, 213 F.3d 454, 458 (9th Cir. 2000).

Approval is a two-step process under Rule 23(e), where "the Court first determines whether a proposed class action settlement deserves preliminary approval and then, after notice is given to class members, whether final approval is warranted." *Noll v. eBay, Inc.*, 309 F.R.D. 593, 602 (N.D. Cal. 2015) (internal citations omitted); *see also Hanlon*, 150 F.3d at 1027 (after preliminary approval and notice to the class, the Court reviews the fairness of the settlement at final approval).

At this stage, the Court is not making a final determination on whether the settlement is fair, reasonable, and adequate, as is ultimately required by FRCP Rule 23(e). The Court's role is to determine whether the settlement terms fall within a reasonable range of possible settlements, with "proper deference to the private consensual decision of the parties." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1988).

Courts in the Northern District of California have found preliminary approval of a settlement appropriate when the settlement falls within the range of possible approval; appears to be the product of serious, informed, non-collusive negotiations; does not improperly grant preferential treatment to class representatives or segments of the class; and has no obvious deficiencies. *Angell v. City of Oakland*, No. 13-cv-00190 NC, 2015 U.S. Dist. LEXIS 1037, at *21-22 (N.D. Cal. Jan. 5, 2015) (quoting *Harris v. Vector Mktg. Corp.*, No. C-08-5198 EMC, 2011 U.S. Dist. LEXIS 48878, at *23 (N.D. Cal. Apr. 29,

2011); *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007)). “Closer scrutiny is reserved for the final approval hearing.” *Harris*, 2011 U.S. Dist. LEXIS 48878, at *24

In order to determine whether a proposed settlement is fair, adequate, and reasonable, courts must balance a number of factors. These factors may include, among others: “the strength of plaintiff’s case; the risk, expense, complexity, and the likely duration of further litigation; the risk of maintaining class action status throughout the trial; the amount offered in settlement; the extent of discovery completed, and the stage of the proceedings; the experience and views of counsel; the presence of a governmental participant; and the reaction of the class members to the proposed settlement. This list is not exclusive and different factors may predominate in different factual contexts.” *Torrise v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1378 (9th Cir. 1993) (citation and internal quotations omitted.) “Under certain circumstances, one factor alone may prove determinative in finding sufficient grounds for court approval.” *Nat’l Rural Telecom. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 525-526 (C.D. Cal. 2004) (citation omitted).

These factors support the conclusion that the proposed Settlement is “fair, adequate and reasonable.”

A. The Settlement is the Product of Serious, Informed and Non-Collusive Arm’s Length Negotiations.

The fairness and reasonableness of a settlement agreement is presumed “where that agreement was the product of non-collusive, arm’s length negotiations conducted by capable and experienced counsel.” *In re Netflix Privacy Litig.*, 2013 U.S. Dist. LEXIS 37286, *11 (N.D. Cal. Mar. 18, 2013). The settlement negotiations between the Parties, have been, at all times, adversarial and non-collusive in nature. The proposed Settlement here was reached in August 2020 after a substantial exchange of information, exhaustive analysis, extensive investigation, a full day of arm’s-length negotiations before respected mediator Steve Pearl, who has expertise in wage and hour law. Renick Decl. ¶¶ 41-43. During this process, Class Counsel, who are experienced wage and hour practitioners, also worked closely with the Named Plaintiffs and other Class Members to gain knowledge about the rest break and meal break policies and practices and the general working conditions of operators. Renick Decl. ¶ 25, 47-52.

The proposed settlement is, therefore, presumptively fair and reasonable.

1 **B. Strength of Plaintiffs' Case and the Risk, Expense, Complexity, and Likely Duration**
2 **of Further Litigation.**

3 In evaluating the fairness, reasonableness, and adequacy of the Settlement, the Court should
4 weigh the strength of Plaintiffs' case against the risk and expense of continued litigation. *See In re*
5 *Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 458 (9th Cir. 2000). While Plaintiffs believe in the merits of
6 their case, they also recognize the inherent risks and uncertainty of litigation, including that the Class
7 could receive nothing, and understand the benefit of providing significant settlement payments to the
8 Class now. Plaintiffs' claims involve disputed legal issues and fact-specific arguments that the parties
9 have been litigating since inception of the action. While Plaintiffs firmly believe in the strength of their
10 claims, Corteva's defenses create a possibility the claims might not be certified or may fail on the
11 merits. Renick Decl. ¶¶ 7-8, 44-45.

12 If the proposed Settlement had not been achieved, continued litigation of the claims would take
13 substantial time and possibly confer no benefit upon the Class. With class claims for violation of wage
14 and hour laws, litigation can extend for many years due to the many hurdles facing plaintiffs in class
15 actions. It was also likely that the action would continue to be fiercely litigated by the Parties;
16 accordingly, many more years of litigation, which inevitably involve significant additional expenses,
17 were a real possibility. By contrast, the Settlement will yield a prompt, certain, and substantial recovery
18 for the Class, without need for additional time or judicial resources. Renick Decl. ¶ 45.

19 Thus, on balance, these factors weigh in favor of the Settlement.

20 **C. The Proposed Settlement is a Reasonable Compromise of Claims.**

21 Plaintiffs' Counsel believe the proposed Settlement is in the best interest of the Class based on
22 detailed knowledge of the factual and legal issues present in this action. Plaintiffs' Counsel considered,
23 among other issues, the risks of an adverse class certification and/or summary judgment ruling and trial
24 and other normal perils of litigation that affect the value of the claims in reaching the proposed
25 Settlement. Renick Decl. ¶ 45. After serious consideration of all facts and arguments, Plaintiffs and
26 Plaintiffs' Counsel concluded the terms and amount of the proposed Settlement are fair and reasonable
27 and in the best interests of the class. Renick Decl. ¶¶ 45, 47. The Settlement provides for the payment
28 of \$3,800,000. There are approximately 207 class members. The net settlement, after the deduction of

1 fees, costs, and administration is \$2,770,000. The average net payment to each class member will be
2 approximately \$13,350. Based on Plaintiffs' review of timecard and payroll data of all shifts during the
3 class period, the total recovery amount at the time of the August 17, 2020 mediation was approximately
4 \$8,200,000. The settlement amount of \$3,800,000 is, therefore, approximately 46% of the total amount
5 that Plaintiffs could have recovered on the rest break, meal break, PAGA and UCL claims. Renick
6 Decl. ¶ 4-5.

7 The Class' primary claim is for the non-compliant rest breaks and meal breaks and
8 compensation of one hour's premium pay for each such failed break. Defendants' policies failed to
9 provide relief to operators for duty-free rest breaks and meal breaks as they were required to be
10 attentive and monitoring their units at all times, including during their rest breaks and meal breaks.
11 Plaintiffs believe that the California Supreme Court's clarification of the off-duty nature of rest breaks
12 in *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th 257 (2016), provided clear guidance regarding an
13 employer's rest break obligations under California law and confirmed Defendants' failure to provide
14 operators with lawful rest breaks. Nonetheless, district courts have not consistently interpreted or
15 applied the decision in all circumstances. *See, e.g., Bell v. Home Depot U.S.A., Inc.*, No. 2:12-cv-02499
16 JAM-CKD, 2017 U.S. Dist. LEXIS 55442, at *5 (E.D. Cal. Apr. 10, 2017) (concluding *Augustus* was
17 not applicable because the court did not consider an on-premises rest break policy which does not
18 require employees to remain on call). Renick Decl. ¶ 6.

19 In addition, Plaintiffs believe that the facts here direct that an off-duty meal period should have
20 been provided to operators since the employer could schedule the work in a manner that allowed
21 operators to be relieved by other operators qualified and certified to cover their positions so they could
22 take their meal breaks. While Defendants presented an on-duty meal break agreement to employees,
23 Plaintiffs believe the agreement is not valid to qualify for the "exceedingly narrow" on-duty exception
24 because the facts do not satisfy the requirement that "the nature of the work prevents an employee from
25 being relieved of all duty." *See Augustus*, 2 Cal. 5th at 266-67. Nonetheless, Defendants would
26 certainly argue that recent legislation and requests for exemptions granted by the California Labor
27 Commissioner's Office for other companies in the same or similar industries involving safety-sensitive
28 positions indicate that this requirement would be met. Renick Decl. ¶ 7.

1 Plaintiffs alleged claims for a violation of Labor Code section 226.7, the UCL, and PAGA. The
2 Settlement provides that \$40,000 will be allocated to penalties under the PAGA, with 75% of the
3 PAGA penalties (\$30,000) being paid to the California Labor and Workforce Development Agency
4 (“LWDA”) and 25% of the PAGA penalties (\$10,000) being paid to Settlement Class Members who do
5 not opt out. SA ¶ 38. This amount is reasonable and adequate given that the possible recovery on the
6 PAGA claim is within the Court’s discretion and varies tremendously from thousands to a few million
7 dollars, and that there is “a substantial risk of recovering nothing” or very little. *See, e.g., Visceral v.*
8 *Mistras Group, Inc.* No. 15-cv-02198-EMC, 2017 WL 661352, at *3 (N.D. Cal. Feb. 17, 2017). Renick
9 Decl. ¶ 8.

10 Moreover, a settlement is not judged *solely* against what might have been recovered had
11 Plaintiffs prevailed at trial, nor does the settlement have to provide 100% of the damages sought to be
12 fair and reasonable. *Linney v. Cellular Alaska Partnership*, 151 F.3d 1234, 1242 (9th Cir. 1998); *In re*
13 *Mego Fin. Corp. Sec. Litig.*, 213 F. 3d 454, 459 (9th Cir. 2000). “Naturally, the agreement reached
14 normally embodies a compromise; in exchange for the saving of cost and elimination of risk, the parties
15 each give up something they might have won had they proceeded with litigation.” *Officers for Justice v.*
16 *Civil Serv. Comm’n*, 688 F.2d 615, 624 (9th Cir. 1982) (citation omitted). Indeed, “[i]t is well-settled
17 law that a cash settlement amounting to only a fraction of the potential recovery does not . . . render the
18 settlement inadequate or unfair.” *Id.* at 628. Accordingly, the proposed Settlement is not to be judged
19 against a speculative measure of what might have been achieved. *Linney*, 151 F.3d at 1234.

20 *Past Distributions*—As set forth in the Declaration of Randy Renick, the past distributions for
21 comparable class settlements, in which counsel represented similar classes of operators in oil refineries
22 for rest break violations, further support the reasonableness of this Settlement. Renick Decl. ¶ 29.

23 *Attorneys’ Fees and Costs*—Plaintiffs will seek an award of attorneys’ fees of 25% of the
24 Settlement, or \$ 950,000. Renick Decl. ¶ 22. The current total lodestar for Plaintiffs’ Counsel is
25 \$322,957.50. Renick Decl. ¶ 22; Young Decl. ¶ 8. At the time of Final Approval, Counsel estimates
26 their total lodestar will be approximately \$362,957.50. Renick Decl. ¶ 23. Accordingly, Plaintiffs will
27 seek a multiplier of less than 2.7, Renick Decl. ¶ 23, which falls well within the Ninth Circuit’s
28 presumptively acceptable range of 1.0 to 4.0. *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 n.6

1 (9th Cir. 2002); *see also* *Dyer v. Wells Fargo Bank, N.A.*, 303 F.R.D. 326, 334 (N.D. Cal. 2014)
 2 (applying 2.83 multiplier); *Craft v. City of San Bernardino*, 624 F. Supp. 2d 1113, 1125 (C.D. Cal.
 3 2008) (court ordered attorneys' fee of 25% of the settlement fund, where lodestar cross-check showed a
 4 multiplier of 5.2). Plaintiffs' Counsel will provide a full detailing of the time spent on this case in
 5 Plaintiffs' Motion for an Award of Attorneys' Fees and Costs, which will also be posted by the
 6 Administrator on its website to allow class members at least 35 days to review the fee motion before
 7 the deadline by which to opt out or object to the Settlement. Renick Decl. ¶ 23.

8 Plaintiffs' Counsel intend to seek reimbursement for up to \$30,000 in costs reasonably incurred
 9 in this action. Renick Decl. ¶ 24.

10 **D. The Extent of Discovery and Stage of the Proceedings Support the Settlement.**

11 The extent of discovery and the stage of proceedings favor approval of the Settlement. During
 12 the actions' pendency, Class Counsel thoroughly investigated and researched the claims, potential
 13 defenses, and the developing body of law relating to the interpretation of Wage Orders and an
 14 employer's duty to authorize and permit rest breaks. Class Counsel thoroughly engaged in the
 15 discovery process and made use of documents and data provided by Defendants through formal and
 16 informal discovery to assess Defendants' potential liability and the likelihood the Court would grant
 17 class certification of Plaintiffs' claims. *See* Renick Decl. ¶¶ 41-43, 46. Thus, the proposed Settlement
 18 has come at a time when the Parties have enough information to make an informed appraisal of the
 19 case, but prior to incurring the additional significant expense, which strongly benefits the Class and
 20 favors approval.

21 The experience and views of counsel also favor settlement. Renick Decl. ¶ 47; Young Decl. ¶
 22 10. Counsel's support is accorded "great weight" because Counsel have the greatest familiarity with the
 23 facts of the litigation, and thus "are better positioned than courts to produce a settlement that fairly
 24 reflects each party's expected outcome in the litigation." *In re Pacific Enters. Sec. Litig.*, 47 F.3d 373,
 25 378 (9th Cir. 1995); *see also* *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528
 26 (C.D. Cal. 2004) ("Great weight is accorded to the recommendation of counsel, who are most closely
 27 acquainted with the facts of the underlying litigation.").

28 The Parties have thoroughly investigated and evaluated the factual strengths and weaknesses of

1 this case and engaged in sufficient investigation and discovery to support the Settlement. Renick Decl.
 2 ¶¶ 41-43, 46. The litigation has reached the stage where the Parties have a clear view of the strengths
 3 and weaknesses of their cases sufficient to support the Settlement. *See Boyd v. Bechtel Corp.*, 485 F.
 4 Supp. 610, 622 (N.D. Cal. 1979).

5 **E. Class Counsel Are Experienced in Similar Litigation.**

6 Experienced counsel, operating at arm's length, have weighed the strengths of the case and
 7 examined all of the issues and risks of litigation and endorse the proposed Settlement. *Ellis v. Naval Air*
 8 *Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980), *aff'd*, 661 F.2d 939 (9th Cir. 1981). This factor,
 9 too, weighs in favor of approval. *Ontiveros v. Zamora*, 303 F.R.D. 356, 371 (E.D. Cal. 2014) ("The
 10 court gives considerable weight to class counsel's opinions regarding the settlement due to counsel's
 11 experience and familiarity with the litigation. Counsel's assertion that the settlement is fair, adequate
 12 and reasonable is a factor supporting the court's final approval of the agreement.") Indeed, "[t]he
 13 recommendations of plaintiffs' counsel should be given a presumption of reasonableness." *In re*
 14 *Omnivision Technologies, Inc.*, 559 F. Supp. 2d 1036, 10432 (N.D. Cal. 2007).

15 Class Counsel, having prosecuted numerous wage and hour class actions are experienced and
 16 qualified to evaluate the Class claims and to evaluate the risks and potential outcome of further
 17 litigation and the propriety of settlement on a fully informed basis. Renick Decl. ¶¶ 47-52; Young
 18 Decl. ¶¶ 4-7. Here, counsel on both sides share the view that this is a fair and reasonable settlement in
 19 light of the complexities of the case and the state of the law, and the uncertainties of the outcome of
 20 litigation. The opinion of counsel in support of the proposed Settlement is based on a realistic
 21 assessment of the strengths and weaknesses of their respective cases, extensive legal and factual
 22 research, the substantial discovery detailed above, as well as law and motion resulting in potential
 23 dispositive rulings by the Court. The opinion of counsel is also based on an assessment of the risks of
 24 proceeding with the litigation through trial and, if a verdict were recovered, through appeal, as
 25 compared to the value of a settlement at this time. Given the risks inherent in litigation and the defenses
 26 asserted, this Settlement is fair, adequate, and reasonable and in the best interests of the class, and
 27 should be preliminarily approved. Renick Decl. ¶¶ 7-8, 45-52.

28 ///

F. The Settlement Proves a Fair Method of Allocation and Does Not Offer Preferential Treatment to the Class Representatives or Other Members of the Class.

The Settlement does not offer preferential treatment to the Class Representatives or other members of the Class, as the Net Settlement Amount will be fairly distributed amongst Participating Class Members on a pro rata basis. Each Class Member will receive credits based on the number of “workweeks.” “Workweeks” shall mean the number of weeks worked by a participating ¶¶ Class Member during the Class Period while assigned a 12-hour rotating shift at the Pittsburg, California manufacturing plant. The Settlement Administrator will calculate the number of workweeks, excluding leaves, worked by the Class Members during the Class Period, by dividing the total days employed as a Class Member during the Class Period by seven (7). Partial workweeks will not be counted; however, if a Class Member worked less than one week as a Class Member, such Class Member will be credited with having worked one workweek for purposes of the Settlement. The amount to be paid per workweek to Class Members will be calculated by dividing the Net Settlement Proceeds by the total number of workweeks for all Class Members; any person who opts out of the Settlement is not a Class Member. SA ¶¶ 21, 43(a)-(b). This formula for calculating a Class Member’s payment relies on information readily available from Defendants’ records, and the Administrator is able to apply the formula in a fair and transparent manner. This method represents the fairest method of distribution to Class Members and does not grant preferential treatment to any Class Members. Renick Decl. ¶ 9.

The Settlement Agreement authorizes an additional service payment to each of the two Named Plaintiffs of \$ 5,000 each. “[T]he Ninth Circuit has recognized that service awards to named plaintiffs in a class action are permissible and do not render a settlement unfair or unreasonable.” *Harris*, 2011 U.S. Dist. LEXIS 48878, at *28 (citing *Staton v. Boeing Co.*, 327 F.3d 938, 977 (9th Cir. 2003)); *see also Resnick v. Frank*, 779 F.3d 934, 943 (9th Cir. 2015) (“Incentive payments to class representatives do not, by themselves, create an impermissible conflict between class members and their representatives.”). Courts routinely approve incentive awards to compensate named plaintiffs for the work done on behalf of the class, the risks they incurred during the course of the class action litigation, and sometimes, to recognize their willingness to act as a private attorney general. *Resnick*, 779 F.3d at 943; *see also Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 958 (9th Cir. 2009).

1 Class Counsel will request \$ 5,000 on behalf of each of the two Named Plaintiffs, for approval
 2 by the Court at the time of the final fairness hearing, to compensate each for their time, effort, risks
 3 undertaken for the payment of costs in the event the actions had been unsuccessful, possible retaliation
 4 as each continues to be employed through the present, and for a general release of all claims. The
 5 requested service payments are fair and reasonable because Plaintiffs were instrumental in achieving
 6 the Settlement in this case. Plaintiffs invested a great deal of personal time and effort into the
 7 investigation, prosecution, and the settlement of the case, which included taking on the risks of serving
 8 as the named representatives, providing factual information and documentation necessary to the
 9 prosecution of this class action, participating in the mediation session, and maintaining contact with
 10 Class Counsel, which will be set forth more fully in their declarations to be filed in conjunction with the
 11 final approval motion. Renick Decl. ¶ 25.

12 Moreover, the size of the incentive awards requested – \$ 5,000 to each of the two Named
 13 Plaintiffs – is consistent with the range of incentive awards approved in class action cases in the
 14 Northern District. *See Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 266 (N.D. Cal. Mar. 19,
 15 2015) (courts typically approve incentive awards up to \$10,000); *see also Covillo v. Specialty's Café*,
 16 No. C-11-00594 DMR, 2014 U.S. Dist. LEXIS 29837, at *28–29 (N.D. Cal. Mar. 6, 2014) (ordering an
 17 \$8,000 incentive award for each of the three named plaintiffs); *Chu v. Wells Fargo Invs., LLC*, Nos. C
 18 05-4526 MHP, C 06-7924 MHP, 2011 U.S. Dist. LEXIS 15821, at *15–16 (N.D. Cal. Feb. 16, 2011)
 19 (awarding a \$10,000 incentive award to two named plaintiffs). Such an award is consistent with and
 20 even below the incentive award amount approved by Judge Gonzalez Rogers to each of the named
 21 plaintiffs in a similar rest break case filed on behalf of oil refinery operators by Plaintiffs' Counsel, in
 22 *Buzas v. Phillips 66 Company*, Case No. 4:17-cv-00163-YGR (March 6, 2018), *see* Dkt. 47. There, the
 23 court approved the amount of \$7,500. Renick Decl. ¶ 25.

24 **G. The Settlement Does Not Have Any Obvious Deficiencies**

25 Preliminary approval of the Settlement is appropriate as the Settlement does not have any
 26 obvious deficiencies, and it comports with the recently revised Northern District's Procedural Guidance
 27 for Class Action Settlements.

28 ///

1 **1. Class Notice, Settlement Administration, and Method of Notice**

2 The Court’s order preliminarily approving a class settlement must include, *inter alia*, that notice
3 be given to all class members who would be bound by the settlement. Fed. R. Civ. P. 23(e)(1).

4 *Class Notice*— “Adequate notice is critical to court approval of a class settlement under Rule
5 23(e).” *Hanlon*, 150 F.3d at 1025. A class settlement notice “is satisfactory if it ‘generally describes
6 the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and
7 to come forward and be heard.’” *Churchill Vill., L.L.C. v. GE*, 361 F.3d 566, 575 (9th Cir. 2004)
8 (citation omitted); *see* Fed R. Civ. P. 23(c)(2)(B). The proposed Notice, attached as Exhibit A to the
9 Settlement Agreement, meets all of the requirements set forth in Rule 23, and, as described herein, *see*
10 *supra* Section VI, complies with and includes the language suggested in the Northern District
11 Procedural Guidance. Renick Decl. ¶¶ 15, 17-19.

12 *Settlement Administration*—As addressed more fully above, *see supra* Section VI, the Parties
13 have agreed to use CAC Services Group, LLC to administer the Settlement. CAC is an experienced
14 and well-regarded class action settlement administrator.³ Renick Decl. ¶ 13. In order to decide on a
15 Settlement Administrator, Class Counsel obtained bids from multiple administrators and determined,
16 based on their experience and the proposals, that CAC would provide the best services at the lowest
17 cost to Class Members. Renick Decl. ¶¶ 12-14.

18 *Method of Notice*—Each Class Member who does not opt out will receive his or her share of the
19 Settlement. Class Members do not need to file a claim form to receive their share. Given the success of
20 this method in three other similar actions, Class Counsel determined that no claim form should be
21 required here and that all Class Members who do not opt out should participate in the Settlement.
22 Renick Decl. ¶ 15. To increase notice to Class Members, Class Counsel intend to hold meetings.
23 Renick Decl. ¶ 18.

24 **2. Cy Pres Recipient**

25 The Settlement contemplates that any uncashed checks be awarded *cy pres* to University of
26 California Hastings Law School Clinical Programs. Renick Decl. ¶ 26; SA ¶ 79. UC Hastings’
27 Workers’ Rights Clinic provides services to protect workers’ rights under state labor law. Renick Decl.

28 ³ Over the last two years, lead class counsel has engaged CAC four times. Renick Decl. ¶ 16.

¶ 26. The proposed *cy pres* recipient, therefore, has the requisite nexus with the California labor laws at issue in this case. *See Dennis v. Kellogg Co.*, 697 F.3d 858, 865 (9th Cir. 2012).

3. Class Action Fairness Act Notice

Class Action Fairness Act (“CAFA”) Notice is required, and the Agreement provides: “Within ten (10) calendar days after the filing of the Motion for Preliminary Approval, Defendant shall comply with the “Notification of Settlement” requirements of the Class Action Fairness Act (28 U.S.C. § 1715).” Renick Decl. ¶ 30; SA ¶ 65.

4. Differences Between the Settlement Class and the Class Proposed in the Operative Complaint.

In the Complaint filed on December 3, 2019, Plaintiffs alleged the following class: “All current and former hourly employees of Defendants who worked a 12-hour rotating shift at the chemical manufacturing plant in Pittsburg, California, since December 3, 2015.” Dkt. 1, ¶ 4. The Settlement Class definition is identical to this definition but for the inclusion of the preliminary approval of the Settlement as an end date and the exclusion of those class members who request to exclude themselves (i.e., opt out) from the settlement. *See* SA ¶ 5.

5. Differences Between Released Claims and Claims in the Operative Complaint

For Class Members, the Settlement Agreement releases all claims under state, federal and local law that were or could have been asserted based on the facts and allegations made in the Action, and any amendments thereto, as well as all claims and allegations alleged in the Action: (1) Failure to Authorize and Permit Rest Periods (Lab. Code § 226.7; Wage Order 1-2001); (2) Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512; Wage Order 1-2001); (3) Private Attorneys General Act (“PAGA”)(Lab. Code § 2698 et seq.); and (4) Violation of the Unfair Competition Law (“UCL”)(Bus. & Profs. Code §17200 et seq. SA ¶¶ 16, 48-50. For the two Named Plaintiffs, they have executed a general release relinquishing all claims they have or might have had against Defendants resulting from any act committed or omitted prior to the Effective Date of the Settlement and to the extent permitted at law. SA ¶¶ 16, 51-54.

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1 **VIII. THE PROPOSED CLASS SHOULD BE CONDITIONALLY CERTIFIED**

2 Before granting preliminary approval of the Settlement, the Court should determine that the
3 proposed Settlement Class meets the requirements of Rule 23. *See Amchem Prods. v. Windsor*, 521
4 U.S. 591, 620 (1997); Manual for Complex Litigation, § 21.632. An analysis of the requirements of
5 Rule 23(a) and 23(b)(3) – referred to as numerosity, commonality, typicality, adequacy, predominance,
6 and superiority – shows that certification of this proposed Settlement Class is appropriate.

7 **A. The Proposed Class is Sufficiently Numerous and Ascertainable.**

8 The numerosity requirement is met where “the class is so numerous that joinder of all members
9 is impracticable.” Fed. R. Civ. P. 23(a)(1). Generally, courts will find a class sufficiently numerous if it
10 consists of 40 or more members. *Vasquez v. Coast Valley Roofing, Inc.*, 670 F. Supp. 2d 1114, 1121
11 (E.D. Cal. 2009). Here, the proposed Class of 207 employees easily meets numerosity requirements.

12 **1. There Are Questions of Law and Fact that Are Common to the Class.**

13 The second Rule 23(a) requirement is commonality, which is satisfied “if there are questions of
14 law or fact common to the class.” FRCP 23(a)(2). The “commonality requirement has been ‘construed
15 permissively,’ and its requirements deemed minimal.” *Hanlon* at 1019–1020. Here, Plaintiffs assert
16 that there are common questions of fact and law arising from the putative Class Members’ employment
17 at Defendants’ chemical manufacturing plant, including whether Defendants failed to authorize and
18 permit the Class to take rest periods or provide the Class with meal breaks in accordance with
19 applicable California law because the Class was not relieved of all work duties during those breaks; and
20 whether Defendants maintain or have maintained policies and engaged in practices that adequately
21 provide for off-duty rest periods and off-duty meal breaks in accordance with the requirements of
22 applicable California law.

23 **B. Plaintiffs’ Claims Are Typical of the Proposed Class.**

24 “Like the commonality requirement, the typicality requirement is ‘permissive’ and requires only
25 that the representative’s claims are ‘reasonably co-extensive with those of absent class members; they
26 need not be substantially identical.’” *Rodriguez v. Hayes*, 591 F.3d 1105, 1124 (9th Cir. 2010) (citation
27 omitted). “In determining whether typicality is met, the focus should be on the defendants’ conduct
28 and Plaintiffs’ legal theory, not the injury caused to the plaintiff.” *Lozano v. AT&T Wireless Services*,

1 *Inc.*, 504 F.3d 718, 734 (9th Cir. 2007). Thus, typicality is “satisfied when each class member’s claim
2 arises from the same course of events, and each class member makes similar legal arguments to prove
3 the defendant’s liability.” *Armstrong v. Davis*, 275 F.3d 849, 868 (9th Cir. 2001) (quoting *Marisol v.*
4 *Giuliani*, 126 F.3d 372, 376 (2nd Cir. 1997)).

5 Plaintiffs’ wage and hour claims are typical of the proposed Class because they arise from the
6 same factual basis and are based on the same legal theories applicable to the other members of the
7 Class. Likewise, Plaintiffs’ interests are entirely coextensive with the interests of the Class. Like the
8 other Class Members, Plaintiffs were non-exempt, hourly employees in Defendants Pittsburg chemical
9 manufacturing plant at all times during the relevant time period. Like other Class Members, Plaintiffs
10 were subjected to Defendants’ policies and practices requiring operators to be available at all times
11 during a shift, including while on breaks. Accordingly, Plaintiffs are typical of the Class Members they
12 seek to represent.

13 **C. Plaintiffs and Their Counsel Will Adequately Represent the Interests of the**
14 **Proposed Settlement Class.**

15 The final Rule 23(a) requirement asks whether “the representative parties will fairly and
16 adequately protect the interests of the class.” FRCP 23(a)(4). This requirement is satisfied if: (1) the
17 proposed representative plaintiffs do not have conflicts of interest with the proposed class, and (2) the
18 plaintiffs are represented by qualified and competent counsel. *Hanlon*, 150 F.3d at 1020. The Rule
19 23(a) adequacy requirement is met here as Plaintiffs have represented their former and current co-
20 workers with a focus and zeal true to the fiduciary obligation that they have undertaken, producing
21 documents, preparing for and participating in mediation, and working closely with their attorneys
22 throughout the case. Renick Decl. ¶¶ 25, 44.

23 The two firms representing Plaintiffs also satisfy the Rule 23(a)(4) adequacy-of-counsel
24 requirement. *See Hanlon*, 150 F.3d at 1020 (“[W]ill the named plaintiffs and their counsel prosecute
25 the action vigorously on behalf of the class?”). Class Counsel – Hadsell Stormer Renick & Dai LLP
26 and Gilbert & Sackman – are experienced class action attorneys who have collectively certified
27 numerous class actions by way of contested motion in state and federal court and have negotiated
28 settlements which were finally approved on behalf of hundreds of thousands of class members. Renick

1 Decl. ¶¶ 29, 47-52; Young Decl. ¶¶4-7. Class Counsel vigilantly safeguarded the interests of the Class
2 by thoroughly investigating the claims, marshalling considerable resources in preparing this case for
3 mediation, and then settling the claims for valuable consideration despite the serious challenges
4 described above.

5 **D. Common Issues Predominate Over Individual Issues.**

6 “In addition to meeting the conditions imposed by Rule 23(a), the parties seeking class
7 certification must also show that the action is maintainable under Fed. R. Civ. P. 23(b)(1), (2) or (3).”
8 *Hanlon*, 150 F.3d at 1022. The California statutes relating to each of Plaintiffs’ claims apply with
9 equal force and effect to all Class Members. Factually, Defendants’ policies and practices apply class-
10 wide and Defendants’ liability can be determined by facts common to all members of the Class. The
11 wage and hour issues are both numerous and substantial, and a class action is the most advantageous
12 method of dealing with the claims of the Class Members. *See Brinker Restaurant Corp. v. Superior*
13 *Court*, 53 Cal. 4th 1004, 1033 (2012) (“Claims alleging that uniform policy consistently applied to a
14 group of employees is in violation of the wage and hour laws are of the sort routinely, and properly,
15 found suitable for class treatment.”).

16 **E. Class Settlement Is Superior to Other Available Means of Resolution.**

17 Similarly, there can be little doubt that resolving all 207 Class Members’ claims through a
18 single class action is superior to a series of individual lawsuits. “From either a judicial or litigant
19 viewpoint, there is no advantage in individual members controlling the prosecution of separate actions.
20 There would be less litigation or settlement leverage, significantly reduced resources and no greater
21 prospect for recovery.” *Hanlon*, 150 F.3d at 1023. Additionally, although the value of the claims is not
22 insignificant, the individual amounts in controversy are not nearly enough to incentivize individual
23 action. *See Wolin v. Jaguar Land Rover North America, LLC.*, 617 F.3d 1168, 1175 (9th Cir. 2010),
24 (“Where recovery on an individual basis would be dwarfed by the cost of litigating on an individual
25 basis, this [superiority] factor weighs in favor of class certification.”). As the class action device
26 provides the superior means to effectively and efficiently resolve this controversy, and as the other
27 requirements of Rule 23 are each satisfied, certification of the Settlement Class proposed by the Parties
28 is appropriate.

1 **IX. CONCLUSION**

2 For the foregoing reasons, Plaintiffs respectfully request that the Court preliminary approve the
3 class settlement, conditionally certify the proposed settlement class, and enter the order submitted
4 concurrently herewith.

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6 DATED: March 19, 2021

Respectfully submitted,

7 HADSELL STORMER RENICK & DAI LLP

8 GILBERT & SACKMAN, A LAW CORPORATION

9
10 /s/ Randy Renick

Randy Renick

11 Attorneys for Plaintiffs
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