Joseph Lavi, Esq. (State Bar No. 209776)
jlavi@lelawfirm.com
Joshua Webster, Esq. (State Bar No. 298546)
jwebster@lelawfirm.com
LAVI & EBRAHIMIAN, LLP
8889 W. Olympic Blvd., Suite 200
Beverly Hills, California 90211
Telephone: (310) 432-0000
Facsimile: (310) 432-0001

Attorneys for PLAINTIFF
RENE ARIAS on behalf of himself and others similarly situated.

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Superior Court of California
County of Los Angeles

JAN 28 2019

Sherri R. Carter, Executive Officer/Clerk of Court
By: Steven Drew, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

RENE ARIAS, on behalf of himself and others similarly situated.

PLAINTIFF,

vs.

ACE HARDWARE CORPORATION, a corporation; ACE GLOBAL DISTRIBUTION, LLC, a limited liability company; and DOES 1 to 100, as individuals, Inclusive.

DEFENDANTS.

Case No.: BC667652

CLASS ACTION

[*Assigned for all purposes to the Hon. Ann I. Jones, dept. SSC11*]

PLAINTIFF RENE ARIAS'S NOTICE AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF JOSHUA WEBSTER; EXHIBITS; [PROPOSED] ORDER

Date: TBD BY COURT
Time: TBD BY COURT
Location: Department SSC 11
Spring Street Courthouse
312 N. Spring St.
Los Angeles, CA 90012

TO THE COURT, TO ALL PARTIES AND TO THEIR COUNSEL OF RECORD:

NOTICE IS HEREBY GIVEN that on a date to be determined by the court to which Plaintiff will provide further Notice once this date is selected, in Department SSC 11 of the Superior Court for the County of Los Angeles, Spring Street Courthouse, located at 312 N. Spring St. Los Angeles, CA 90012, Plaintiff RENE ARIAS ("Plaintiff") will move for an order granting preliminary approval of the proposed class action settlement on the terms and conditions set forth in the Joint Stipulation of Class Action Settlement and Release ("Settlement Agreement") between Plaintiff and Defendants ACE HARDWARE CORPORATION AND ACE GLOBAL DISTRIBUTION LLC ("Defendant"). A copy of the Settlement Agreement is attached as **Exhibit A** to the Declaration of Joshua Webster. Plaintiff will further move that the Order specifically encompass the following:

1. Certify a class for settlement purposes only;

2. For purposes of settlement, designate Plaintiff RENE ARIAS as Class Representative and Joseph Lavi and Joshua Webster of the law firm of Lavi & Ebrahimian as Class Counsel;

3. Confirm CPT Group as the Settlement Administrator;

4. Approve, as to form and content, the allocation form and class settlement notice attached as Exhibits "1" and "2," respectively, to the Settlement Agreement submitted in support of this motion;

5. Approve the form and content of the proposed method of participation in the settlement, requesting exclusion from the settlement, or objecting to the settlement;

6. Grant preliminary approval of the settlement; and

7. Set a Final Approval and Settlement Fairness

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The motion is based on this Notice and Motion, the Memorandum of Points and Authorities, Declaration of Joshua Webster, exhibits, all other pleadings and papers on file in this action, and any oral argument or other matter that may be considered by the Court.

Dated: January 24, 2019

LAVI & EBRAHIMIAN, LLP

By: _____

JOSEPH LAVI, ESQ.
JOSHUA WEBSTER, ESQ.
Attorneys for Plaintiff RENE ARIAS and other Class Members

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff RENE ARIAS ("Plaintiff") respectfully submits this memorandum in support of his motion for preliminary approval of the proposed class action settlement with Defendants ACE HARDWARE CORPORATION, and ACE GLOBAL DISTRIBUTION, LLC ("Defendant"). Plaintiff seeks entry of a proposed order granting preliminary approval of the class settlement which: (1) preliminarily approves the proposed settlement of the class action; (2) approves the form and method for providing notice and directs that notice be given to members of the settlement class; (3) preliminarily certifies the settlement class for settlement purpose; and (4) schedules a final approval hearing date.

Plaintiff filed this action on July 7, 2017 alleging that Defendant failure to provide proper meal periods, failure to provide proper rest periods, failure to pay all hours worked at the legal minimum wage, failure to pay all overtime hours at the applicable overtime rate. (First Amended Complaint.) Plaintiff also sought derivative penalties for inaccurate wage statements and untimely payment of unpaid wages following separation of employment, including PAGA civil penalties.

On May 9, 2018, the Parties participated in a successful mediation session before respected class action mediator Jeffery A. Ross, Esq. During this mediation, the Parties reached the basic terms of a settlement, which was later finalized in the Settlement Agreement for which Plaintiff now seeks preliminary approval.

As consideration for this Settlement, Defendant shall pay $1,700,000.00 (the "Maximum Settlement Amount") to fund a settlement to be distributed to current employees and former employees. (Webster Dec. Ex. A, pg. 1.) The Maximum Settlement Amount is inclusive of payments to those class members who do not exclude themselves, the approved attorney fees and costs, an approved Class Representative Enhancement Payment for his service as class representative, approved claims administration costs, and LWDA payment. (*Id.*) The employer shall separately pay its FICA, FUTA, and SDI contributions. (*Id.*)

The Net Settlement Amount is the portion of the Class Settlement Amount remaining after deductions of the Court-approved Class Counsel Award of not more than $566,666.00 in fees and not more than $15,000 in costs requested by Class Counsel, the Court-approved Settlement

Administration Costs not to exceed $20,000, the Labor and Workforce Development Agency Payment of $15,000.00 (75% of $20,000 allocated to PAGA), and the Court-approved class representative enhancement of no more than $7,900. (Webster Dec. Ex. A pg. 13 &20.) If all requested amounts are approved, the Net Settlement Amount is estimated to be $1,075,434. The distribution to Class Members is on a pro rata basis based on number of compensable workweeks.

As of the time of mediation, Defendants estimated that there were approximately 1,500 non-exempt hourly employees in California during the class period. Accordingly, Plaintiff estimates that class members will receive an average payment of $716.29 ($1,074,434 ÷ 1,500 = $716.29). As set forth below, Plaintiff believes this is a fair result for the class members.

II. SUMMARY OF LITIGATION

A. The Parties

Defendants has over 5,000 stores around the world with a majority of those stores independently owned and operated by local entrepreneurs. (www.acehardware.com/about-us) Defendants "offer a wide variety of pain, lawn and garden, tools, local niche services and virtually anything you'll ever need to fix, repair and maintain a customer's home." (www.acehardware.com/about-us) Mr. Arias worked for Defendant as a non-exempt hourly employee, as a lead material handler, from approximately March 2008 to August 2016. Defendants estimated that there were approximately 1500 non-exempt hourly employees in California during the class period at the time of mediation.

B. The Complaint and Allegations

On July 7, 2017 Plaintiff filed the current action on behalf of current and former non-exempt employees in California four years prior to the filing of the complaint through the present. Plaintiff filed a first amended complaint on September 8, 2017. Alvarado alleges: (1) Failure to Pay Wages For all Hours of Work at the Legal Minimum Wage Rate in Violation of Labor Code Sections 1194, 1194.2, & 1197; (2) Failure to Pay Wages for all time Worked at Overtime Rate; (3) Failure to Provide Legally Compliant Meal Periods; (4) Failure to Provide Legally Compliant Rest Periods; (5) Failure to Provide Complete and Accurate Wage Statements in Violation of Labor Code section 226; (6) Failure to Timely Pay Unpaid Wages After Separation of Employment; (7) Unfair Business Practices in Violation of Business and Professions Code Section 17200, *et seq.*; (8) PAGA penalties.

Plaintiff's claims are premised primarily on the allegation that Defendants did not pay employees for failing to provide meal and rest period in accordance with the California Labor Code and Wage Orders. Further, Plaintiff claims Defendants did not pay employees for all hours worked as they utilized quarter-hour rounding, further, Defendants automatically deducted 30 minutes for meal breaks even though Defendants routinely failed to provide a full 30-minute meal period.

Defendants denied the allegations and contended that employees were properly compensated.

C. The Mediation, Exchange of Directly Relevant Informal Discovery, and Legal Analysis By Parties' Counsel

The Parties have undertaken significant investigation of the facts and law during the pendency of this action. Following the filing of the case, the parties agreed to exchange information informally and privately mediate the matter. Prior to the mediation, the parties exchanged extensive data, information, and documents concerning Plaintiff's allegations, including production of meal and rest period policies, meal and rest period waivers, and timecards in Excel spreadsheets of the equivalent of over 1,294 pages of data when printed, and other various Class Member data. Plaintiff hired a consultant to evaluate the timecards for violations.

On August 6, 2018, the Parties participated in a mediation session before mediator Jeffrey A. Ross, Esq., an experienced complex litigation mediator. The mediator actively assisted the Parties in settlement discussions and the Parties reached an agreement to settle this matter. The Settlement was reached after extensive informal discovery as well as extensive negotiations conducted through the mediator. The mediation ultimately resulted with the Parties reaching the basic terms of a settlement, which was later finalized in the Settlement Agreement for which Plaintiff now seeks preliminary approval.

Class Counsel represent that they have conducted a thorough investigation into the facts of this case and have diligently pursued an investigation of the Class Members' claims against Defendants, including research of the applicable law and the potential defenses and review of relevant documents including Defendants' time records and policy documents, and average hourly rate of non-exempt employees.

Plaintiff and Class Counsel concluded, after taking into account the sharply disputed factual and legal issues involved in this action, the risks attending further prosecution, and the benefits to be received pursuant to the compromise and settlement of the action as set forth in this agreement,

that settlement on the terms set forth herein is in the best interest of the representative Plaintiff and the Class Members and is fair and reasonable.

Defendants have concluded that there are benefits associated with settling this action. Defendants have denied, and continue to deny, each of the claims and contentions in this action. After taking into account the sharply disputed factual and legal issues involved in the action, the expense and burden of protracted litigation, and the desire to put the controversy to rest, Defendants believe that settlement on the terms set forth in this agreement is in their best interests and is fair and reasonable.

III. SUMMARY OF SETTLEMENT

A. Terms of Settlement

Subject to Court approval pursuant to Section 382 of the California Code of Civil Procedure and Rule 3.769 et seq. of the California Rules of Court, the Parties have agreed to settle the Lawsuit by agreement upon the terms and conditions and for the consideration set forth in the Settlement Agreement a copy of which is attached to the Declaration of Joshua Webster as Exhibit "A".

A summary of the key terms of the Settlement is as follows:

1. Class Member(s) means all individuals who are or who have been employed by Defendants in California as a non-exempt employee between July 7, 2013 and the date upon which the Court grants the Preliminary Approval Order. (Webster Dec. Ex. A, ¶1.16.)
2. Maximum Settlement Amount means an amount not to exceed One Million Seven Hundred Thousand Dollars ($1,700,000), inclusive of attorneys' fees, costs, and expenses directly related to the Litigation (which includes all such fees and costs incurred to date, as well as all such fees and costs incurred in documenting the Settlement, securing Court approval of the Settlement, administering the Settlement, and includes the Settlement Administrator's fees and expenses, and obtaining final order approving the Settlement and entering judgment), the service payment to the Class Representative, and payment to the State of California Labor Workforce and Development Agency ("LWDA") of the PAGA Payment. All participating Class Members as of the date of Preliminary Approval will receive a cash settlement payment check as their pro-rata share of the Net Settlement Fund. This is a non-reversionary Settlement. This Settlement shall include up to 1,500 Class Members. If the number of Class Members as of the date of Preliminary Approval actually exceeds 1,500 by more than ten percent (10%), the Gross Settlement Amount shall be increased by the percentage difference between 1,500 and the actual number of Class Members. (*Id.* Ex. A ¶ 1.7.)
3. Attorneys' Fees and Costs: Class Counsel will request a payment of no more than $566,666.00 in attorneys' fees which constitutes approximately 33 1/3% of the gross settlement. (See *Id.* Ex. 1 ¶10.5.) Class Counsel will request a payment not to exceed $15,000.00 for Class Counsel's costs. (See *Id.*)
4. Class Representative Enhancement Payment: Plaintiff and Class Counsel will request a service award in the amount of $7,900 to be paid out of the Maximum Settlement

Amount for Plaintiff as payment for his time, effort, and assumption of risk in pursuing the litigation. If less than the requested amount is awarded to Plaintiff as the Class Representative Service Payment, the unawarded sum shall be added to the Net Settlement Fund for distribution to the Participating Class Members. (*Id.* Ex. A ¶10.3.)

5. Settlement Administration Costs: Defendant agrees to pay the reasonable costs incurred by the Settlement Administrator in administering the Settlement, as approved by the Court, from the Maximum Payment. Those costs are currently estimated to be approximately Twenty Thousand Dollars ($20,000.00). If the Court approves a payment to the Settlement Administrator of less than the amount sought, the remainder will be retained in the Net Settlement Amount for distribution of Participating Class Members. (Webster Dec. Ex. A ¶8.2.)

6. LWDA Payment: The Parties agree to allocate the amount of $20,000.00 from the Maximum Settlement Amount as penalties authorized by the PAGA. 75% of this amount or fifteen thousand dollars ($15,000.00) will be paid to the LWDA and 25% of this amount or five thousand dollars ($5,000.00) will become part of the Net Settlement Fund to be distributed to the Participating Class Members in accordance with the Distribution Formula to the Participating Class Members. (*Id.* Ex. A ¶10.4.)

7. Net Settlement Amount: means the Maximum Settlement Amount less the Class Representative Service Payment, Class Counsel's awarded attorneys' fees and expenses, the PAGA Payment, and the Settlement Admonitor's fees and expenses. The Net Settlement Fund will be distributed entirely to all Class Members who do not submit a timely and valid request for exclusion. Employer payroll taxes are separate from and not included in the Net Settlement Fund. No portion will revert to Defendants under any circumstances. (*Id.* Ex. A ¶1.8.) If all requested costs and fees are requested and approved, the distributable Net Settlement Amount is estimated to be $1,075,434:

Class Settlement Amount	$1,700,000
(Attorney's Fees)	($566,666)
(Attorney's Costs)	($15,000)
(Class Representative Enhancement Payment)	($7,900)
(Settlement Administration Costs)	($20,000)
(75% LWDA Payment)	($15,000)
Net Settlement Fund	$1,075,434

8. Distribution Formula to the Participating Class Members: Each Participating Class Member's payment (i.e., an Individual Settlement Payment) will be determined as follows:

   a. The Participating Class Members' distribution amounts will be calculated by dividing the Net Settlement Amount by the total number of Compensable Workweeks for the entire Class ("Compensable Workweeks" are calculated by taking the total number of weeks worked by a Class Member). The Settlement Administrator will then calculate the amount due to each Participating Class Member by multiplying the appropriate dollars-per-Compensable Workweek amount by the number of Compensable Workweeks worked by each Participating Class Member. In addition, to calculate the pro rata share of each Class Number, each Class Member's Workweeks shall be divided by the total of the Workweeks for all Class Members. The resulting figure would be divided into the Net Settlement Amount, which would give the amount available per Participating Class Member.

   b. All Class Members shall receive their Individual Settlement Payments by check from the Net Settlement Fund in the manner described above.

c. Any disputes, including those concerning a Class Member's Individual Settlement Payment or administration of the Settlement (but excluding those disputes that concern the interpretation or enforceability of this Agreement) shall be presented to the Settlement Administrator, who shall recommend a resolution of the dispute. If either Party disagrees with the recommendation, the Court will finally resolve the matter. Prior to any such resolution, counsel for the Parties will confer in good faith to resolve the dispute. (Webster Dec. Ex. A, ¶10.2)

9. No-Reversion Of Uncashed Funds: Funds for any settlement checks remaining uncashed after one hundred and eighty (180) days shall be remitted to DIR unclaimed funds under the employee's name. (*Id.* Ex. A ¶9 pg. 17, lines 18-20.)

10. Class Release and Waiver of Claims of Claims by the Class Members: The class release provides for a limited and not a general release of all "Released Claims" from July 7, 2013 through the date of preliminary approval as follows:

11. "Released Claims" are defined as any and all claims, debts, liabilities, demands, actions, or causes of action of every nature and description that were alleged in the First Amended Complaint or which could have been alleged based on the factual predicates in said Complaint. The Released Claims include, without limitation, all claims for unpaid wages, including, but not limited to, failure to pay minimum wages; failure to pay straight time compensation, overtime compensation, double-time compensation, reporting time compensation, and/or interest; missed, late, short or interrupted meal and/or rest periods, including any claim for any alleged failure to pay premiums for missed, late, short or interrupted meal or rest periods, including any claim for any alleged failure to pay such premiums for missed, late, short or interrupted meal or rest periods, or to pay such premiums at the regular rate of compensation, inaccurate or otherwise improper wage statements and/or failure to keep or maintain accurate records; unlawful payment instruments that are optional to the Class Members; any claim for unfair business practices arising out of, arising in connection with, or related to any or all of the aforementioned claims; any claim for penalties arising out of or related to any or all of the aforementioned claims, including but not limited to, recordkeeping penalties, wage statement penalties, minimum-wage penalties, and waiting time penalties; and attorneys ' fees and costs. The Released Claims include all such claims arising under the California Labor Code (including, but not limited to, sections 200, 201, 202,203 , 204, 210 (only limited as to claims based on Labor Code Section 204), 216, 218, 218.5 , 218.6, 223, 225, 225.5 , 226, 226.7, 510, 512, 516, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1 , 1198, and 2698 *et seq. as to identified Labor Code Section* and 2699 *et seq.;* the applicable Wage Orders of the California Industrial Welfare Commission as to the facts alleged in the Complaint and all claims that could have been pled based on the alleged facts in said Complaint; California Business and Professions Code section 17200, *et seq. ;* the California Civil Code, including but not limited to, sections 3287,; California Code of Civil Procedure§ 1021.5. The Class Released Claims include any and all claims under the Private Attorneys General Act, Cal. Lab. Code § 2698 *el seq.* ("PAGA") that were or could have been asserted in the Litigation based on the facts alleged or are reasonably related to those asserted. The PAGA Released Claims include PAGA Claims asse1ted during the PAGA Settlement Period of July 7, 2016 through the date of Preliminary Approval. In addition, Settlement Class Members who endorse their settlement checks waive and release any claims under the Fair Labor Standards Act, 29 U.S.C. § 20 I *et seq.* ("FLSA") arising during the Settlement Class Period and reasonably related to any or all of the aforementioned claims. This release excludes the release of claims not permitted by law. (Webster Decl., Ex. A pg.8:7 – 9:11.)

B. Proposed Form of Notice to The Class

Notice of Settlement: Within twenty (20) days after the Court grants preliminary approval of

the settlement, Defendants will provide the Settlement Administrator with the Class Members' names, last known addresses, dates of employment and Social Security Numbers as well as any other information requested by the Settlement Administrator. (*Id.* Ex. A, pg 12:17-20.) Within 15 days of receipt of the Class List and Data, the Settlement Administrator shall mail the Notice Packet to the Class Members, in English and Spanish via first class regular U.S. mail. (*Id.* Ex. A pg12:25-27)

The proposed notice of settlement is intended to effectively reach the class based on their contact information provided to Defendant during their employment and by way of returned Notice Packets or of a "skip trace." (Webster Decl. Ex. A, pg 13:6-13). On each returned as undeliverable Notice Packet, the Administrator will review the Class list and Data to determine whether the Class member is currently employed, and if so, will inform the Parties. Defendants will promptly investigate and, if possible, provide an updated mailing address for remailing of the Notice Packet for any current employee. (Id. at Ex. A, pg. 13:14-20).

The proposed notice of settlement will be sent in plain language (both English and Spanish) to explain the nature of the Litigation, a summary of the substance of the Settlement, the Class definition, the formula to calculate a Class Member's Individual Settlement Payment, the deadline to submit an objection to the Settlement or a request for exclusion from the Settlement and/or to dispute the basis for a Class Member's estimated Individual Settlement Payment, and the date, time and place for the Final Approval Hearing. (*Id.* Ex. A Ex. 1.) The Class Members will also be given the opportunity to dispute the workweeks allocated to them using the Allocation Form which will be sent with the notice of settlement. (*Id.* Ex. A Ex. 2.)

Request for Exclusion: Any Class Member, who wishes to be excluded from the settlement, must complete, sign, date, and timely return the Exclusion Request to the Settlement Administrator to exclude themselves from the Settlement, setting forth their name, address, last four digits of their Social Security number, and the following statement or a similar statement: "I wish to exclude myself from the settlement reached in the matter of Arias vs. Ace hardware Corporation, Case No. BC667652, within 45 calendar days after the date that the Settlement Administrator first mails the Notice Packets. (*Id.* Ex. A, pg 14:25–15:6.)

Objections: Any Class Member wishing to object to the approval of this settlement shall

inform the Settlement Administrator in writing of his or her intent to object within 45 days of mailing of the class notice. (*Id.* Ex. A, pg 14:3-5) Any written objection must be signed and include: (1) the full name of the Class Member; (2) the dates of employment; (3) the last four digits of the Settlement Class Members' Social Security number; (4) the basis for the objection; (5) whether the Class Member intends to appear at the Final Approval/Settlement Fairness Hearing; and (6) an explanation of the basis for the Class Member's objection. (*Id.* Ex. A 14:5-10.)

C. CPT Group as Settlement Administrator

CPT Group, Inc. is an experienced and qualified class action claims administrator who provides class action administrative services. (Webster Dec. Exhibit B; CPT Group Curriculum Vitae). CPT is a provider of notice and settlement class action administration services since 1984 and has been appointed as a third-party administrator by all major courts in California and a number of United States District Courts. (*Id.*)

D. Attorneys' Fees and Costs

As noted above, Class Counsel will request a payment of fees up to $566,666.00, which is one-third of the settlement, for the time spent litigating this matter. (*Id.* Ex. A ¶10.5 pg. 21:6-9.) Class Counsel will also seek up to $15,000 for Class Counsel Costs. (*Id.*) The requested fee is a fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a contingent fee basis, especially in light of the substantial benefits achieved by Plaintiff's counsel for the Class Members.

California courts have recognized that one appropriate method for awarding attorney's fees in class actions is to award a percentage of the "common fund" created as a result of the settlement. (*City & County of San Francisco v. Sweet* (1995) 12 Cal. 4th 105, 110-11; *Quinn v. State* (1975) 15 Cal. 3d 162, 168; *see also Apple Computer, Inc. v. Superior Court* (2005) 126 Cal. App. 4th 1253, 1270; *Lealao v. Beneficial California, Inc.* (2000) 82 Cal. App. 4th 19, 26.) The basis of the common fund is fairness to the successful litigant, who might otherwise receive no benefit because his recovery might be consumed by the expenses; correlative prevention of an unfair advantage to others who are entitled to share in the fund and who should bear their share of the burden of its recovery; encouragement of the attorney for the successful litigant, who will be more willing to undertake and diligently prosecute proper litigation for the protection or recovery of the fund if he

is assured that he will be properly and directly compensated should his efforts be successful. (*City & County of San Francisco*, 12 Cal. 4th at 111.) In *Quinn*, the California Supreme Court stated: "[O]ne who expends attorneys' fees in winning a suit which creates a fund from which others derive benefits may require those passive beneficiaries to bear a fair share of the litigation costs." (*Quinn v. State,* 15 Cal. 3d at 167.) Similarly, in *Sweet*, the California Supreme Court recognized that the common fund doctrine has been applied "consistently in California when an action brought by one party creates a fund in which other persons are entitled to share." (*City & County of San Francisco,* 12 Cal. 4th at 110.)

Several courts have expressed frustration with the alternative "lodestar" approach for deciding fee awards, which usually involves wading through voluminous and often indecipherable time records. (*Lealao*, 82 Cal. App. 4th at 31 n.5 [citing *In re Activision Sec. Litig.* (N.D. Cal 1989)] 723 F. Supp. 1373, 1375].) The percentage approach is preferable to the lodestar because: (1) it aligns the interests of class counsel and absent class members; (2) it encourages efficient resolution of the litigation by providing an incentive for early, yet reasonable, settlement; and (3) it reduces the demands on judicial resources. (*In re Activision Sec. Litig.*, 723 F. Supp. at 1378-79.) The Ninth Circuit now routinely uses the percentage of the common fund approach to determine the award of attorney's fees. (*Lealao*, 82 Cal. App. 4th at 30-31; *see e.g., In re Pacific Enters. Sec. Litig.* (9th Cir. 1995) 47 F.3d 373, 378-79 [approving attorney's fee of 33%].)

Plaintiff's counsel requests fees equal to 1/3 of the Class Settlement Amount and falls well within the range of reasonableness. Historically, courts have awarded percentage fees in the range of 20% to 50%, depending on the circumstances of the case. (*See In re Activision Sec. Litig.*, 723 F. Supp. at 1378.) According to Professor Newberg: "No general rule can be articulated on what is a reasonable percentage of a common fund…Usually 50 per cent of the fund is the upper limit on a reasonable fee award from a common fund, in order to assure that fees do not consume a disproportionate part of the recovery obtained for the class, though somewhat larger percentages are not unprecedented." (Newberg on Class Actions (4th Ed.), §14.6.)

Class Counsel have bore, and continue to bear, the entire risk and cost of litigation associated with this class action on a pure contingency basis. The factual and legal issues posed in this case were highly disputed, and there were also risks as to whether or not a class might be de-

certified or whether Plaintiff might succeed at trial, leaving a large number of putative class members unlikely to receive any recovery.

The Court should preliminarily approve the requested attorney's fees and costs, which are justified by the results achieved, the complexity of the issues, the difficulty of the case, and the great risk undertaken by Class Counsel. The requested attorneys' fees and costs will not be opposed by Defendants and are well within established guidelines. The Class Members will also be notified of the requested amount and have an opportunity to object to the requested fees.

E. Enhancement/Service Award

Plaintiff and Class Counsel will request, and Defendants agree not to oppose, payment by Defendants from the Class Settlement Amount of $7,900 to Plaintiff as a service payment. (Webster Dec. Ex. A ¶ 10.3 pg 20:13-14.) The named Plaintiff is entitled to an enhancement award for his service as Class Representative and the risks in connection with that role. Enhancement awards in overtime cases typically range from $5,000.00 to $40,000.00, although some awards are higher. Often, multiple class representatives receive awards in the higher range. (*See e.g.*, *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 412 (approving an enhancement request of $10,000.00 per named plaintiff in a 188 member class); *Cook v. Niedert* (7th Cir. 1998) 142 F.3d 1004, 1016; *Thornton v. East Texas Motor Freight* (6th Cir. 1974) 497 F.2d 416, 420 ("We also think there is something to be said for rewarding those drivers who protect and help to bring rights to a group of employees who have been the victims of discrimination.").) Here, the requested enhancement is relatively modest, reasonable, and should be preliminarily approved. The requested award of $7,900 is less than half a percent, .46 percent, of the total settlement. Plaintiff has performed considerable services on behalf of the Class during the litigation by seeking an attorney, participating throughout litigation, searching for and providing information related to his employment and the employment conditions, spending time in meetings with counsel to get a better understanding of his work environment and requirements, provided needed information for mediation, settlement discussions, and potential class certification, and approved the settlement on behalf of all class members. (Webster Dec. ¶33.)

IV. ARGUMENT IN FAVOR OF PRELIMINARY APPROVAL

A. The Proposed Settlement Meets The Standards For Preliminary Approval

Rule 3.769 of the California Rules of Court requires court approval for class action

settlements. "Before final approval, the court must conduct an inquiry into the fairness of the proposed settlement." (Cal. Rules of Court, rule 3.769(g).) Courts act within their discretion in approving settlements which are fair, not collusive, and take into account "all the normal perils of litigation as well as the additional uncertainties inherent in complex class actions." (*In re Beef Industry Antitrust Litigation* (5th Cir. 1979) 607 F.2d 167, 179, *cert. den. sub nom. Iowa Beef Processors, Inc. v. Meat Price Investigators Ass'n* (1981) 452 U.S. 905.)

The purpose of the preliminary evaluation of class action settlements is to determine only whether the proposed settlement is within the *range of reasonableness* and, therefore, whether notice to the class and the scheduling of a formal fairness hearing are warranted. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35; Newberg on Class Actions (4th Ed.) §11:25.) Courts have broad powers to determine whether a proposed settlement is fair under the circumstances of the case. (*Wershba*, 91 Cal.App.4th at 234-35; *Mallick v. Superior Court* (1979) 89 Cal.App.3d 434, 438.) In evaluating preliminary approval, courts must consider several relevant factors, including "the strength of the Plaintiff's case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, [and] the experience and views of counsel...." (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) "The list of factors is not exclusive and the court is free to engage in a balancing and weighing of the factors depending on the circumstances of each case." (*Wershba*, 91 Cal.App.4th at 245.) Furthermore, courts must give "proper deference to the private consensual decision of the parties" because "the court's intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." (*Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1027.)

A proposed class action settlement is presumed fair under the following circumstances: (1) the parties reached settlement after arms-length negotiations; (2) investigation and discovery were sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation, and (4) the percentage of objections is small. (*Dunk v. Ford Motor Co.*, 48 Cal.App.4th at

1802.) The Declaration of Joshua Webster demonstrates that the proposed settlement was the product of serious, informed, and non-collusive negotiations and demonstrates counsel's extensive experience in both employment law as well as class action litigation.

1. The settlement is the result of serious, informed, and non-collusive negotiations.

The proposed settlement was reached as a result of arm's-length negotiations facilitated by an experienced mediator following significant investigation of the facts and law during and in preparation for mediation. The settlement negotiations have been, at all times, adversarial and non-collusive in nature. Indeed, continued good-faith but occasionally contentious negotiations were required to ultimately reach an agreement following a successful full-day mediation with respected class action mediator Jeffrey A. Ross, Esq. While Plaintiff believes in the merits of his case, he also recognizes the inherent risks of litigation and understands the benefit of the Class receiving settlement funds immediately as opposed to delaying payment or risking an unfavorable decision on summary adjudication/judgment, motion for class certification, at trial and/or the damages awarded, and/or appeal all of which have potential to eliminate any relief for class members on claims which are suitable for class treatment.

2. The extent of the information provided through informal discovery and the stage of the proceedings support the settlement.

As described above, the Parties thoroughly investigated and evaluated the factual strengths and weaknesses of this case before reaching the proposed settlement and engaged in sufficient investigation and discovery as referenced above, to support the settlement. Each side agreed to the informal production of discovery and production of relevant declarations to fully inform the parties of potential liability and strength of Plaintiff's claims. Such discovery and investigation in this included investigation and research of relevant legal principles for liability and certification and production and analysis of the documents and data produced. Plaintiff hired a consultant to evaluate the data. There have also been conferences and communications between the representatives of the Parties related to this primary issue. Counsel for the Parties have investigated the law as applied to the facts regarding the alleged claims and potential defenses thereto, and the potential damages claimed, including the review of class information produced by Defendants to Class Counsel for the purposes of litigation and mediation.

The settlement came only after the case was fully investigated by counsel, as set forth above.

This litigation, therefore, had reached the stage where "the Parties certainly have a clear view of the strengths and weaknesses of their cases" sufficient to support the Settlement. (*Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F. Supp. 610, 617.)

3. Plaintiff's counsel is experienced in similar litigation

Experienced counsel, operating at arms-length, have weighed the strengths of the case and examined all of the issues and risks of litigation and endorse the proposed settlement. The view of the attorneys actively conducting the litigation "is entitled to significant weight" in deciding whether to approve the settlement. (*Fisher Bros. v. Cambridge Lee Industries, Inc.* (E.D. Pa. 1985) 630 F.Supp. 482, 488; *Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D. 15, 18, *affd.* 661 F.2d 939 (9th Cir. 1981); *Boyd,* 485 F.Supp. at 617.)

Both Plaintiff's and Defendants' counsel are experienced in employment, wage and hour and class action matters. Lavi & Ebrahimian LLP is well-regarded as a firm that handles exclusively employment matters (both individual and class). (Webster Dec. ¶¶25-28.) Lavi & Ebrahimian, LLP, has been approved as class counsel in numerous actions. Joseph Lavi has been named a Southern California Super Lawyer the area of Plaintiff's employment litigation from 2011-2017. (*Id.*) Joshua Webster is also experienced in handling employment, wage and hour and class action matters. (*Id.*) In short, Class Counsel are experienced and qualified to evaluate the class claims and to evaluate settlement versus trial on a fully informed basis, and to evaluate the viability of the defenses. Counsel on both sides share the view – endorsed by an experienced class action mediator – that this is a fair and reasonable settlement in light of the complexities of the case, the state of the law and uncertainties of litigation and trial, and the benefit the settlement confers on the class. Given the risks inherent in litigation, in class certification proceedings, and in the defenses asserted, this settlement is fair, adequate, and reasonable and in the best interests of the class.

4. The settlement is fair and reasonable based on the strengths of Plaintiff's case and the risks and costs of further litigation

Plaintiff and his counsel have concluded it was reasonable to enter into the proposed Settlement. Defendants have contested and continue to contest liability for the claims asserted in the action. Although Defendants believe that ultimate success would be unlikely on Plaintiff's claims, they nevertheless agreed to attempt resolution of the case through mediation to avoid the expense, distraction and uncertainty of protracted litigation.

There are significant legal uncertainties associated with cases such as this as they can be factually complex and require protracted litigation to resolve. A settlement is not judged solely against what might have been recovered had plaintiff prevailed at trial, nor does the settlement have to provide 100% of the damages sought to be fair and reasonable. (*Linney v. Cellular Alaska Partnership* (9th Cir. 1998) 151 F. 3d 1234, 1242; *Wershba*, 91 Cal.App.4th at 246 & 250; *Rebney v. Wells Fargo Bank* (1990) 220 Cal.App. 3d 1117, 1139.) Instead, "[c]ompromise is inherent and necessary in the settlement process...even if the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated, this is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation" (*Wershba*, 91 Cal.App.4th at 250.)

5. The Proposed Settlement is a Reasonable Compromise of Claims.

To evaluate a settlement, the trial court must receive "basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) However, the record need not contain an explicit statement of the maximum theoretical recovery:

> Greenwell misunderstands *Kullar*, apparently interpreting it to require the record in all cases to contain evidence in the form of an explicit statement of the maximum amount the plaintiff class could recover if it prevailed on all its claims—a number which appears nowhere in the record of this case. But *Kullar* does not, as Greenwell claims, require any such explicit statement of value; it requires a record which allows "an understanding of the amount that is in controversy and the realistic ranges of outcomes of the litigation."

(*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles,* 186 Cal.App.4th at 409.)

To assist the Court with determining if the proposed settlement is within a range that is fair, reasonable, and adequate, Plaintiff's counsel analyzed the value of pleaded class allegations. As stated above, the settlement was reached only after exchanging discovery prior to mediation and conducting legal analyses of both Plaintiff and Defendant's theories.

Minimum Wage Violations: Plaintiff alleged that Defendant maintained a policy, practice, and/or procedure whereby it used quarter-hour rounding (potentially other types of time deduction) which reduced the daily hours worked by Plaintiff and other California-based non-

exempt employees. Plaintiff estimated approximately $378,000.00 (estimated 300.9 unpaid hours x $14.21 average rate of pay x 44.37 multiplier ≈ $378,000.00) in total minimum wage hour damages owed during the relevant period.

Defendant claimed that company policies provided the proper payment of all wages, and that Defendant's rounding policy complies with California Law.

Meal Break Violations: Plaintiff alleged that first meal periods were late or not issued at all and that second meal periods were not permitted. Analysis of time cards demonstrated numerous instances of late first meal breaks, shifts in excess of 6 hours when employees did not receive a first meal break, and shifts in excess of 10 hours when employees did not receive a second meal break. Plaintiff estimated approximately $2,938,000.00 (estimated 4660 violations from timecards x $14.21 x 44.37 multiplier ≈ $ 2,938,000.00) in total meal period damages based on violations occurring each workday during the relevant period. Plaintiff estimated $2,100,000.00 damages for late first meal breaks (3,329 instances x $14.44 x 44.37 multiplier ≈ $2,100,000). Plaintiff estimated $216,000.00 for missed first meal breaks (344 violations x $14.21 average hourly rate x 44.37 multiplier ≈ $216,000). Plaintiff estimated $622,000.00 for missed second meal breaks (987 violations x $14.21 hourly rate x 44.37 multiplier ≈ $622,000.00).

Defendant claimed that company policies provided for proper meal breaks so if an employee took it late or failed to take a meal break, it was their choice and they had waived the right to take either a timely meal or a meal break at all. Defendant argued that it had a policy of paying employees meal break premium wages if an employee could not take a break due to reasons which were not the employees' choice.

Rest Break Violations: Plaintiff alleged that rest breaks were not received, and that Defendants' did not have a policy in place where their employees would receive a rest break when they worked a shift of 3.5 hours or more. Further, Plaintiff alleged that second rest breaks were not received, and that Defendants' did not have a policy in place where their employees would receive a rest break when they worked a shift of 7 hours or more. Additionally, Plaintiff alleges a third rest break was not provided when an employee worked over 10 hours in a workday. Finally, Plaintiff alleged that when Plaintiff and other California based non-exempt hourly employees did not receive a rest break, there was no policy or procedure in place where Plaintiff or the other

Class Members would receive a rest break premium pay. Plaintiff estimated approximately $1,648,000.00 (116,049 estimated violations x $14.21 ≈ $1,648,000.00) in rest period damages.

Defendant claimed that company policies provided for proper rest breaks so if an employee took it late or failed to take a rest break, it was their choice and they had waived the right to take either a timely rest or a rest break at all. Defendant argued that it had a policy of paying employees rest break premium wages if an employee could not take a break due to reasons which were not the employees' choice.

Labor Code § 226 Penalties: Plaintiff alleged that based on the foregoing, wage statements inaccurately stated the number of hours worked and wages earned. Plaintiff estimated approximately $1,600,000.00 (408 approximate employees within penalty period x $4,000 ≈ $1,600,000).

Because this claim was derivative, it was subject to the defenses to the claims alleged above. In addition, Defendant also argued that Plaintiff could not demonstrate that the Defendant knowingly and intentionally provided employees with inaccurate wage statements.

Waiting Time Penalties: Defendant provided Plaintiff with an estimate of 1,002 former employees who separated employment with Defendant. Accordingly, Plaintiff estimated $3,400,000.00 in waiting time penalties (1,002 formers x 30 days x 8 hours x $14.21 average per hour ≈ $3,400,000.00). Because this claim was derivative, it was subject to the defenses to the underlying claims as alleged above. In addition, Plaintiff would have needed to show that the violations were willful. (Lab. Code § 203, subd. (a); CACI No. 2704.) Defendant asserted Plaintiff could not show Defendant willfully withheld owed wages in the manner intended to be protected by the Labor Code.

As such, Defendant's maximum potential exposure without including PAGA would be approximately $9,800,000. The case settled for $1,600,000, which is approximately 16.33% of the potential recovery not including PAGA in this matter. However, if Plaintiff continued litigating this matter, Class Members potentially could have received nothing if the Court had agreed with Defendants' positions especially in light of the volatility of this area of law and the aforementioned defenses. As such, Plaintiff's decision to settle this matter was in the best interest of the Class Members. The Class Settlement Amount is reasonable in light of the risks involved in this case—

including the prospect of a potential adverse summary adjudication ruling, certification ruling, defenses to the case, potential appeal, and elements of willfulness and/or injury required for certain penalties.

Plaintiff's Counsel is convinced that the proposed settlement is in the best interest of the class based on the negotiations and a detailed knowledge of the issues present in this action. The length and risks associated with the pending motion for summary adjudication, trial, and other normal perils of litigation that may have impacted the value of the claims and were all weighed in reaching the proposed settlement. In addition, the affirmative defenses asserted by Defendant, the prospect of a potential adverse summary adjudication ruling, uncertainty on certification issues, the difficulties of complex litigation, the lengthy process of establishing specific damages and various possible delays and appeals, were also carefully considered by Class Counsel in agreeing to the proposed settlement. In light of the above, the proposed Settlement is well within the "ballpark" of reasonableness and should be granted preliminary approval.

The proposed settlement results in substantial benefits to the class. If the Court were to approve the estimated requested amounts for attorneys' fees and costs, LWDA payment, service award, and administrator costs as set forth above, Plaintiff estimates that class members will receive an average payment of $716.29 ($1,074,434 ÷ 1,500 = $716.29). This is a fair and reasonable result. Based on the nature of wage and hour cases, the actual unpaid amounts of wages are relatively small for each individual class member. The settlement which will allow the employees, many of them current employees, to receive a portion of their unpaid wages without risk of retaliation or having to file their own action, find an attorney, participate in the action, or incur the risk of costs if the action is unsuccessful.

V. THE COURT SHOULD CERTIFY THE CLASS FOR SETTLEMENT PURPOSES

The court may make an order approving certification of a provisional settlement class after the preliminary settlement hearing. (California Rules of Court, Rule 3.769(d).) For settlement purposes, courts use a less stringent standard for certification of classes. (*Global Minerals & Metals Corp. v. Superior Court* (2003) 113 Cal.App.4th 836, 859.) "The reason for this is that no trial is anticipated in a settlement class case, so the case management issues inherent in the ascertainable class determination need not be confronted." (*Id.;* see also *7-Eleven Owners for Fair Franchising v.*

Southland Corp. (2000) 85 Cal.App.4th 1135, 1161-1162 [affirming certification of class action for settlement purposes only].) Accordingly, this Court has discretion to certify Plaintiff's class for settlement purposes only.

The requirements under California Code of Civil Procedure Section 382 are all met for the purposes of certifying this case for settlement purposes:

- Numerosity: The settlement class consists of approximately 1500 class members. Thus, the requirement of numerosity is met because joinder of 1500 individual plaintiffs into a single case is otherwise impracticable in light of the circumstances of this case.
- Ascertainability: The proposed "Settlement Class" is easily ascertainable based on Defendants' own payroll records.
- Typicality: The claims of the class representative are typical of the claims of the class members as a whole. The named Plaintiff suffered the same alleged violations (e.g. minimum, overtime wages, meal and rest period violations, and derivative claims) as the class as a whole did and, thus, the claims of the named Plaintiff fairly represent the claims of the class as a whole.
- Adequacy: Plaintiff has proven to be an adequate class representative. He has conducted himself diligently and responsibly in representing the class in this litigation, understands his fiduciary obligations, and has actively participated in the prosecution of this case. (Webster Dec. ¶33.) Plaintiff has spent hours in meetings and conferences with counsel to provide counsel with a better understanding of his work environment and requirements. (*Id.*) Further, Plaintiff does not have any interest that is averse to the interests of the other class members. (*Id.*) Moreover, proposed class counsel is adequate to represent the class for settlement purposes. (Webster Dec. ¶¶25-28.)
- Commonality/Predominance: Many common issues of law and fact unite the class. The common questions of law and fact include, but are not limited to:

1) Whether Defendants illegally failed to provide minimum wage for all hours worked;
2) Whether Defendants illegally failed to provide overtime wages for all hours worked over 8 hours in a workday or 40 hours in a workweek;
3) Whether Defendants illegally failed to provide proper meal periods;
4) Whether Defendants illegally failed to provide proper rest periods;
5) Whether Defendants failed to provide the class members with accurate itemized wage statements;
6) Whether Defendants failed to provide the Class members with their final wages after separation from employment within the statutory time period;
7) Whether Defendants violated Business & Professions Code Section 17200, et

seq. by their wage and hour practices, furnishing of correct itemized wage statement practices, indemnification practices, as well as, payment at the time of separation practices;

8) Whether Class Members are entitled to unpaid wages, penalties, interest, fees and other relief in conjunction with his claims;

9) Whether, as a consequence of Defendants' unlawful conduct, the Class Members are entitled to restitution, and/or equitable relief, and

10) Plaintiff anticipates that Defendants' affirmative defenses will raise additional common issues of fact and law.

- Superiority: A class action is superior to other available means for the fair and efficient adjudication of this controversy. Joinder of all members of the proposed class is impractical. Class treatment will permit a large number of similarly-situated persons to prosecute their common claims in a single forum simultaneously for settlement purposes without the unnecessary duplication of effort and expense that numerous individual actions would engender. Moreover, because a number of the class members are current employees, the fear of retaliation further supports superiority of class-wide relief because that fear of retaliation often discourages victims from seeking legal redress while currently employed by the same employer.

VI. THE PROPOSED CLASS NOTICE OF SETTLEMENT SHOULD BE APPROVED

The proposed Class Notice and Allocation Form in the form attached as Exhibit 1 and 2, respectively, to Exhibit A to the Declaration of Joshua Webster should be approved for dissemination to the Class Members. This notice informs the Class of the terms of the settlement, of their right to receive their proportional share of the settlement and the manner in which to do so, of their right to request exclusion or to comment upon or object to the settlement, and of their right to appear in person or by counsel at the final approval hearing and to be heard regarding approval of the Settlement. Adequate periods of time are provided by each of these procedures. Furthermore, the date and time of the Final Approval hearing will be inserted in the Class Notices and will identify the information upon which the Class Member's share will be calculated as well as the estimated amount he or she can expect to receive if he or she chooses not to exclude him or herself.

Notice of Final Judgment: Within sixty (60) days of final approval, the Settlement Administrator will send the Participating Class Members a postcard to notify the Class Members of final judgment.

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VII. PROPOSED SCHEDULE OF SETTLEMENT PROCEEDINGS

The Parties propose the following schedule for the fairness hearing and final proceedings:

Event	Timing
Preliminary Approval Order	TBD
Last Day for Defendants to provide Class Member data to the Settlement Administrator	(20 calendar days after entry of preliminary approval order)
Notice Date: last day for Settlement Administrator to mail the Class Notice	(15 calendar days after receipt of class list)
Deadline for Objections, and Exclusion Requests	(45 calendar days from last date to mail)
Hearing on final approval of class action settlement	(21 calendar days from the deadline for Objections, and Exclusion Requests)

VIII. CONCLUSION

The proposed class action settlement is fair, adequate, and reasonable. It will result in fair and immediate payment to Class Members; it is non-collusive; and it was achieved as the result of informed, extensive, and arms' length negotiations conducted by counsel for respective parties who are experienced in wage and hour class action litigation. For the foregoing reasons, the parties respectfully request that the Court grant preliminary approval of the proposed Settlement, sign the proposed Order, approve and authorize mailing of the proposed Class Notice, and set a date for a final approval hearing.

Dated: January 24, 2019

LAVI & EBRAHIMIAN, LLP

By: _____

Joseph Lavi, Esq.
Joshua Webster, Esq.
Attorneys for Plaintiff RENE ARIAS and other Class Members

DECLARATION OF JOSHUA WEBSTER

I, Joshua Webster, declare:

1. I am an attorney licensed to practice law in the state of California and have been admitted to practice before this Court. I am an associate attorney with the law firm of Lavi & Ebrahimian, LLP, Counsel for Plaintiff Rene Arias ("Plaintiff") in this action, and I an attorney assigned to work on this case. I have personal knowledge of the matters stated herein and if called and sworn as a witness, I would and could competently testify under oath thereto. I am a member in good standing of the bar of the State of California.

2. This Declaration is submitted in support of Plaintiff Rene Arias's Motion for Preliminary Approval of Class Action Settlement.

CLASS COUNSEL'S INVESTIGATION

3. Defendants has over 5,000 stores around the world with a majority of those stores independently owned and operated by local entrepreneurs. (www.acehardware.com/about-us) Defendants "offer a wide variety of pain, lawn and garden, tools, local niche services and virtually anything you'll ever need to fix, repair and maintain a customer's home." (www.acehardware.com/about-us) Mr. Arias worked for Defendant as a non-exempt hourly employee, as a lead material handler, from approximately March 2008 to August 2016. Defendants estimated that there were approximately 1500 non-exempt hourly employees in California during the class period at the time of mediation.

4. On July 7, 2017 Plaintiff filed the current action on behalf of current and former non-exempt employees in California four years prior to the filing of the complaint through the present. Plaintiff filed a first amended complaint on September 8, 2017. Alvarado alleges: (1) Failure to Pay Wages For all Hours of Work at the Legal Minimum Wage Rate in Violation of Labor Code Sections 1194, 1194.2, & 1197; (2) Failure to Pay Wages for all time Worked at Overtime Rate; (3) Failure to Provide Legally Compliant Meal Periods; (4) Failure to Provide Legally Compliant Rest Periods; (5) Failure to Provide Complete and Accurate Wage Statements in Violation of Labor Code section 226; (6) Failure to Timely Pay Unpaid Wages After Separation of Employment; (7) Unfair Business Practices in Violation of Business and Professions Code Section 17200, *et seq.*; (8) PAGA penalties.

5. Plaintiff's claims are premised primarily on the allegation that Defendants did not pay employees for failing to provide meal and rest period in accordance with the California Labor Code and Wage Orders. Further, Plaintiff claims Defendants did not pay employees for all hours worked as they utilized quarter-hour rounding, further, Defendants automatically deducted 30 minutes for meal breaks even though Defendants routinely failed to provide a full 30-minute meal period.

6. Defendants denied the allegations and contended that employees were properly compensated.

7. The Parties have undertaken significant investigation of the facts and law during the pendency of this action. Following the filing of the case, the parties agreed to exchange information informally and privately mediate the matter. Prior to the mediation, the parties exchanged extensive data, information, and documents concerning Plaintiff's allegations, including production of meal and rest period policies, meal and rest period waivers, and timecards in Excel spreadsheets of the equivalent of over 1,294 pages of data when printed, and other various Class Member data. Plaintiff hired a consultant to evaluate the timecards for violations.

8. On August 6, 2018, the Parties participated in a mediation session before mediator Jeffrey A. Ross, Esq., an experienced complex litigation mediator. The mediator actively assisted the Parties in settlement discussions and the Parties reached an agreement to settle this matter. The Settlement was reached after extensive informal discovery as well as extensive negotiations conducted through the mediator. The mediation ultimately resulted with the Parties reaching the basic terms of a settlement, which was later finalized in the Settlement Agreement for which Plaintiff now seeks preliminary approval.

9. Class Counsel represent that they have conducted a thorough investigation into the facts of this case and have diligently pursued an investigation of the Class Members' claims against Defendants, including research of the applicable law and the potential defenses and review of relevant documents including Defendants' time records and policy documents, and average hourly rate of non-exempt employees.

10. Plaintiff and Class Counsel concluded, after taking into account the sharply disputed factual and legal issues involved in this action, the risks attending further prosecution, and the benefits

to be received pursuant to the compromise and settlement of the action as set forth in this agreement, that settlement on the terms set forth herein is in the best interest of the representative Plaintiff and the Class Members and is fair and reasonable.

11. Defendants have concluded that there are benefits associated with settling this action. Defendants have denied, and continue to deny, each of the claims and contentions in this action. After taking into account the sharply disputed factual and legal issues involved in the action, the expense and burden of protracted litigation, and the desire to put the controversy to rest, Defendants believe that settlement on the terms set forth in this agreement is in their best interests and is fair and reasonable.

THE SETTLEMENT IS FAIR, JUST AND REASONABLE

12. To assist the Court with determining if the proposed settlement is within a range that is fair, reasonable, and adequate, Plaintiff's counsel analyzed the value of pleaded class allegations. As stated above, the settlement was reached only after exchanging discovery prior to mediation and conducting legal analyses of both Plaintiff and Defendant's theories.

13. Minimum Wage Violations: Plaintiff alleged that Defendant maintained a policy, practice, and/or procedure whereby it used quarter-hour rounding (potentially other types of time deduction) which reduced the daily hours worked by Plaintiff and other California-based non-exempt employees. Plaintiff estimated approximately $378,000.00 (estimated 300.9 unpaid hours x $14.21 average rate of pay x 44.37 multiplier ≈ $378,000.00) in total minimum wage hour damages owed during the relevant period.

14. Defendant claimed that company policies provided the proper payment of all wages, and that Defendant's rounding policy complies with California Law.

15. Meal Break Violations: Plaintiff alleged that first meal periods were late or not issued at all and that second meal periods were not permitted. Analysis of time cards demonstrated numerous instances of late first meal breaks, shifts in excess of 6 hours when employees did not receive a first meal break, and shifts in excess of 10 hours when employees did not receive a second meal break. Plaintiff estimated approximately $2,938,000.00 (estimated 4660 violations from timecards x $14.21 x 44.37 multiplier ≈ $ 2,938,000.00) in total meal period damages based on violations occurring each workday during the relevant period. Plaintiff

estimated $2,100,000.00 damages for late first meal breaks (3,329 instances x $14.44 x 44.37 multiplier ≈ $2,100,000). Plaintiff estimated $216,000.00 for missed first meal breaks (344 violations x $14.21 average hourly rate x 44.37 multiplier ≈ $216,000). Plaintiff estimated $622,000.00 for missed second meal breaks (987 violations x $14.21 hourly rate x 44.37 multiplier ≈ $622,000.00).

16. Defendant claimed that company policies provided for proper meal breaks so if an employee took it late or failed to take a meal break, it was their choice and they had waived the right to take either a timely meal or a meal break at all. Defendant argued that it had a policy of paying employees meal break premium wages if an employee could not take a break due to reasons which were not the employees' choice.

17. Rest Break Violations: Plaintiff alleged that rest breaks were not received, and that Defendants' did not have a policy in place where their employees would receive a rest break when they worked a shift of 3.5 hours or more. Further, Plaintiff alleged that second rest breaks were not received, and that Defendants' did not have a policy in place where their employees would receive a rest break when they worked a shift of 7 hours or more. Additionally, Plaintiff alleges a third rest break was not provided when an employee worked over 10 hours in a workday. Finally, Plaintiff alleged that when Plaintiff and other California based non-exempt hourly employees did not receive a rest break, there was no policy or procedure in place where Plaintiff or the other Class Members would receive a rest break premium pay. Plaintiff estimated approximately $1,648,000.00 (116,049 estimated violations x $14.21 ≈ $1,648,000.00) in rest period damages.

18. Defendant claimed that company policies provided for proper rest breaks so if an employee took it late or failed to take a rest break, it was their choice and they had waived the right to take either a timely rest or a rest break at all. Defendant argued that it had a policy of paying employees rest break premium wages if an employee could not take a break due to reasons which were not the employees' choice.

19. Labor Code § 226 Penalties: Plaintiff alleged that based on the foregoing, wage statements inaccurately stated the number of hours worked and wages earned. Plaintiff estimated approximately $1,600,000.00 (408 approximate employees within penalty period x $4,000 ≈ $1,600,000).

20. Because this claim was derivative, it was subject to the defenses to the claims alleged above. In addition, Defendant also argued that Plaintiff could not demonstrate that the Defendant knowingly and intentionally provided employees with inaccurate wage statements.

21. Waiting Time Penalties: Defendant provided Plaintiff with an estimate of 1,002 former employees who separated employment with Defendant. Accordingly, Plaintiff estimated $3,400,000.00 in waiting time penalties (1,002 formers x 30 days x 8 hours x $14.21 average per hour ≈ $3,400,000.00). Because this claim was derivative, it was subject to the defenses to the underlying claims as alleged above. In addition, Plaintiff would have needed to show that the violations were willful. (Lab. Code § 203, subd. (a); CACI No. 2704.) Defendant asserted Plaintiff could not show Defendant willfully withheld owed wages in the manner intended to be protected by the Labor Code.

22. As such, Defendant's maximum potential exposure without including PAGA would be approximately $9,800,000. The case settled for $1,600,000, which is approximately 16.33% of the potential recovery not including PAGA in this matter. However, if Plaintiff continued litigating this matter, Class Members potentially could have received nothing if the Court had agreed with Defendants' positions especially in light of the volatility of this area of law and the aforementioned defenses. As such, Plaintiff's decision to settle this matter was in the best interest of the Class Members. The Class Settlement Amount is reasonable in light of the risks involved in this case—including the prospect of a potential adverse summary adjudication ruling, certification ruling, defenses to the case, potential appeal, and elements of willfulness and/or injury required for certain penalties.

23. Plaintiff's Counsel is convinced that the proposed settlement is in the best interest of the class based on the negotiations and a detailed knowledge of the issues present in this action. The length and risks associated with the pending motion for summary adjudication, trial, and other normal perils of litigation that may have impacted the value of the claims and were all weighed in reaching the proposed settlement. In addition, the affirmative defenses asserted by Defendant, the prospect of a potential adverse summary adjudication ruling, uncertainty on certification issues, the difficulties of complex litigation, the lengthy process of establishing specific damages and various possible delays and appeals, were also carefully considered by Class Counsel in agreeing to the

proposed settlement. In light of the above, the proposed Settlement is well within the "ballpark" of reasonableness and should be granted preliminary approval.

24. The proposed settlement results in substantial benefits to the class. If the Court were to approve the estimated requested amounts for attorneys' fees and costs, LWDA payment, service award, and administrator costs as set forth above, Plaintiff estimates that class members will receive an average payment of $716.29 ($1,074,434 ÷ 1,500 = $716.29). This is a fair and reasonable result. Based on the nature of wage and hour cases, the actual unpaid amounts of wages are relatively small for each individual class member. The settlement which will allow the employees, many of them current employees, to receive a portion of their unpaid wages without risk of retaliation or having to file their own action, find an attorney, participate in the action, or incur the risk of costs if the action is unsuccessful.

EXPERIENCE OF CLASS COUNSEL

25. Lavi & Ebrahimian, LLP is experienced and qualified to act as Class Counsel, to evaluate the class claims, to evaluate settlement versus trial on a fully informed basis, and to evaluate the viability of the defenses.

26. Mr. Joseph Lavi, myself, and the law firm of Lavi & Ebrahimian, LLP, have almost exclusively practiced in the area of labor and employment law.

27. Mr. Lavi is experienced and qualified to evaluate the Class claims and to evaluate settlement versus trial on a fully informed basis, and to evaluate the viability of the defenses. Mr. Lavi has been practicing law for more than 14 years. He, and the other members of his firm, have almost exclusively practiced in the area of labor and employment law. Mr. Lavi has handled numerous cases in all aspects of employment and labor law, including state and federal class actions, wrongful termination, discrimination, harassment and retaliation cases. Mr. Lavi has tried both labor and employment cases in State and Federal court, and have argued before various Court of Appeals, on employment issues such as validity of Arbitration Agreements, Application of Res Judicata in class action cases as well as other employment issues. I have also been a panelist and/or speaker for various Employment Law Continuing Legal Education Panels on issues of employment law trials, how to proceed and conduct trials as well as proving and winning punitive damages. Mr. Lavi has also been named a Southern California Super Lawyer in the area of Plaintiff's employment litigation- class

action from 2011-2017. Mr. Lavi has settled numerous wage and hour class actions and he is currently Plaintiff's counsel in numerous others. Some of the class actions that he has handled against employers on wage and hour issues and have been approved as class counsel consisted of Kaiser Permanente which settled for $6,510,000.00; Hustler Casino which settled for $980,000.00; Chevron Stations Inc., which settled for $4,500,000.00; Commerce Casino which settled for $1,575,000.00; BP West Cost Products, which settled for $4,000,000.00; Kaiser Permanente which settled for $3,600,000.00, Fuddruckers (as lead counsel) which settled for $900,000.00; Movado Retail Group, Inc. (as lead counsel) which settled for $728,000.00, Chuck-E-Cheese's (as lead counsel) which settled for $1,900,000.00; Aero-Electric Connector, Inc. (as lead counsel) which settled for $1,500,000.00; Clougherty Packing, LLC (as lead counsel) which settled for $4,250,000.00; and Gruma Corporation (as lead counsel) which Defendant's petition to the United States Supreme Court in the matter was denied and the matter settled for $2,300,000.00. There are numerous other class actions that he has settled as well as pending ones. Mr. Lavi has been approved as class counsel by both federal and state Courts. He and the other attorneys at Lavi & Ebrahimian who are available to assist him in this case if needed are fully capable of adequately and fairly representing Plaintiffs and the proposed class in this matter. Lavi & Ebrahimian, LLP, and Mr. Lavi have been appointed Class Counsel in over fifty contested proceedings including the following:

a. *Ischak v. Kaiser Foundation Hospitals, Inc.*, Los Angeles Superior Court Case No. BC343535;

b. *Santana v. El Pollo Loco, Inc.*, Los Angeles Superior Court Case No. BC369846;

c. *Edlin, et al. v. Fuddruckers, Inc.*, United States District Court, Central District of California, Case No. CV-07-3678-ABC;

d. *Chavez, et al. vs. CEC Entertainment, Inc. d/b/a Chukee-Cheeses,* Los Angeles Superior Court Case No. BC380996;

e. *Bustamante, et al. v. Teamone Employment Specialists*, Los Angeles Superior Court Case No. BC383266;

f. *Cervantes, et al. v. Kaiser Foundation Hospitals, Inc.*, Alameda Superior Court Case No. RG 0265835;

g. *Seng Savang v. Club One Casino*; Fresno Superior Court Case No. 05CECG02189;

h. *Norman, et al. v. Movado Retail Group, Inc.*, United States District Court, Central District of California, Case No. CV08-06691 SVW (PLA)

i. *Shand v. G.A.L.A., Inc. dba Giorgio Armani*, Los Angeles Superior Court Case No. BC342588;

g. *Solis v. Plycraft Industries, Inc.*, Los Angeles Superior Court Case No. BC374816;

h. *Campos v. HWB Carwash, Inc.*, Los Angeles Superior Court Case No. BC378990;

i. *Acosta, et al. v. Texwood Industries*, United States District Court, Central District of California, Case No. CV07-3237-DDP (PLAX);

h. *Arevalo v. Gruma Corporation*, Los Angeles Superior Court Case No. BC410322;

j. *Burrola v. American Promotional Events*, Los Angeles Superior Court Case No. BC412315;

k. *Cortez v. Trader Distribution Services*, Los Angeles Superior Court Case No. BC397208;

l. *Cueva v. Allied Industries, Inc.*, Los Angeles Superior Court Case No. BC399431;

m. *Del Toro v. Petco Animal Supplies, Inc.*, San Diego Superior Court Case No. 37-2009-00103626-CU-OE-CTL;

n. *Garcia v. Home Cooking, Inc.*, Los Angeles Superior Court Case No. BC451148;

o. *Alcantar v. Amerimax Building Products, Inc.*, United States District Court, Central District of California, Case No. CV 10-8916 DDP (CWx);

p. *Arancivias v. Clougherty Packaging, LLC dba Farmer John*, Los Angeles Superior Court Case No. BC432406;

q. *Barajas v. Menzies Aviation, Inc.*, United States District Court, Central District of California, Case No CV-10-02315-JEM;

r. *Barrera v. BHFC Operating, LLC dba Bottega Louie*, Los Angeles Superior Court Case No. BC462603;

s. *Camacho v. American Textile Maintenance Co.*, Los Angeles Superior Court Case No. BC452570;

t. *Cortes v. Monsanto Company*, Ventura Superior Court Case No. 56-2010-00366952-CU-OE-VTA;

u. *Escobar v. Aero-Electric Connector, Inc.*, Los Angeles Superior Court Case No. BC421009;

v. *Gomez v. Bacara Resort & Spa*, Santa Barbara Superior Court Case No. 1341987;

w. *Gonzalez v. Ashley Furniture Industries, Inc.*, Los Angeles Superior Court Case No. BC425708

x. *Gonzalez v. Burrtec Waste Industries, Inc.*, Los Angeles Superior Court Case No. BC436879;

y. *Gutierrez v. Visterra Credit Union*, Riverside Superior Court Case No. RIC10020183;

z. *Hernandez v. Kruse & Son, Inc.*, Los Angeles Superior Court Case No. BC411849;

aa. *Lopez v. Tecno Industrial Engineering*, Los Angeles Superior Court Case No. BC411134;

bb. *Lowanga v. Continental Currency Services, Inc.*, Orange County Superior Court Case No. 30-2011-0044011-CU-OE-CXC;

cc. *Aguilar v. PLS Financial Services, Inc.*, United States District Court, Central District of California, Case No. CV 10-0415 ODW (FMOx)

dd. *Lozada v. Classic Party Rentals, Inc.*, Los Angeles Superior Court Case No. BC443792;

ee. *Madrid v. OPI Products, Inc.*, Los Angeles Superior Court Case No. BC451489;

ff. *Martinez v. J. Fletcher Creamer & Son, Inc.*, United States District Court Case No. CV 10-0968-PSG-FMOX;

gg. *Martinez v. Administaff Companies II, L.P.*, Los Angeles Superior Court Case No. BC425799;

hh. *Martinez v. Morgans Hotel Group Management, LLC*, Los Angeles Superior Court Case No. BC446744;

jj. *Sanchez v. La Brea Bakery, Inc.*, Los Angeles Superior Court Case No. BC456420;

ii. *Montenegro v. Ruggeri Marble and Granite, Inc.*, United States District Court, Central District of California, Case No. CV-10-00711 JFW (PLAx);

kk. *Reed v. 99 Cents Only Stores,* Los Angeles Superior Court Case No. BC436793;

ll. *Santos v. Noble Management Group-California, LLC*, United States District Court, Central District of California, Case No. CV 10-2594 DSF (VBKx)

mm. *Taylor v. U.S. Healthworks Holding Company, Inc.*, Orange County Superior Court Case No. 30-2011-00473505;

nn. *Valencia Diaz v. Gene Wheeler Farms, Inc.*, Los Angeles Superior Court Case No. BC436235;

oo. *Zad-Behtooie v. Valley Village,* Los Angeles Superior Court Case No. BC451490;

pp. *Bell v. Aidells Sausage Company, Inc.*, Alameda Superior Court Case No. RG10523946;

qq. *Negrete v. Cenveo, Inc.*, United States District Court, Central District of California, Case No. CV 11-09543 DSF (MRWx);

rr. *Bejar v. Exopack-Ontario, Inc.*, Orange County Superior Court Case No. 30-2011-00518396-CU-OE-CXC;

ss. *Aguilar v. PLS Financial Services, Inc.*, United States District Court, Central District of California, Case No. CV 10-0415 ODW (FMOx);

tt. *Sparks v. Larry Flynt dba Hustler Casino*, Los Angeles Superior Court Case No. BC320172;

uu. *Morris v. Chevron Stations, Inc.*, Los Angeles Superior Court Case No. BC361380;

vv. *Marino v. BP West Coast Products, LLC*, Los Angeles Superior Court Case No. BC357987.

ww. *Alvarado v. Roadrunner Transportation Services, Inc.*, Alameda County Superior Court Case No. RG16820835.

28. I have been an attorney for over 4 years and have almost exclusively practiced in the area of labor and employment law. Along with Mr. Lavi, I was approved as class counsel for the Alvarado v. Roadrunner Transportation Services, Inc. matter, and have worked on and continue to assist Mr. Lavi in litigating multiple class actions to date.

29. Mr. Lavi, and the law firm of Lavi & Ebrahimian, LLP has made every effort to litigate this action in an efficient and cost-effective manner. Given his years of experience, his trial and appellate experience, and the focus of his practice, if Mr. Lavi were to charge for his type of work by the hour, Mr. Lavi's current hourly rate would be $725 per hour. This rate is Mr. Lavi's firm's current billing rate and is supported by the extensive and specialized experience in these types of cases and recognized expertise described. I have personal knowledge of the hourly rates charged by other attorneys with comparable experience to Mr. Lavi. Based on that information, I believe that his rates are fully consistent with the market rate for attorneys with comparable expertise, experience and qualifications. Based on the information I have, I believe that Mr. Lavi's rates are reasonable and appropriate fees for Los Angeles attorneys with comparable expertise, experience, and qualifications.

30. I am a graduate of Willamette University College of Law, where I was a member of both the law review and moot court. Given my years of experience, trial experience, and the focus of my practice throughout my career, if I were to charge for my type of work by the hour, my current hourly rate would be $500 per hour. This rate is my current billing rate. I have personal knowledge of the hourly rates charged by other attorneys with comparable experience to mine. Based on the

information I currently have, I believe that my rates are fully consistent with the market rate for attorneys with comparable expertise, experience and qualifications.

31. The specific work performed by my firm in prosecuting this action has included, but not been limited to: preparing the pleadings, informal discovery exchange, including the sample workweeks and punch data and information regarding class size, average rate of pay, regular hour wage data, and Plaintiff's expert witness' and counsel's analysis of both the aforementioned data as well as Defendant's relevant policies and procedures and developing the strategy for prosecuting the claims in this case; reviewing documents; analyzing the data; participating in settlement negotiations; participating in mediation, negotiating, drafting, and reviewing Stipulation and Settlement Agreement as well as drafting Motion for Preliminary Approval.

32. Our firm maintains all records regarding costs expended on each case. I have reviewed the records of costs expended in this matter. According to our records, our firm has incurred approximately $9,744.56 in costs in this matter at this time. This amount includes costs associated with filing of the papers filed and responded to in this matter, expert fees, mediation, summons and complaint.

CONTRIBUTION OF PLAINTIFF AND REASONABLENESS OF THE REQUESTED SERVICE AWARD

33. It is imperative that Plaintiff Rene Arias obtain just compensation for the time, effort and risk associated with his fiduciary duties as a class representative and named Plaintiff. Plaintiff's requested payment of $7,900 is less than half a percent, .46%, of the entire settlement. Plaintiff's participation has resulted in substantial benefits to class members including but not limited to a settlement which distributes a fair amount to class members without requiring the class members to find an attorney, litigate the case, risk retaliation by Defendants, and/or risk costs of litigation if the case were lost. Plaintiff has proven to be an adequate class representative. He has conducted himself diligently and responsibly in representing the class in this litigation, understands his fiduciary obligations, and his actively participated in the prosecution of this case. Plaintiff does not have any interest that is averse to the interests of the other class members. Plaintiff was extremely helpful throughout the litigation. Plaintiff has performed considerable services on behalf of the Class during the litigation by seeking an attorney, participating throughout litigation, searching for and providing

information related to his employment and the employment conditions, spending time in meetings with counsel to get a better understanding of his work environment and requirements, provided needed information for mediation, settlement discussions, and potential class certification, and approved the settlement on behalf of all class members. Plaintiff has put himself at risk for liability for costs in this matter if Defendants prevailed. Plaintiff has also put himself at risk for retaliation by future potential employers who may discover and find it unappealing that Plaintiff served as class representative in a lawsuit against a former employer. Finally, Plaintiff is subject to a general release whereas the class members are only releasing claims relating to the facts alleged in the operative complaint.

34. Attached as Exhibit A to this declaration is a true and correct copy of the Joint Settlement Agreement.

35. Attached as Exhibit B to this declaration is a true and correct copy of the curriculum vitae of CPT Group.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: January 24, 2019

Joshua Webster

EXHIBIT "A"

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
A Limited Liability Partnership
Including Professional Corporations
PAUL S. COWIE, Cal. Bar No. 250131
BROOKE S. PURCELL, Cal. Bar No. 260058
REANNE SWAFFORD-HARRIS, Cal. Bar No. 305558
Four Embarcadero Center, 17th Floor
San Francisco, California 94111-4109
Telephone: 415.434.9100
Facsimile: 415.434.3947
E-mail: pcowie@sheppardmullin.com
bpurcell@sheppardmullin.com
rswafford-harris@sheppardmullin.com

Attorneys for Defendants ACE HARDWARE CORPORATION and ACE GLOBAL DISTRIBUTION LLC

LAVI & EBRAHIMIAN, LLP
Joseph Lavi, Cal. Bar No. 209776
8889 W. Olympic Blvd., Suite 200
Beverly Hills, California 90211
Telephone: (310) 432-0000
Facsimile: (310) 432-0001
E-mail : jlavi@lelawfirm.com

Attorneys for Plaintiff RENE ARIAS, on behalf of himself and others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

RENE ARIAS, on behalf of himself and others similarly situated, Plaintiff, v. ACE HARDWARE CORPORATION, a corporation; ACE GLOBAL DISTRIBUTION, LLC, a limited liability company; and DOES 1 to 100, inclusive. Defendants.	Case No. BC667652 **JOINT STIPULATION OF SETTLEMENT AND RELEASE** Assigned for All Purposes to: Hon. Hon. Ann I. Jones, Dept. 11 [Complaint Filed: July 7, 2017]

R. A.

This Joint Stipulation of Settlement and Release (the "Agreement") is made by and between (a) Plaintiff Rene Arias, on behalf of himself and each of the other Class Members as defined herein, and (b) Defendants Ace Hardware Corporation and Ace Global Distribution, LLC ("Defendants"), and is intended to resolve the putative class action captioned Rene Arias v. Ace Hardware Corporation, Ace Global Distribution, LLC and Does 1 to 100, Los Angeles County Superior Court, Case No. BC667652 (the "Litigation").

1. DEFINITIONS

1.1 The term "Settlement" means the settlement described in this Agreement.

1.2 The term "Settlement Administrator" means CPT Group, the firm that shall be responsible for the administration of the Settlement, pursuant to the terms of this Agreement.

1.3 The term "Court" means the Superior Court of California, County of Los Angeles.

1.4 The terms "Plaintiff," "Named Plaintiff," and "Class Representative" mean Plaintiff Rene Arias in this Litigation.

1.5 The term "Defendants" means Defendants Ace Hardware Corporation and Ace Global Distribution, LLC.

1.6 The term "Parties" means Plaintiff and Defendant, collectively.

1.7 The term "Maximum Settlement Amount" means an amount not to exceed One Million Seven Hundred Thousand Dollars ($1,700,000), inclusive of attorneys' fees, costs, and expenses directly related to the Litigation (which includes all such fees and costs incurred to date, as well as all such fees and costs incurred in documenting the Settlement, securing Court approval of the Settlement, administering the Settlement, and includes the Settlement Administrator's fees

R.A.

and expenses, and obtaining final order approving the Settlement and entering judgment), the service payment to the Class Representative, and payment to the State of California Labor Workforce and Development Agency ("LWDA") of the PAGA Payment. All participating Class Members as of the date of Preliminary Approval will receive a cash settlement payment check as their pro-rata share of the Net Settlement Fund. This is a non-reversionary Settlement. This Settlement shall include up to 1,500 Class Members. If the number of Class Members as of the date of Preliminary Approval actually exceeds 1,500 by more than ten percent (10%), the Gross Settlement Amount shall be increased by the percentage difference between 1,500 and the actual number of Class Members.

1.8 The term "Net Settlement Fund" or "NSF" means the Maximum Settlement Amount less the Class Representative Service Payment, Class Counsel's awarded attorneys' fees and expenses, the PAGA Payment, and the Settlement Administrator's fees and expenses. The Net Settlement Fund will be distributed entirely to all Class Members who do not submit a timely and valid request for exclusion. Employer payroll taxes are separate from and not included in the NSF. No portion will revert to Defendants under any circumstances.

1.9 The term "Settlement Fund" means the funds that will be distributed from the Maximum Settlement Amount in accordance with the terms and provisions of this Agreement.

1.10 The term "Class Counsel" means Joseph Lavi of Lavi & Ebrahimian, LLP.

1.11 The term "Preliminary Approval Order" means the order of the Court that grants preliminary approval of the Settlement.

1.12 The term "Final Approval Order" means the order of the Court that grants final approval of the Settlement and dismisses the Litigation in its entirety with prejudice.

R.A.

1.13 The "Effective Date" of the Settlement will be the last to occur of the following: (a) if there are no objections to the Settlement, then the date of final approval by the Court; (b) if there are objections to the Settlement, and if an appeal, review or writ is not sought from the order granting final approval of the Settlement, the 61st day after service of notice of entry of the order; or (c) if an appeal, review or writ is sought from the order, the day after the order is affirmed or the appeal, review or writ is dismissed or denied, and the order is no longer subject to further judicial review. Prior to the Effective Date of the Settlement, Defendant will not be required to fund the Settlement, in whole or in part, through the Settlement Administrator or any third party.

1.14 The term "PAGA Payment" means the payment made to the LWDA pursuant to the terms of this Agreement.

1.15 The term "Settlement Class Period" means the time from July 7, 2013 through the date upon which the Court grants the Preliminary Approval Order.

1.16 The term "Class Members" means all individuals who are or who have been employed by Defendants in California as a non-exempt employee between July 7, 2013 and the date upon which the Court grants the Preliminary Approval Order.

1.17 The term "Participating Class Member" means any Class Member who has not timely requested exclusion from the Settlement.

1.18 The term "Individual Settlement Payment" means the amount to be paid to a Participating Class Member as described below.

1.19 The term "Mediator" means Jeffrey A. Ross, Esq. of Jeffrey A. Ross, Employment Mediation.

R.A.

2. BACKGROUND

2.1 This Litigation was filed by Plaintiff on July 7, 2017 in Los Angeles County Superior Court. The Complaint alleges the following causes of action: (1) failure to pay wages for all hours of work at the legal minimum wage rate in violation of Labor Code Sections 1194, 1194.2 and 1197 and the Wage Orders; (2) failure to pay wages for all time worked at overtime rate in violation of Labor Code Sections 510 & 1194 and the Wage Orders; (3) failure to provide meal periods and meal period premium wages in violation of Labor Code Sections 226.7 and 512 and the Wage Orders; (4) failure to provide rest breaks and rest break premium wages in violation of Labor Code Section 226.7 and the Wage Orders; (5) failure to provide accurate wage statements in violation of Labor Code section 226 and the Wage Orders; (6) failure to timely pay final wages in violation of Labor Code sections 201 and 202; and (7) unfair competition in violation of Business & Professions Code section 17200, *et seq.*

2.2 On September 8, 2017, Plaintiff filed a First Amended Complaint alleging causes of action for: (1) failure to pay wages for all hours of work at the legal minimum wage rate in violation of Labor Code Sections 1194, 1194.2 and 1197 and the Wage Orders; (2) failure to pay wages for all time worked at overtime rate in violation of Labor Code Sections 510 & 1194 and the Wage Orders; (3) failure to provide meal periods and meal period premium wages in violation of Labor Code Sections 226.7 and 512 and the Wage Orders; (4) failure to provide rest breaks and rest break premium wages in violation of Labor Code Section 226.7 and the Wage Orders; (5) failure to provide accurate wage statements in violation of Labor Code section 226 and the Wage Orders; (6) failure to timely pay final wages in violation of Labor Code sections 201 and 202; (7) unfair competition in violation of Business & Professions Code section 17200, *et seq.*; and (8) civil penalties pursuant to the Private Attorney General Act of 2004 ("PAGA"), Labor Code section 2698, *et seq.*

R.A.

2.3 The Parties have conducted significant investigation of the facts and law during the prosecution of this Litigation. Such investigation has included the pre-mediation exchange of documents and a substantial amount of information and numerous communications between the Parties. The Parties have further investigated the applicable law as applied to the facts discovered regarding the alleged claims of Plaintiff and potential defenses thereto, and the damages claimed by Plaintiff.

2.4 The Parties mediated this matter before an experienced wage and hour class action litigation mediator, Jeffrey A. Ross, Esq., on August 6, 2018 at Mr. Ross' offices in Oakland, California. The mediator actively assisted the Parties in settlement discussions and the Parties reached an agreement to settle this matter.

2.5 The Parties believe this Agreement constitutes a fair, adequate, and reasonable settlement of the Litigation and have arrived at this Agreement as a result of arms'-length negotiations, taking into account all relevant factors, present and potential, and will so represent to the Court. This Settlement was reached after extensive informal discovery as well as extensive negotiations conducted through the mediator. If the Court deems it necessary, the Parties agree that the mediator may execute a declaration in support of the Settlement and the reasonableness of the Settlement.

3. SCOPE, PURPOSE, AND BENEFITS OF THE SETTLEMENT

3.1 This Agreement is intended to and does effectuate the full, final, and complete resolution of the Litigation.

3.2 The Parties believe that continued litigation would be protracted, expensive, uncertain, and contrary to their best interests. In light of these realities, the Parties believe that this Settlement is the best way to resolve the disputes between them.

R.A.

4. JURISDICTION

4.1 The Court has jurisdiction over the Parties and the subject matter of this Litigation. The Litigation includes claims that, while Defendants deny them in their entirety, would, if proven, authorize the Court to grant relief pursuant to the California laws cited therein. If the Settlement is approved, the Court will retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Agreement and all orders and judgments entered in connection therewith, and the Parties hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing, and enforcing the Settlement embodied in this Agreement and all orders and judgments entered in connection therewith.

5. STATEMENT OF NO ADMISSION

5.1 The Parties agree that this Agreement reflects their good faith compromise of the claims raised in the Litigation, based upon their assessment of the mutual risks and costs of further litigation and the assessments of their respective counsel. This Agreement does not constitute, is not intended to constitute, and will not be deemed to constitute, an admission of liability by Defendants as to the merits, validity, or accuracy of any of the allegations or claims made against them in the Litigation.

5.2 Nothing in this Agreement, nor any action taken or made in implementation thereof, nor any statements, discussions, or communications, nor any materials prepared, exchanged, issued, or used during the course of the negotiations leading to the Agreement, is intended by the Parties to, nor will any of the foregoing constitute, be introduced, be used, or be admissible in any way in this case or any other judicial, arbitral, administrative, investigative or other forum or proceeding as evidence of any violation of any federal, state, or local law, statute, ordinance, regulation, rule, or executive order, or any obligation or duty at law or in equity. Notwithstanding the foregoing, the Agreement may be used in any proceeding in the Court that

R.A.

has as its purpose the interpretation, implementation, or enforcement of the Agreement or any orders or judgments of the Court entered into in connection therewith.

5.3 The Parties agree that the Settlement shall not constitute an admission by Defendants that class certification in this Litigation was proper under the standard applied to contested certification motions and that this Agreement will not be admissible in this or any other proceeding as evidence that (i) a class should have been certified as Plaintiff proposed or should remain certified or (ii) Defendants are liable to Plaintiff or the Class Members as Plaintiff alleged. Further, neither this Agreement nor the Court's actions with regard to this Agreement will be admissible in any court or other tribunal regarding the propriety of class certification or collective treatment for purposes other than the settlement of this Litigation. In the event that this Agreement is not approved by the Court or any appellate court, is terminated, or otherwise fails to be enforceable, Defendants will not be deemed to have waived, limited, or affected in any way any of their objections or defenses in the Litigation, including, but not limited to, their defenses in opposition to class certification.

6. CLASS CERTIFICATION

6.1 For the purposes of this Agreement only, the Parties agree to the certification of the settlement class, to include all Class Members. As set forth above, Defendants expressly reserve their right to challenge class certification should the Court decide to not approve this Settlement.

7. WAIVER AND RELEASE

7.1 Release and Waiver of Claims by the Class Members

Other than those Class Members who timely file requests for exclusion, the Class Members, and their successors, assigns, and/or agents, shall fully and finally release and discharge

R.A.

Defendants and each of their past and present parent companies, subsidiaries, and affiliates, and their respective shareholders, members, partners, representatives, agents (including, without limitation, any investment bankers, accountants, insurers, reinsurers, attorneys, auditors, consultants, and any past, present, or future officers, directors and employees), and each of their predecessors, successors, heirs, and assigns, and any individual or entity which could be jointly liable with Defendants (collectively, the "Released Parties"), from the "Released Claims."

For purposes of this Agreement, the "Released Claims" are defined as any and all claims, debts, liabilities, demands, actions, or causes of action of every nature and description that were alleged in the First Amended Complaint or which could have been alleged based on the factual predicates in said Complaint. The Released Claims include, without limitation, all claims for unpaid wages, including, but not limited to, failure to pay minimum wages; failure to pay straight time compensation, overtime compensation, double-time compensation, reporting time compensation, and/or interest; missed, late, short or interrupted meal and/or rest periods, including any claim for any alleged failure to pay premiums for missed, late, short or interrupted meal or rest periods, including any claim for any alleged failure to pay such premiums for missed, late, short or interrupted meal or rest periods, or to pay such premiums at the regular rate of compensation, inaccurate or otherwise improper wage statements and/or failure to keep or maintain accurate records; unlawful payment instruments that are optional to the Class Members; any claim for unfair business practices arising out of, arising in connection with, or related to any or all of the aforementioned claims; any claim for penalties arising out of or related to any or all of the aforementioned claims, including but not limited to, recordkeeping penalties, wage statement penalties, minimum-wage penalties, and waiting time penalties; and attorneys' fees and costs. The Released Claims include all such claims arising under the California Labor Code (including, but not limited to, sections 200, 201, 202, 203, 204, 210 (only limited as to claims based on Labor Code Section 204), 216, 218, 218.5, 218.6, 223, 225, 225.5, 226, 226.7, 510, 512, 516, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, and 2698 *et seq. as to identified Labor Code Section* and 2699 *et seq.*; the applicable Wage Orders of the California Industrial Welfare Commission as to the facts alleged in the Complaint and all claims that could have been pled

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based on the alleged facts in said Complaint; California Business and Professions Code section 17200, *et seq.*; the California Civil Code, including but not limited to, sections 3287. ; California Code of Civil Procedure § 1021.5. The Class Released Claims include any and all claims under the Private Attorneys General Act, Cal. Lab. Code § 2698 *et seq.* ("PAGA") that were or could have been asserted in the Litigation based on the facts alleged or are reasonably related to those asserted. The PAGA Released Claims include PAGA Claims asserted during the PAGA Settlement Period of July 7, 2016 through the date of Preliminary Approval. In addition, Settlement Class Members who endorse their settlement checks waive and release any claims under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* ("FLSA") arising during the Settlement Class Period and reasonably related to any or all of the aforementioned claims. This release excludes the release of claims not permitted by law.

7.2 General Release and Waiver of Claims by the Named Plaintiff

Plaintiff makes the following general release of all claims, known or unknown (the "General Release"). Plaintiff, and his successors, assigns, and/or agents, shall fully and finally release and discharge Defendants and each of their parent companies and subsidiaries, and past or present affiliates, shareholders, members, representatives, agents (including, without limitation, any investment bankers, accountants, insurers, reinsurers, attorneys, auditors, consultants, and any past, present, or future officers, directors and employees), and each of their predecessors, successors, heirs, and assigns and any individual or entity which could be jointly liable with Defendants (collectively the "Named Plaintiff's Released Parties") from all claims, demands, rights, liabilities and causes of action of every nature and description whatsoever, known or unknown, asserted or that might have been asserted, whether in tort, contract, or for violation of any state or federal statute, rule or regulation arising out of, relating to, or in connection with any act or omission by or on the part of any of the Named Plaintiff's Released Parties committed or omitted prior to the execution hereof. The Release however, excludes the release of claims not permitted by law, including Workers' Compensation Claim.

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The General Release includes any unknown claims the Plaintiff does not know or suspect to exist in the Plaintiff's favor at the time of the General Release, which, if known by the Plaintiff, might have affected Plaintiff's settlement with, and release of, the Named Plaintiff's Released Parties by the Plaintiff or might have affected the Plaintiff's decision not to object to this Settlement or the General Release.

With respect to the General Release, Plaintiff stipulates and agrees that, upon the Effective Date, Plaintiff shall be deemed to have, and by operation of the Final Approval Order shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, or any other similar provision under federal or state law, which provides:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

However, the General Release excludes the release of claims not permitted by law, including Workers' Compensation Claim. Plaintiff may hereafter discover facts in addition to or different from those the Plaintiff now knows or believes to be true with respect to the subject matter of the General Release, but the Plaintiff, upon the Effective Date, shall be deemed to have, and by operation of the Final Approval Order shall have, fully, finally, and forever settled and released any and all of the claims released pursuant to the General Release, whether known or unknown, suspected or unsuspected, contingent or non-contingent, which now exist, or heretofore have existed upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct that is negligent, intentional, with or without malice, or a breach of any duty, law, or rule, without regard to the subsequent discovery or existence of such different or additional facts.

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7.3 PAGA Payment

The Parties hereto, including the Class Members, stipulate and agree that Individual Settlement Payments and the PAGA Payment compensate the Class and the LWDA for all civil penalties that may be due to them under PAGA arising from the allegations in the Litigation.

8. NOTICE, OBJECTIONS, AND OPPORTUNITY TO OPT OUT

8.1 Notice

The Parties shall submit the Notice of Class Action Settlement ("Notice") substantially in the form attached hereto as Exhibit 1 to the Court for approval as well as the Allocation Form, substantially in the form attached hereto as Exhibit 2 to the Court for approval. The Notice and the Allocation Form shall be mailed in English and Spanish. The Notice will include, nonexclusively, information regarding the nature of the Litigation; a summary of the substance of the Settlement; the Class definition; the formula to calculate a Class Member's Individual Settlement Payment, the deadline to submit an objection to the Settlement or a request for exclusion from the Settlement and/or to dispute the basis for a Class Member's estimated Individual Settlement Payment; and the date, time and place for the final approval hearing. The Notice, Allocation Form, and writing on the mailing envelope will be referred to collectively as the "Notice Packet".

If a Class Member wishes to dispute the number of Compensable Workweeks listed on the Allocation Form, the Class Member may so notify the Settlement Administrator not later than forty five (45) days after the date that the Settlement Administrator first mails the Notice Packets and should produce any available supporting evidence to the Settlement Administrator of the dates the Class Member contends he or she worked during the Class Period. Defendants will review their records and provide information to the Settlement Administrator in response to any such dispute. Defendants' records will be presumed to be determinative, but the Settlement

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Administrator will evaluate the evidence submitted by the Class Member and make the decision as to which dates should be applied. The determination by the Settlement Administrator will be final and binding, subject to oversight by the Court.

If a person believes that he or she was wrongly excluded from being a Class Member, the Parties will endeavor to resolve the issue informally. If they are unable to do so, the Parties will refer the matter to the Court for a final determination on whether that individual should be included as a Class Member.

Defendants' records will be presumed determinative, absent evidence to rebut Defendants' records, but the Settlement Administrator will evaluate the evidence submitted by the Class Member and make a recommendation as to which evidence should be applied. If either Party disagrees with the recommendation, that Party may submit the matter to the Court for final resolution.

8.2 Mailing of Notice Packet

Within twenty (20) days of the Preliminary Approval Order, Defendants shall provide the Settlement Administrator with a readable Microsoft Excel spreadsheet which includes for each Class Member: name, last known address, and dates of employment and Social Security number as well as any other information requested by the Settlement Administrator. The Settlement Administrator will take all necessary steps to ensure the protection Class Data from unnecessary disclosure, in particular, the Settlement Administrator will ensure that Class Member Social Security numbers are protected from disclosure, and that they are stored and transmitted only using secure encrypted systems.

Within 15 business days after receipt of the Class List and Data, the Settlement Administrator shall mail the Notice Packet to the Class Members, in English and Spanish, via first-class regular U.S. mail. Class Members are not required to submit claims to participate in the Settlement. All Class Members who do not return a timely request for exclusion will be mailed an

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Individual Settlement Payment. Prior to mailing, the Settlement Administrator will perform a National Change of Address Database search to update and correct for any known or identifiable address changes. The Settlement Administrator will also perform one "skip trace" using the Class Member's social security number, which Defendants shall provide to the Settlement Administrator on request, on Notice Packets returned as undeliverable.

If a new address is obtained by way of a returned Notice Packet within 30 days of the initial mailing, or by way of a "skip trace," then the Settlement Administrator shall forward the original Notice Packet to the updated address via first-class regular U.S. mail indicating on the original Notice Packet the date of such re-mailing within 3 days of obtaining the new address. On each returned as undeliverable Notice Packet, the Administrator will review the Class List and Data to determine whether the Class Member is currently employed, and if so, will inform the Parties. Defendants will promptly investigate and, if possible, provide an updated mailing address for remailing of the Notice Packet for any current employee.

In the event the procedures in this Section are followed and the intended recipient of a Notice still does not receive the Notice, the intended recipient shall remain a Class Member and will be bound by all terms of the Settlement and any Final Approval Order entered by the Court if the Settlement is approved by the Court. In the event the procedures in this Section are followed and a Class Member does not return a timely and valid request for exclusion, the Class Member shall remain a Class Member and will be bound by all terms of the Settlement and any Final Approval Order entered by the Court if the Settlement is approved by the Court.

Settlement Administration Costs: Defendant agrees to pay the reasonable costs incurred by the Settlement Administrator in administering the Settlement, as approved by the Court, from the Maximum Payment. Those costs are currently estimated to be approximately Twenty Thousand Dollars ($20,000.00). If the Court approves a payment to the Settlement Administrator of less than the amount sought, the remainder will be retained in the Net Settlement Amount for distribution to Participating Class Members.

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8.3 Objections

1. Class Members who wish to object to the Settlement must submit to the Settlement Administrator not later than forty five (45) calendar days after the date that the Settlement Administrator first mails the Notice Packets (the "Objection Deadline Date"), a written statement objecting to the Settlement, which must include: (1) the full name of the Class Member; (2) the dates of employment of the Class Member; (3) the last four digits of the Class Member's Social Security number; (4) the basis for the objection; (5) whether the Class member intends to appear at the Final Approval/Settlement Fairness Hearing; and (6) an explanation of the basis for the Class Member's objection. A Class Member who does not submit an objection in the manner and by the deadline specified above will be deemed to have waived all objections and will be foreclosed from making any objection to the Settlement, whether by appeal or otherwise, absent a contrary order of the Court.

If any Class Member objects to the Settlement and the Parties, or either of them, wish to conduct discovery from the objector, the Parties will meet and confer with the objector (through the objector's counsel, if any) regarding any such discovery sought and any objections thereto. If they are unable to resolve the dispute informally, the Parties will contact the Court for further direction.

Unless the Court directs otherwise, the 45-calendar day period applies notwithstanding any argument regarding non-receipt of the Notice. Class Members may also object to the Settlement at the final approval hearing.

8.4 Opportunity to Request Exclusion from the Settlement

Class Members who wish to exclude themselves from the Settlement ("opt out" of the Settlement) must submit to the Settlement Administrator, not later than forty five (45) calendar days after the date that the Settlement Administrator first mails the Notice Packets (the "Opt-Out-Deadline"), an Exclusion Request as described in this Section 8.4. Exclusion Requests may be

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submitted to the Settlement Administrator via U.S. Mail only. Class Members must complete, sign, date, and timely return the Exclusion Request to the Settlement Administrator to exclude themselves from the Settlement, setting forth their name, address, last four digits of their Social Security number, and the following statement or a similar statement: "I wish to exclude myself from the settlement reached in the matter of *Arias vs. Ace Hardware Corporation, Case No.* BC667652. I understand that by excluding myself, I will not receive any money from the settlement reached in this matter." A Class Member who does not complete and submit a valid and timely Exclusion Request in the manner and by the deadline specified above will remain a Class Member and, if the Court approves the Settlement, will be bound by all terms and conditions of the Settlement and by the Judgment. A Class Member who timely submits a valid Exclusion Request will not participate in, or be bound by, the Settlement or the Judgment in any respect and will not receive any payment pursuant to the Settlement. To be valid, Exclusion Requests must be completed in full, signed, and returned to the Settlement Administrator by the deadline as explained above. The date of the postmark on the return mailing envelope shall be the exclusive means used to determine whether a request for exclusion has been timely submitted. Persons who submit an Exclusion Request will not be permitted to file objections to the Settlement or appear at the Final Approval Hearing to voice any objections to the Settlement. The Settlement Administrator will provide all counsel and the Court with the names of the Class Members who have submitted Exclusion Requests.

Members of the Settlement Class are free to consult counsel of their choosing regarding the exclusion from the Settlement, at their own expense. No Class Member may opt out by way of a request for exclusion signed by an actual or purported agent or attorney acting on behalf of the Class Member. No request for exclusion may be made on behalf of a group of Class Members. A Class Member who returns a valid and timely request for exclusion will not be entitled to an Individual Settlement Payment and will not be bound by the Settlement Agreement, Orders, or Judgment or have any right to object, appeal, or comment thereon. Class Members who

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fail to submit a valid and timely request for exclusion on or before the Opt-Out Deadline shall be bound by all terms of the Settlement Agreement, Orders and Judgment.

8.5 No Solicitation of Settlement Objections or Exclusions

The Parties agree to use their best efforts to carry out the terms of this Agreement. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Class Members to submit Exclusion Forms, submit written objections to the Settlement, or appeal from or seek review of the Court's Final Approval Order.

8.6 Defendant's Right to Rescind

If five percent (5%) or more of the Class Members elect not to participate in the Settlement, Defendants may, at their election, rescind the Settlement, and all actions taken in its furtherance of it will be thereby null and void. Defendants must exercise this right of rescission, in writing, to Class Counsel, within ten (10) business days after the Settlement Administrator notifies the Parties of the total number of opt-outs and the percentage of the Net Settlement Fund those opt outs represent. If the option to rescind is exercised, then Defendants shall be solely responsible for all costs of the Settlement Administrator accrued to that point. Further, if Defendants rescind, this Agreement may not be used or introduced in further litigation in this case, or in any proceeding whatsoever.

9. SETTLEMENT PROCEDURE

The Settlement procedure is governed exclusively by the terms and conditions set forth in this Agreement. An Individual Settlement Payment shall be mailed to each Participating Class Member.

The Settlement Administrator will send an individualized Notice Packet to each Class Member that includes the Class Notice and the Allocation Form which indicates the

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estimated Individual Settlement Payment he/she is to receive. If a Class Member disputes the amount of the Individual Settlement Payment included on the individualized Allocation Form, the Class Member must submit correspondence to the Settlement Administrator that is postmarked by no later than the response deadline provided by the Settlement Administrator, which provides information reflecting any and all information and/or documentation, such as wage statements, to support the basis of the dispute. Defendants' records will be presumed determinative, absent evidence to rebut Defendants' records, but the Settlement Administrator will evaluate the evidence submitted by the Class Member and the Class Data and List and make a determination as to the accuracy of the information and which information should be applied. If the Parties disagree with the Settlement Administrator's determination, the Court will finally resolve the matter.

Participating Class Members will receive an Individual Settlement Payment as good and valuable consideration for the waiver and release of Released Claims in an amount determined by the Settlement Administrator in accordance with the provisions of this Agreement. Individual Settlement Payment checks paid to Participating Class Members will indicate the checks will remain valid and negotiable for 180 days from the date of issuance and may thereafter automatically be canceled if not cashed by a Participating Class Member within that time. Any Participating Class Member's failure to negotiate and/or cash any such check will not abrogate or affect that Participating Class Member's waivers or releases under this Agreement. The funds representing any "uncashed checks" within 180 days of the checks' issuance shall be remitted to DIR unclaimed funds under the employee's name. Upon completion of administration of the Settlement, the Settlement Administrator shall provide written certification of such completion to the Court and counsel for the Parties.

9.1 Confirmation of Participating Class Members

All requests for exclusion will be submitted to the Settlement Administrator, who will certify jointly to Class Counsel and Defendants' counsel the number of requests for exclusion that were validly and timely submitted in accordance with Section 8.4. The Settlement

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Administrator shall prepare a declaration to be filed with the Motion for Order Granting Final Approval of Class Action Settlement and provide it to the Parties 10 business days before the date set for the Final Approval hearing. The declaration will summarize the Settlement Administrator's work to provide notice to the Class as described in this Agreement, and shall include, among other things, the number of Notice Packets mailed, efforts made to locate a better address for individuals whose Notice Packets were returned as undeliverable, the number of valid and timely requests for exclusion, the names of each of those individuals, and the number of objections received. This declaration shall also confirm the Settlement Administrator's total costs and expenses expended and the estimated costs and expenses to complete administration of the Settlement following Final Approval. When and if the Court grants Final Approval of the Settlement, the Settlement Administrator shall promptly provide Defendants with a final list of all Participating Class Members.

10. COMPUTATION AND DISTRIBUTION OF PAYMENTS

10.1 Maximum Settlement Amount

The Maximum Settlement Amount has been agreed to by Plaintiff and Defendants, based on the aggregation of the agreed-upon settlement value of individual claims. It is expressly understood that if the Court awards less than the amounts requested by Class Counsel to be awarded for attorneys' fees and litigation costs or the Class Representative Service Payment, the difference in any such amounts will be added to the Net Settlement Fund, however, Plaintiff may appeal any reduction in the amount of Class Counsel's fees. Defendants will not be responsible to pay any additional attorneys' fees other than the amount approved by the court, provided that any such increase will not increase the Maximum Settlement Amount.

Defendants shall have no obligation to segregate the funds to be used for the Maximum Settlement Amount from other assets. Defendants will retain exclusive authority over,

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and responsibility for, the funds comprising the Maximum Settlement Amount until the Funding Date, as defined below.

Participating Class Members will receive an amount determined by the Settlement Administrator in accordance with this Agreement. The Parties agree that: this payment does not constitute earnings for purposes of a 401k or any other benefit; this this payment is not viewed as additional compensation for purposes of calculating a "regular rate" of pay under California or federal law for the period during which it is received, and no additional overtime compensation is required as a result of such payment; any claim to entitlement to any additional overtime compensation is expressly waived under the terms of this Agreement. No person or entity shall have any claim against Defendants, Defendant's Counsel, Plaintiff, any Class Members, Class Counsel, or the Settlement Administrator based upon distributions and payments made in accordance with this Agreement.

10.2 Distribution Formula to the Participating Class Members

Each Participating Class Member's payment (i.e., an Individual Settlement Payment) will be determined as follows:

The Participating Class Members' distribution amounts will be calculated by dividing the Net Settlement Amount by the total number of Compensable Workweeks for the entire Class ("Compensable Workweeks" are calculated by taking the total number of weeks worked by a Class Member). The Settlement Administrator will then calculate the amount due to each Participating Class Member by multiplying the appropriate dollars-per-Compensable Workweek amount by the number of Compensable Workweeks worked by each Participating Class Member. In addition, to calculate the pro rata share of each Class Number, each Class Member's Workweeks shall be divided by the total of the Workweeks for all Class Members. The resulting figure would be divided into the Net Settlement Amount, which would give the amount available per Participating Class Member.

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All Class Members shall receive their Individual Settlement Payments by check from the Net Settlement Fund in the manner described above.

Any disputes, including those concerning a Class Member's Individual Settlement Payment or administration of the Settlement (but excluding those disputes that concern the interpretation or enforceability of this Agreement) shall be presented to the Settlement Administrator, who shall recommend a resolution of the dispute. If either Party disagrees with the recommendation, the Court will finally resolve the matter. Prior to any such resolution, counsel for the Parties will confer in good faith to resolve the dispute.

10.3 Class Representative Service Payment

Plaintiff will be entitled to apply to the Court for a service payment (the "Class Representative Service Payment") of $7,900 to be paid out of the Maximum Settlement Amount. Defendants will not oppose such an application, so long as it is consistent with the provisions of this Agreement. If less than the requested amount is awarded to Plaintiff as the Class Representative Service Payment, the unawarded sum shall be added to the Net Settlement Fund for distribution to the Participating Class Members. The Settlement Administrator will issue an IRS Form 1099 to the Class Representative for the Class Representative Service Payment. Plaintiff shall be solely and legally responsible to pay any and all applicable taxes on this payment and shall hold harmless Named Plaintiff's Released Parties from any claim or liability for taxes, penalties, or interest arising as a result of the Class Representative Service Payment.

10.4 PAGA Payment

The Parties agree to allocate the amount of $20,000.00 from the Maximum Settlement Amount as penalties authorized by the PAGA. 75% of this amount or fifteen thousand dollars ($15,000.00) will be paid to the LWDA and 25% of this amount or five thousand dollars

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($5,000.00) will become part of the Net Settlement Fund to be distributed to the Participating Class Members in accordance with the Distribution Formula to the Participating Class Members.

10.5 Attorneys' Fees and Costs

Class Counsel shall be entitled to apply to the Court for attorneys' fees payable to Class Counsel out of the Maximum Settlement Amount in the amount of 33 1/3% of the Maximum Settlement Amount ($566,666.00) (the "Fees Award") plus litigation costs and expenses estimated to be $15,000 (the "Costs Award"). The amounts set forth above will cover all work performed and all fees and costs incurred to date, and all work to be performed and all fees to be incurred in connection with the approval by the Court of this Agreement, the administration of the Settlement, and obtaining an order granting final approval of the Settlement and entering judgment. Defendants agree not to oppose such an application for a Fees Award or Costs Award so long as they are consistent with the provisions of this Agreement. The Settlement Administrator shall issue an IRS Form 1099 to Class Counsel reflecting the awarded attorneys' fees, costs, and expenses. Should Plaintiff and/or Class Counsel request a lesser amount for attorneys' fees and/or costs, and/or the Court approve a lesser amount, the difference shall be added to the Net Settlement Fund. In consideration of their awarded attorneys' fees, costs, and expenses, Class Counsel waive all claims to any further attorneys' fees, costs, and expenses in connection with the Litigation. Class Counsel shall not be permitted to petition the Court for, or accept, any additional payments for attorneys' fees, costs, or expenses in connection with this Litigation. Class Counsel shall assume full responsibility and liability for the payment of taxes due on such Fees Award or Costs Award.

Defendants' payment of the Fees Award and Costs Award to Class Counsel out of the Maximum Settlement Amount shall constitute full satisfaction of the obligation to pay any amounts to any person, attorney, or law firm for attorneys' fees, costs, or expenses in the Litigation incurred by any attorney on behalf of the Plaintiff and the Class Members, and shall relieve Defendants, the Settlement Administrator, and Defendants' counsel of any other claims or

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liability to any other attorney or law firm for any attorneys' fees, costs, and expenses to which any of them may claim to be entitled on behalf of the Plaintiff and/or the Class Members.

10.6 Settlement Administrator

The Parties agree that the fees and expenses of the Settlement Administrator in relation to services rendered in the Litigation shall be deducted from the Maximum Settlement Amount. The Settlement Administrator shall have the authority to format and mail the Notice Packet to each member of the Class; create and administer the Settlement Fund; and disburse sums from the Settlement Fund.

The Settlement Administrator shall calculate the Individual Settlement Payments to be paid to the Participating Class Members in accordance with the terms and provisions of this Agreement; distribute the Notice Packets; determine eligibility for payment to a Class Member; resolve any disputes regarding the calculation or application of the formula for determining the Individual Settlement Payment; provide information regarding any requests for exclusion; mail the Individual Settlement Payment checks to Participating Class Members; issue IRS W-2 and 1099 forms; and perform such other tasks necessary to effectuate the terms of this Agreement or as the Parties mutually agree or the Court orders the Parties to perform.

The Settlement Administrator shall provide a weekly status report reflecting the number of returned and undelivered Notice Packets, the number of skip-traced and re-mailed Notice Packets, requests for exclusion, and objections, among other things.

As set forth above the Settlement Administrator will submit to the Court, in conjunction with the motion for final approval, a declaration summarizing its work to provide notice to the Class as described in this Agreement.

Any disputes relating to the Settlement Administrator's ability or performance of its duties shall be referred to the Court.

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10.7 Operation of the Settlement Fund

Within 20 days after the Effective Date, Defendants shall provide the Settlement Administrator with the Settlement Fund to make all the payments required under this Settlement. Prior thereto, Defendants shall not have any obligation to segregate the funds comprising the Maximum Settlement Amount from its other assets and will retain exclusive authority over, and responsibility for, those funds.

10.8 Time for Distribution

Within 15 days after receipt of the Maximum Settlement Amount from Defendants, the Settlement Administrator shall make the following payments: (1) Individual Settlement Payments to Participating Class Members; (2) the Class Representative Service Payment; (3) the Fees Award; (4) the Costs Award; (5) the PAGA Payment; and (6) payment to the Settlement Administrator for its administration duties performed and to be performed to conclude its obligations pursuant to this Agreement.

11. INTEREST

11.1 The Maximum Settlement Amount includes any and all interest accruals and no additional interest shall be due under any circumstances.

12. TAXATION

12.1 The Parties agree that 33% of each Individual Settlement Payment to Participating Class Members will be for wages and that this amount shall have deducted from it all applicable employee payroll taxes and withholdings, and an IRS Form W-2 shall be issued for this portion of the Individual Settlement Payment. The Parties further agree that 67% of all Individual Settlement

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Payments to Participating Class Members will be treated as penalties and for which a 1099 shall be issued. Participating Class Members will assume full responsibility and liability for the payment of taxes due on the penalty portion of the Individual Settlement Payments. The Parties make no representations about the tax consequences of the Individual Settlement Payments.

12.2 Neither Defendants, Defense Counsel, Plaintiff or Class Counsel provide or purport to provide any tax advice to the Participating Class Members in connection with this Agreement or otherwise. The Parties agree that they shall not rely upon any terms of this Agreement for the purpose of determining or avoiding federal, state, or local tax obligations.

12.3 CIRCULAR 230 DISCLAIMER: EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER, OR ITS OWN, INDEPENDENT LEGAL AND TAX ADVISERS FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER

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PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

13. COURT APPROVAL

13.1 Following the Preliminary Approval Order, if Defendants do not exercise their right to rescind the Settlement, solely as provided for herein, a motion for final approval of the Settlement will be filed by Class Counsel which, if not separately filed by Class Counsel, will include a request for the Attorneys' Fees and Costs and the Class Representative Service Fees, which Defendants will not oppose provided it complies with the terms of this Agreement. The Parties agree to take all steps as may be reasonably necessary to secure final approval of the Settlement as quickly as possible, to the extent not inconsistent with the terms of this Agreement, and will not take any action adverse to each other in obtaining Court approval, and, if necessary, appellate approval, of the Agreement in all respects.

13.2 This Agreement is contingent upon Defendants not rescinding the Agreement and upon final approval by the Court of the Settlement.

13.3 If the Court does not grant final approval of the Settlement, or if the Court's final approval of the Settlement is reversed or materially modified on appeal, then this Settlement will become null and void ab initio.

13.4 In the event the Court declines to enter the Final Approval Order, this Agreement shall be null and void and any order or judgment entered by the Court in furtherance of this

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Agreement shall be treated as void. In such a case, the Parties and any funds to be awarded under this Settlement shall be returned to their respective statuses as of the date and time immediately prior to the execution of this Agreement, and the Parties shall proceed in all respects as if this Agreement had not been executed, except that any fees already incurred by the Settlement Administrator shall be paid by Defendants.

13.5 In the event an appeal is filed from the Court's Final Approval Order, or any other appellate review is sought prior to the date of the Final Approval Order, administration of the Settlement shall be stayed pending final resolution of the appeal or other appellate review.

14. MISCELLANEOUS PROVISIONS

14.1 Headings

The descriptive headings of any paragraphs or sections of this Agreement are inserted for convenience of reference only and do not constitute a part of this Agreement.

14.2 Interpretation of the Agreement

The Agreement will be interpreted and enforced under the laws of the State of California without regard to its conflict of laws provisions. Any dispute arising out of or relating to the Agreement, or the subject matter hereof, will be resolved solely and exclusively in the Superior Court of California, County of Los Angeles, and the Parties hereby consent to the jurisdiction of the Court over them solely in connection therewith.

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14.3 Final Agreement

This Agreement constitutes the exclusive and final understanding and expression of all agreements between the Parties with respect to the resolution of the Litigation, and supersedes all prior agreements and understandings between the Parties relating to the subject matter hereof. Plaintiff, on Plaintiff's own behalf and on behalf of Class Members, and Defendants enter into this Agreement based solely upon its terms and not in reliance upon any representations or promises other than those contained in this Agreement. The Agreement may be modified only by a writing signed by the Parties, or their successors, and approved by the Court.

14.4 Counterparts/Facsimile

The Agreement may be executed in two or more counterparts, each of which will be considered one and the same instrument and all of which will be considered duplicate originals. A signature by facsimile on this Agreement shall be as legally binding as an original signature.

14.5 Authority

Counsel for all Parties represent and warrant they are expressly authorized by the Parties whom they represent to negotiate this Agreement and to take all appropriate actions required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties shall seek the assistance of the Court to resolve such disagreement. The person signing this Agreement

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on behalf of Defendants represents and warrant they are authorized to sign this Agreement on behalf of Defendants.

14.6 No Effect on Employee Benefits

The Individual Settlement Payments as well as the Class Representative Service Payment shall be deemed not to be pensionable earnings and shall not have any effect on the eligibility for, or calculation of, any of the employee benefits (e.g., vacations, holiday pay, retirement plans, etc.) of Plaintiff or any Participating Class Members. The payment of the Individual Settlement Payments to Participating Class Members does not represent any modification of Participating Class Members' previously credited hours of service or other eligibility criteria under any employee pension benefit plan or employee welfare benefit plan sponsored by Defendants. Further, any Individual Settlement Payment or Service Payment shall not be considered "compensation" in any year for purposes of determining eligibility for, or benefit accrual within, an employee pension benefit plan or employee welfare benefit plan sponsored by Defendants.

14.7 No Injunctive Relief

Defendants shall not be required to enter into any consent decree, nor shall Defendants be required to agree to any provision for injunctive relief, or to modify or eliminate any of their personnel, compensation, or payroll practices, or adopt any new personnel, compensation, or payroll practices.

14.8 Binding on Successors and Assigns

This Agreement shall be binding upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

R.A.

14.9 Cooperation and Drafting

Each of the Parties has cooperated in the drafting and preparation of this Agreement. Hence, in any construction made to this Agreement, the same shall not be construed against any of the Parties.

14.10 Invalidity of Any Provision

Before declaring any provision of this Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Agreement as valid and enforceable.

14.11 Plaintiff's Waiver of Right to Request Exclusion and Object

By signing this Agreement, Plaintiff is bound by the terms herein stated and further agrees not to request to be excluded from the Settlement and agrees not to object to any of the terms of this Agreement. Any such request for exclusion or objection shall therefore be void and of no force or effect. Plaintiff also agrees not to disparage the Settlement to Class Members or encourage, in any way, Class Members to request exclusion from the Settlement.

14.12 No Unauthorized Public Comment

The Parties and their counsel agree that they will not issue any press releases, initiate any contact with the press, respond to any press inquiry or have any communication with the press about the fact, amount or terms of the Settlement. In addition, the Parties and their counsel agree that they will not engage in any advertising or distribute any marketing materials relating to the Settlement of this case, including posting any information about the settlement to any website. The Settlement Administrator shall neither create nor maintain any website regarding this Settlement at any time. Any communication about the Settlement to Class

R.A.

Members prior to the court-approved mailing will be limited to a statement that a settlement has been reached and the details will be communicated in a forthcoming Court-approved notice.

14.13 Waiver of Appeals

The Parties agree to waive appeals and to stipulate to class certification for purposes of implementing this Settlement only.

14.14 Defense

To the extent permitted by law, this Settlement may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit, or other proceedings that may be instituted, prosecuted, or attempted with respect to the Released Claims in breach of or contrary to this Settlement.

WHEREFORE, Plaintiff, on behalf of himself and the Class Members, and Defendants have executed this Agreement as of the dates set forth below.

PLAINTIFF, RENE ARIAS

Dated: January 10, 2019 By: Rene Arias

Rene Arias, Plaintiff

DEFENDANT ACE HARDWARE CORPORATION

Dated: January 11, 2019 By: Kathy M. Johnson

Print Name: Kathy M. Johnson

Title: Vice President, General Counsel & Secretary

R.A.

DEFENDANT ACE GLOBAL DISTRIBUTION LLC

Dated: January 11, 2019

By: _____
Print Name: _____
Title: _____

APPROVED AS TO FORM AND CONTENT BY:

Dated: January 11, 2019

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By _____

PAUL S. COWIE
BROOKE S. PURCELL
REANNE SWAFFORD-HARRIS
Attorneys for Defendants ACE HARDWARE CORPORATION and ACE GLOBAL DISTRIBUTION LLC

Dated: January 10, 2019

LAVI & EBRAHIMIAN, LLP

By _____

JOSEPH LAVI
Attorneys for Plaintiff RENE ARIAS, on behalf of himself and others similarly situated

R.A.

EXHIBIT "1"

Superior Court of California, County of Los Angeles
Rene Arias vs. ACE Hardware Corporation, et. al.
Case No. BC667652

NOTICE OF CLASS ACTION SETTLEMENT

PLEASE READ THIS NOTICE CAREFULLY. YOUR RIGHTS MAY BE AFFECTED.
YOU MAY BE ENTITLED TO RECEIVE MONEY FROM THIS PROPOSED SETTLEMENT.

This is a court-authorized notice. This is not a solicitation from a lawyer.

- A settlement has been reached in a class action lawsuit that affects your rights.
- The settlement will provide up to $1,700,000.00, less certain fees and costs, to pay claims from those who do not validly exclude themselves from the settlement.
- The Court has not decided whether to grant final approval to the settlement. Payments will be made only after the Court approves the settlement and any appeals are resolved. Please be patient. Please do not contact the Court regarding this Notice.
- Your legal rights are affected whether you act or do not act.
- **No adverse action will be taken against anyone for participating under this settlement.**

YOUR RIGHTS AND OPTIONS REGARDING THE SETTLEMENT	
You may:	**What will happen:**
Do nothing	**You will get your Individual Settlement Payment**, and give up the right to bring your own lawsuit for the same claims. See below.
Submit the Allocation Form and information or document(s) you have in support of the corrections to the Allocation Form	A decision will be made regarding the number of workweeks based on the information in the Allocation Form and evidence submitted. **You will get your Individual Settlement Payment**, and give up the right to bring your own lawsuit for the same claims. See below.

Request to be excluded from the settlement	You will not receive any payment. You will retain the right to file your own lawsuit for the same claims. See below.
Object to the terms of the settlement	The court will consider your objection. If the court overrules your objection, you will still be bound by the terms of the settlement. See below.

BASIC INFORMATION

1. Why did I receive this Notice?

The employment records of Ace Hardware Corporation and/or Ace Global Distribution, LLC. ("the Company") show that you worked as an hourly non-exempt employee at some point from July 7, 2013 through Preliminary Approval date. A settlement has been reached in a class action lawsuit against the Company that affects your rights.

2. What is this class action about?

This lawsuit, known as *Arias vs. Ace Hardware Corporation, et. al.*, Case No. BC667652, alleging that the Company: (1) failed to pay wages for all hours of work at the legal minimum wage rate in violation of Labor Code Sections 1194, 1194.2 and 1197 and the Wage Orders; (2) failed to pay wages for all time worked at overtime rate in violation of Labor Code Sections 510 & 1194 and the Wage Orders; (3) failed to provide meal periods and meal period premium wages in violation of Labor Code Sections 226.7 and 512 and the Wage Orders; (4) failed to provide rest breaks and rest break premium wages in violation of Labor Code Section 226.7 and the Wage Orders; (5) failed to provide accurate wage statements in violation of Labor Code section 226 and the Wage Orders; (6) failed to timely pay final wages in violation of Labor Code sections 201 and 202; (7) unfair competition in violation of Business & Professions Code section 17200, *et seq.*; and (8) civil penalties pursuant to the Private Attorney General Act of 2004 ("PAGA"), Labor Code 2698 *et seq.* It seeks to recover back wages, interest, civil and statutory penalties, attorney fees and costs.

3. How does the Company respond?

The Company has denied and continues to deny all allegations in the lawsuit. It contends it complied with the California Labor Code, all applicable Industrial Welfare Commission Wage Orders, the California Business & Professions Code, and all other applicable laws and regulations. The Company further contends this lawsuit could not be maintained as a class action if it were litigated rather than settled.

4. What is a class action and who is involved?

In a class action lawsuit, one or more people called a "Class Representative" or "Class Representatives" sue on behalf of other people who have similar claims. The Class Representative in this case is Rene Arias. The employees he represents are the "Class" or "Class Members." The Class Representative is called the "Plaintiff" and all the Class Members are called the "Class Members." The Company is called the "Defendant." The settlement resolves the issues for

everyone in the Class, except for those people who make a valid request to exclude themselves from the Class.

5. Why is this lawsuit being settled?

After good-faith settlement negotiations presided over by a private mediator, the Class Representative and the Company agreed to settle this case rather than go to trial. The settlement represents a compromise of highly-disputed claims and is not an admission that the Company violated the law. The Class representative and his attorneys believe the settlement is in the best interests of the Class, given the risks and expense of going to trial.

6. Has the Court decided who is right?

No. The Court has not decided anything yet, only that you should get a copy of this Notice so that you can review the settlement and determine whether you want to participate in the settlement, object to it, or exclude yourself from the settlement.

7. Who is the Settlement Administrator?

The Settlement Administrator is an independent third party appointed by the Court to send this notice, process and issue settlement checks, and otherwise administer the settlement. The Court has approved CPT Group, Inc. to be the Settlement Administrator in this case. You may contact the Settlement Administrator to provide updated contact information, make corrections regarding your employment information at the Company, or ask questions regarding the processing of settlement awards. You may contact the Settlement Administrator at:

Arias/Ace Hardware Settlement Administrator
c/o _____
_____
_____
FAX NUMBER: _____
EMAIL: _____

YOUR RIGHTS AND OPTIONS

8. Am I part of this Class?

In preliminarily approving the settlement, the Court defined the Class to include all hourly non-exempt employees employed by the Company in California at any time from July 7, 2013 through preliminary approval date. The Company's records indicate that you fall within this Class definition.

9. What does the settlement generally provide?

The Company has agreed to make a payment to all Class Members without those Class Members having to do anything. In return, Class Members who do not timely request to be excluded from the settlement will release any claims they might have against the Company that which relate to, the Plaintiff's claims as raised in the Action, including claims for failure to pay wages for all hours of work at the legal minimum wage rate; failure to pay wages for all time worked at overtime rate;

failure to provide meal periods and meal period premium wages; failure to provide rest breaks and rest break premium wages; failure to provide accurate wage statements; failure to timely pay final wages; unfair competition in violation of Business & Professions Code section 17200, *et seq.*; and civil penalties pursuant to the Private Attorney General Act of 2004 ("PAGA") and/or any other federal, state or local law, statute or regulation regarding the claims alleged in this case, including without limitation all claims for restitution and other equitable relief, conversion, liquidated damages, punitive damages, waiting time penalties, penalties of any nature whatsoever, other compensation, attorneys' fees and costs, or any other relief from any other suit, class or collective action, or administrative claim, arising during the Class Period based on the claims alleged in this case. For more information about your estimated payment from the settlement fund and the way it was calculated, see below. For more information about the claims being released as part of the settlement, see below.

10. How do I receive money under the settlement?

You do not have to do anything to receive your settlement share.

11. What is my estimated share of the settlement?

The estimated gross share you will receive under the settlement if you are a participating Class Member is preprinted on your customized Allocation Form accompanying this Notice. The actual amount you receive may be higher or lower than this amount.

12. How do I request to be excluded from the settlement?

If you wish to be excluded from the settlement, you must write to the Settlement Administrator at the address specified above in Section 7 and request to be excluded. Your request must: (1) explicitly and unambiguously state the following statement or substantially similar statement: "I wish to exclude myself from the settlement reached in the matter of *Arias v. Ace Hardware Corporation*, Case No. BC667652. I understand by excluding myself, I will not receive any money from the settlement reached in this matter"; (2) contain your name, address, and the last four digits of your Social Security number; (3) be signed by you; and (4) be postmarked (if mailed) or faxed to the Settlement Administrator no later than _____, 2019 (within 45 days of the mailing of this Notice).

If you do not complete and timely submit a valid request to be excluded from the settlement, you will be bound by all terms and conditions of the settlement, including its release of claims. If you do submit a timely and valid request to be excluded, you will no longer be a class member, you will not receive any money from the settlement, and you will be barred from participating in any portion of the settlement, but you will retain the right to sue the Company separately for the same legal claims contained in this lawsuit. The Company has reserved all applicable defenses in the event claims are filed.

13. May I object to the settlement?

If you believe the settlement is unfair or inadequate, you may object, personally or through an attorney at your own expense, by mailing a copy of your objection to the Settlement Administrator at the address set forth above. You cannot object to the settlement **and** exclude yourself from the settlement.

Your objection must be signed, dated and include: (1) your full name; (2) your employment dates; (3) the last four digits of your Social Security number and/or your Employee ID number; (4) an explanation of the basis for the objection; (5) whether you intend to appear at the Final Approval/Settlement Fairness Hearing; and (6) the name of the case *Arias vs. Ace Hardware Corporation*, Case No. BC667652. To be effective, your objection must be postmarked no later than _____, 2019 (within 45 days of the mailing of this Notice). Do not telephone the Court or the Company's counsel.

If the Court rejects your objection, you will be bound by the terms of the settlement, and you will not then be able to exclude yourself from the settlement.

14. When will I receive my payment?

The settlement payments will be paid within sixty (60) calendar days after final court approval of the settlement if all rights to appeal or review are exhausted or any appeal or review has been resolved in favor of the settlement.

15. What if I do nothing?

If you do nothing, you will receive your settlement share and you will give up any rights you would otherwise have to sue the Company for the claims described below in Section 26 under claims released.

THE LAWYERS REPRESENTING YOU

16. Do I have a lawyer in this case?

The Court has determined that Joseph Lavi, Esq. of Lavi & Ebrahimian, LLP is qualified to represent you and all Class Members. The lawyers for this firm are called "Class Counsel." They are experienced in handling similar cases. Their contact information is provided at the end of this Notice.

17. May I get my own lawyer?

You do not need to hire your own lawyer because Class Counsel is working on your behalf. Nonetheless, you may hire your own lawyer if you wish. If you hire your own lawyer, however, you are responsible for paying for that lawyer.

18. How will Class Counsel be paid?

You do not have to pay Class Counsel's fees and costs. The fees and expenses that the Court approves will be paid by the Company from the settlement. More information about the attorneys' fees and costs is contained below.

TERMS OF THE SETTLEMENT

19. What has the Company agreed to do?

The Company has agreed to pay a maximum amount of $1,700,000.00. Subject to the Court's approval, this will include a Class Representative Service Payment of $7,900 to Plaintiff Arias. This maximum amount also will be used to pay the settlement administration costs, and Class Counsel's attorneys' fees and costs as awarded by the Court, and a $20,000 payment to the California Labor Workforce Development Agency. These payments are discussed below.

20. What is a "Class Representative Payment"?

In class actions such as this one, a court may provide the Class Representative a "class representative payment" in recognition of the time, effort and risks the Class Representative took to prosecute the class action and the Class Representative's execution of a general release of all claims. Plaintiff Arias will request that the Court approve the Class Representative Service Payment of $7,900. This Class Representative Service Payment, if approved by the Court, will be deducted from the maximum payment.

21. How much will the attorneys get?

Class Counsel and/or Plaintiff will seek approval from the Court for payment of attorneys' fees in an amount up to 33% of the maximum payment or $566,666, plus costs not to exceed $15,000. These amounts, if approved by the Court, will be deducted from the maximum payment. Class Counsel believes the amounts they are requesting for attorneys' fees and costs are fair and reasonable. The Company will not oppose the request for these amounts. Class Members are <u>not</u> personally liable for any fees and costs.

22. How much will it cost to administer the Settlement?

It is estimated that it will cost approximately $20,000 for the Claims Administrator to fully administer the settlement.

23. How will the settlement funds be distributed and my share calculated?

If the Court approves the settlement as proposed, the amount available for distribution to participating Class Members will be the Net Settlement Amount.

Each Class Member's recovery will be based on a formula that computes a dollars-per-workweek amount, multiplied by the number of workweeks worked by the Class Member during the Class Period. The amount of each Class Member's recovery will depend on (a) the size of the Net Settlement Amount as finally approved by the Court and (b) the number of workweeks that each Class Member worked during the Class Period.

The Net Settlement Amount will be different from this amount if the Court does not approve the requested amounts for Class Counsel's attorneys' fees, Class Counsel's litigation costs, the Class Representative's payment, or if the cost of administering the Settlement is different than estimated. If some Class Members are excluded from the settlement, the monies they would have received will be allocated to the Class Members who do not submit timely requests for exclusion.

Under the settlement, the Company will pay out the maximum payment of $1,700,000.00 in its entirety. No portion of the maximum payment will remain with, or revert back to, the Company, even if some Class Members do not submit claims or do not cash their settlement checks

24. Will I have to pay taxes on my award?

33% of your award will be considered to be wages and will be reported on IRS Form W-2 with all appropriate taxes withheld, 67% will be considered interest and penalties and will be reported on IRS Form 1099. **You will be responsible for correctly characterizing this compensation for tax purposes and paying any taxes that may be due on the payment you receive.**

You should consult a tax professional for more information about your own specific situation.

25. What if I dispute the number of my workweeks as listed on the Allocation Form?

The Allocation Form enclosed with this Notice lists the number of workweeks you worked in California in a relevant job position during the Class Period, according to the Company's records. If you wish to challenge the number of workweeks listed on your Allocation Form, you may do so by submitting a written challenge to the Settlement Administrator, along with the signed Allocation Form and any supporting documentation, by _____, 2019 (within 45 days of the date of initial mailing of this Notice). The Settlement Administrator will evaluate the evidence you submit and, after reviewing the Company's records, the Settlement Administrator, together with the parties' counsel, will attempt to informally resolve the dispute as to your correct number of workweeks. Unresolved disputes will be decided by the Settlement Administrator, subject to final approval by the Court.

RELEASE OF CLAIMS

26. What claims are being released as part of the settlement?

If you do not submit a timely request to be excluded from the settlement, you will be giving up your right to bring a legal claim against the Company for the same claims, or similar claims, as those encompassed by this lawsuit. Specifically, the parties' Settlement Agreement states that you will release the Company and each of their past and present parent companies, subsidiaries, and affiliates, and their respective shareholders, members, partners, representatives, agents (including, without limitation, any investment bankers, accountants, insurers, reinsurers, attorneys, auditors, consultants, and any past, present, or future officers, directors and employees), and each of their predecessors, successors, heirs, and assigns, and any individual or entity which could be jointly liable with Defendants (collectively, the "Released Parties"), from the "Released Claims."
For purposes of this Agreement, the "Released Claims" are defined as any and all claims, debts, liabilities, demands, actions, or causes of action of every nature and description that were alleged in the First Amended Complaint or which could have been alleged based on the factual predicates in said Complaint. The Released Claims include, without limitation, all claims for unpaid wages, including, but not limited to, failure to pay minimum wages; failure to pay straight time compensation, overtime compensation, double-time compensation, reporting time compensation, and/or interest; missed, late, short or interrupted meal and/or rest periods, including any claim for any alleged failure to pay premiums for missed, late, short or interrupted meal or rest periods, including any claim for any alleged failure to pay such premiums for missed, late, short or interrupted meal or rest periods, or to pay such premiums at the regular rate of compensation, inaccurate or otherwise improper wage statements and/or failure to keep or maintain accurate

records; unlawful payment instruments that are optional to the Class Members; any claim for unfair business practices arising out of, arising in connection with, or related to any or all of the aforementioned claims; any claim for penalties arising out of or related to any or all of the aforementioned claims, including but not limited to, recordkeeping penalties, wage statement penalties, minimum-wage penalties, and waiting time penalties; and attorneys' fees and costs. The Released Claims include all such claims arising under the California Labor Code (including, but not limited to, sections 200, 201, 202, 203, 204, 210 (only limited as to claims based on Labor Code Section 204), 216, 218, 218.5, 218.6, 223, 225, 225.5, 226, 226.7, 510, 512, 516, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, and 2698 *et seq. as to identified Labor Code Section* and 2699 *et seq.*; the applicable Wage Orders of the California Industrial Welfare Commission as to the facts alleged in the Complaint and all claims that could have been pled based on the alleged facts in said Complaint; California Business and Professions Code section 17200, *et seq.*; the California Civil Code, including but not limited to, sections 3287; California Code of Civil Procedure § 1021.5 during the Class Period. The Class Released Claims include any and all claims under the Private Attorneys General Act, Cal. Lab. Code § 2698 *et seq.* ("PAGA") that were or could have been asserted in the Litigation based on the facts alleged or are reasonably related to those asserted. The PAGA Released Claims include PAGA Claims asserted during the PAGA Settlement Period of July 7, 2016 through the date of Preliminary Approval. This release excludes the release of claims not permitted by law.

FINAL SETTLEMENT APPROVAL HEARING

27. When will the Court consider whether to finally approve the settlement?

The Court will hold a hearing in Department 11 of the Los Angeles County Superior Court, located at 312 Spring Street, Los Angeles, CA 90012, on _____ __, 2019 at ___ _.m, to decide whether to finally approve the settlement as fair, reasonable, and adequate. At that time, the Court also will be asked to approve Class Counsel's request for attorneys' fees and reimbursement of costs, and the Class Representative Payment.

It is not necessary for you to appear at this hearing. If you have timely submitted a valid objection to the settlement and a notice of intent to appear, you may appear at the hearing to argue your objection to the Court, or have an attorney represent you at the hearing at your own expense.

The hearing may be postponed without further notice to the Class. If the settlement is not approved, the lawsuit will continue to be prepared for trial or other judicial resolution.

FURTHER INFORMATION

28. How do I get more information?

This Notice provides a summary of the basic terms of the settlement. If you have more questions about this Notice or this lawsuit, you can contact Class Counsel, whose contact information is below, or the Settlement Administrator at 1-_____:

Joseph Lavi, Esq.
Joshua Webster, Esq.
LAVI & EBRAHIMIAN, LLP

8889 W. Olympic Blvd., Suite 200
Beverly Hills, CA 90211
Telephone: (310) 432-0000
Facsimile: (310) 432-0001
Email: Jlavi@lelawfirm.com

For the settlement's complete terms and conditions, please consult the detailed Class Action Settlement Agreement. The defined terms in this Notice have the same meaning as set forth in the Class Action Settlement Agreement. If you wish to review the settlement documents, you may do so by visiting www.lelawfirm.com/_____. Your browser will be directed to information regarding this case.

IMPORTANT:

1. **PLEASE DO NOT TELEPHONE THE COURT OR THE COMPANY'S COUNSEL FOR INFORMATION REGARDING THIS SETTLEMENT OR THE CLAIM PROCESS.**

2. **If you move to a different address, please send the Settlement Administrator your new address. It is your responsibility to keep a current address on file with the Settlement Administrator to ensure receipt of your settlement payment.**

EXHIBIT "2"

ALLOCATION FORM

You do NOT have to mail this Allocation Form to get your Individual Settlement Payment.

Return this form to the Settlement Administrator ONLY if you need to correct any of the personal and/or employment information reported below.

MAIL TO:
Arias vs. Ace Hardware Corporation **c/o CPT Group, Inc._____.** ***insert address, Fax Number***

TO CLASS MEMBER [MERGED_FirstName] [MERGED_LastName]:

TO RECEIVE MONEY FROM THE SETTLEMENT, YOU DO NOT NEED TO TAKE ANY ACTION.

1. Under the terms of the Class Action Settlement ("Settlement"), you are entitled to receive an Individual Settlement Payment in the approximate estimated amount of $[MERGED_EstSettAmnt_CALC], minus all applicable payroll and tax deductions, after the Court approves the Settlement, and after it goes into effect. Your Individual Settlement Payment will be treated as follows: 33% will be attributed to wages and will be reported as such on an IRS Form W-2 from which payroll withholding taxes and contributions shall be taken; 67% will be attributed to interest and penalties and will be reported on an IRS Form 1099. The Parties agree that all Participating Class Members who receive any payment pursuant to this settlement will be responsible for any and all tax obligations associated with such receipt. Your Individual Settlement Payment reflected on this Notice is only an estimate. The exact amount of your Individual Settlement Payment could vary, up or down.

2. The records of Ace Hardware Corporation and/or Ace Global Distribution, LLC (hereinafter collectively referred to as "Company") shows that you are a member of the class because you were/are a non-exempt employee of the company in California during the class period (July 7, 2013 to preliminary approval date) and worked _____ workweeks.

3. Your Individual Settlement Payment is based on your total workweeks during the Class Period. A workweek is defined as one in which you were both present at work and earned wages.

4. You have been credited with [MERGED_] workweeks for purposes of calculating your Individual Settlement Payment.

5. If you ***DO NOT*** **WANT TO DISPUTE** the total amount of workweeks being credited to you, **YOU SHOULD NOT RETURN THIS FORM AND DO NOT NEED TO TAKE ANY FURTHER ACTION TO BE ELIGIBLE FOR AN INDIVIDUAL SETTLEMENT PAYMENT**. The Individual Settlement Payment will be mailed to you after the Settlement goes into effect in approximately six months.

6. **YOU SHOULD ONLY COMPLETE THIS SECTION** ***IF YOU DISPUTE*** the number of workweeks listed above. To file a dispute you must: (1) check the dispute box below and fully complete the chart below; (2) sign this form; (3) provide any documentation you have to support your position; and (4) and mail or fax the completed and signed form and any supporting documentation to the Settlement Administrator so that it is postmarked or fax stamped no later than DATE, 2019. The Settlement Administrator will review all valid dispute forms and notify you of the results by written notice. The Settlement Administrator's decision will be final. Late or incomplete disputes, or disputes that are mailed without a visible postmark date, will not be considered and your Individual Settlement Payment will be based on the workweeks listed above.

QUESTIONS?

CALL THE SETTLEMENT ADMINISTRATOR AT _____

☐ I WANT TO DISPUTE the number of workweeks credited to me under this Settlement. I worked the following number of workweeks:

	Dates of Employment During the Class Period (July 7, 2013 through preliminary approval_____)
	Workweeks I Worked During the Class Period

I believe I worked more workweeks than shown above because:

_____

_____

_____ Date

_____ Signature of Claimant

_____ Daytime Telephone Number

_____ Print Name

_____ Last four digits of social security number

YOU SHOULD NOT RETURN THIS FORM IF YOU DO NOT DISPUTE THE NUMBER OF WORKWEEKS SPECIFIED ABOVE.

EXHIBIT "B"

CPTGroup
Class Action Administrators

50 Corporate Park, Irvine CA 92606 • (800) 542-0900 • www.cptgroup.com

CURRICULUM VITAE

COMPANY PROFILE

CPT Group, Inc., founded in 1984, is a leading provider of notice and settlement class action administration services and has been appointed as the third-party administrator by all major courts in the State of California and numerous United States District Courts. Located in Irvine, CA, CPT's client base includes over 10,500 attorneys, both local and nationwide, that have entrusted CPT to bring their experience, expertise and proven excellence to their settlements for administration. Throughout our history, CPT has disbursed billions of dollars in Settlement funds, and serviced over 65,000,000 class members and administrated approximately 4,000 cases. CPT offers a wide range of class action administrative services for developing, managing and executing all stages of integrated settlement plans. This includes pre-certification and discovery mailings, class-certification mailings, claims processing and administration, data management, data reporting, settlement fund administration, legal noticing campaigns, website design and web hosting. Experienced CPT staff currently handles the following types of class action cases: Wage and Hour, FLSA, Employment/ADA, Consumer/Product, Insurance, Securities, Finance, Antitrust, and ERISA.

Once designated by the parties and approved by the court as the third-party administrator, CPT assumes full responsibility in overseeing management of the class database, notification to the class members, claims processing, and disbursement of settlement payments. The operations, IT and production facilities are all located at the corporate headquarters in Irvine. The integrity of CPT's work is strengthened by the staff's ability to work in close proximity and keep the work handled in-house. The IT data center is accessible 24/7/365 to authorized CPT personnel. CPT uses internal IT expertise and follows internal business as well as IT policies and procedures to support its daily administration and service operations.

CPT prides itself on being the industry's premier class action administrator, offering comprehensive and cost-effective class action administration services, utilizing leverages that decades of personal insight and firsthand knowledge from multiple disciplines and legal arenas have provided. CPT is NIST SP 800-171 compliant, administrates hundreds of cases per year, and has disbursed over a billion dollars in settlement funds. With a structured service platform and practice-area expertise, CPT can effectuate the services it provides accurately and expeditiously.

CPT is entrusted by counsel and appointed by the court to handle nationwide, complex, large project settlements. Some of our current representative matters include:

- Lim, et al. v. Vendini, Inc., California Superior Court Case No. 1-14-CV-259897;
- Mount v Wells Fargo Bank, Superior Court of California Case No. BC395959;
- Manouchehri v Styles For Less, Inc., United States District Court Case No. 14cv2521 NLS;
- Kerr, et al. v. Zacks Investment Research, Inc., et al., United States District Court Case No. 16-CV-01352 GPC BLM;
- Hinshaw v. Vizio, Inc., United States District Court Case No. SA CV14-00876-DOC (ANx);
- Kerr v. The New York Times Company, et al., California Superior Court Case No. 37-2016-000010125-CU-MC-CTL;
- Hightower, et al. v. JPMorgan Chase Bank, N.A., United States District Court Case No. 11-CV-01802-PSG-PLAx; Singer v. WWF Operating Company, United States District Court Case No. 1:13-CV-21232-UNGARO;
- Romero, et al. v. Loacker USA, Inc., California Superior Court Case No. 1-14-CV-274434;
- Hoover v. Hi-Tech Pharmacal Co., Inc., United States District Court Case No. EDCV 13-00097 JGB (OPx);
- Michigan Finance Authority, et al. v. Kiebler, et al., Michigan Court of Claims Case No. 13-000166-MZ.

AREAS OF EXPERTISE

- **Project Management** – To ensure a smooth claims administration process, CPT Group acts as a neutral third party and provides comprehensive case administration from start to finish. Following the timeline set forth in the Settlement Agreement and Court Order, our team of Case Managers ensures that all actions required by the Claims Administrator are met.
- **Claims Administration** – CPT Group executes an extensive Quality Assurance process throughout the duration of the claims period. Any and all responses received from Class Members are processed according to our strict internal procedures and in accordance with Settlement Agreement. Once claims processing is completed, Counsel is provided with all required reporting, including, where applicable, a list of approved claimants and the settlement calculations for each.
- **Call Center** – CPT Group maintains a Call Center to provide support for Class Members between the hours of 9:00 AM and 5:30 PM, Monday through Friday, except for major holidays. The Call Center is specially trained to field questions pertaining to the important features of each case. Our Call Center representatives are all bilingual in English and Spanish, and upon special request, CPT can provide support in other languages.
- **Data Management/Reporting** – CPT Group will standardize and analyze the class data provided by Counsel to compile the master mailing list. CPT Group prepares weekly status reports for each case that summarize the status of returns and responses such as mail pieces and claim form submissions. These live reports can also be accessed by verified Counsel for each case 24-hours a day on our secured website. CPT Group, Inc. is NIST SP 800-171 compliant, which ensures that necessary measures are taken to guarantee that all class member data is handled and stored in a safe and secure manner.
- **Noticing Expertise** – CPT Group will format the court-approved Notices, Claim Forms, and Exclusion Forms whether the method of notification be standard mail or electronic distribution. CPT Group maintains an on-site printing and mail house, which ensures the utmost quality control. Regardless of class size, CPT strives to execute the class notification process using cost-effective and accurate methods.
- **Settlement Fund Administration** – CPT Group's staff of accounting professionals oversees the disbursement process for each case in strict detail and in accordance with the terms of the Settlement Agreement. Utilizing a Qualified Settlement Fund (QSF) for each case, CPT maintains its settlement account through a federally insured bank where access to each Settlement Account is restricted to authorized personnel. Bank accounts for each case are reconciled monthly and are available to each client upon request. On behalf of the QSF, CPT Group pays and reports all applicable State and Federal tax withholdings and liability, and issues and reports W-2 wages and 1099 income, as required, for each case.

SERVICES

- Settlement Notification
- Pre-Certification Notification
- Data Analysis
- Bilingual Call Center
- Publication & Media Campaigns
- Claims Processing
- Class Certification Notification
- Secure Data Management
- In-House Print & Mail House
- Website Hosting
- Settlement Fund Administration
- Electronic Notification
- Secure Data Reporting
- NCOA & Skip Tracing
- Website Design

REFERENCES

For reference, the following Exhibits are attached:

1. CPT's Information Security Statement.
2. CPT's Data and Settlement Fund Transmission Methods
3. CPT's Company Brochure.
4. CPT's Client Testimonials.

EXHIBIT 1

CPTGroup
Class Action Administrators

Information Security Statement
Confidential

CPT Group, Inc. ("Company" or "CPT") maintains a comprehensive, written Information Security Program that complies with all applicable laws and regulations and is designed to (a) ensure the security, privacy and confidentiality of Class Member Information, (b) protect against any reasonably anticipated threats or hazards to the security or integrity of the Class Member Information, and (c) deny unauthorized access to, use, deletion, or modification of Class Member Information. As part of an ongoing effort, throughout its business CPT has implemented the following security controls and procedures:

1) Company uses Class Member Information only for the purposes for which Client provided it, as described in any Agreements and/or Court Order's governing the provisions of the Company's services on any particular engagement.
2) Company has designated one of more specifically named employees to be responsible for the administration of its Information Security Program.
3) Company has and maintains processes for identifying, assessing, and mitigating the risks to Class Member Information in each relevant area of the Company's operations and evaluating the effectiveness of the safeguards for controlling these risks.
4) Company runs and analyzes daily Risk Assessment and Threat Intelligence scans on all company computer stations, servers and protected network subnets. These scans search for any software vulnerabilities along with data containing sensitive information ("SI").
5) All computers are provisioned with an advanced security stack. Company's Endpoint Protection centrally reports activity, handles patch management and security policies. Company's security stack is based on DNS and content filtering, deep packet inspection at the firewall level, antivirus/antimalware, email filtering and user behavior analysis. Each endpoint is monitored with modern Data Loss Prevention ("DLP") software. Company's DLP system prevents connection to unauthorized external storage, cloud systems or email accounts. It actively blocks screen prints and will not allow confidential user information to be sent out of our trusted network.
6) Login access to Company email or systems requires two factor authentication, which requires not only a password and username but also something physical, like user location, secure ID token or biometrics.
7) Company regularly monitors, tests and updates its Information's Security Program.
8) Company restricts access to Class Member Information only to those employees, agents, or subcontractors who need to know the information to perform their jobs.
9) Company performs an annual audit of its Information Security Program. This includes a review of the controls: vulnerability scans, secure software development life cycle, patch management, intrusion detection and prevention, encryption of storage media and devices. Company makes reasonable changes to its Information Security Program to ensure it can maintain safeguards that are appropriate for the Class Member Information at issue.
10) At Client's request, but only when and in a manner consistent with applicable Agreements and/or Court Orders, Company will securely destroy or return all Class Member Information in its possession and certify to Client in writing that Company has done so. If Company destroys Class Member Information rather than return it, Company will use destruction methods that are in compliance with all applicable state and federal laws and regulation including NIST Special Publication 800-88, Revision 1 (2014). This obligation to return or destroy information shall not apply to Class Member Information that is stored in backup or other disaster recovery systems, archives or other storage systems that make it impractical to

destroy the information, but if Company retains Class Member Information for these reasons, its obligation under the Settlement Agreement will continue to apply for so long as it retains the information. Additionally, the Company will retain all hard copy documents (i.e. Claim Forms, etc.) for a period of 6 months, at which time they are scanned and shredded on Company premises in compliance with NIST Cybersecurity Framework.

11) Company performs extensive background checks (County Criminal, County Civil and National Criminal Database Search) of all its employees, including a review of their references, employment edibility, and education verification to ensure they do not pose a risk to the security of Class Member Information or Clients employees. Company will provide, upon request, a copy of its background check requirements for Clients review and approval. Nothing in this document shall compel Company to disclose the results of such background information of its employees.
12) Company conducts a monthly third-party credentialed vulnerability assessment with Trustwave. Vulnerabilities rated as high are patched/resolved with 48 hours. Medium is 1 week and Low is within 2 weeks. If a vulnerability cannot be resolved within our standard time, a compensating control will be introduced to protect the vulnerable systems. To ensure Company receives timely information regarding new threats and vulnerabilities, Company subscribes to US-CERT notices as well as notices are received from Sonicwall our firewall manufacturer. New threats are communicated to our executive and leadership team to disseminate to all employees within the company.
13) Company has implement the following safeguards for systems that process, store or transmit Class Member Information:
    - Identify and Access Management;
    - Windows password complexity with a specific length, history, upper and lower characters, numbers, expiration every 45 days, and separate password for email and computer;
    - Two-Factor authentication for remote access;
    - Removable media devices, personal web-based email, instant message, or online storage (i.e. Dropbox, Google Drive, iCloud, etc.) are blocked and restricted by the firewall;
    - Company uses the Microsoft Azure cloud to host corporate email. Remote access to the email system is disabled;
    - Company uses the HTTPS or FTP standard for all data transmissions, and shall ensure that all Client Data is encrypted while in transmission between Company's data center and the Company's computer system or other device (as applicable) and at rest, consistent with the NIST standard, but no less than a 128-bit key for symmetric encryption and a 1024-bit key for asymmetric encryption.
    - Company requires its clients and self to transfer files with personal Class Member Information via a secure transmission protocol through Citrix Sharefile FTP which secures file during transfer with SSL/TFL encryption protocols and in storage using AES 256-bit encryption. Links to file expire after 7 days. Company requires all files transferred in this method to be password protected during transmission and password to be provided telephonically only. Files are retrieved by Company, and then deleted manually upon successful download (or auto-deleted after 7 days from upload by system)'
    - Upon hire and annually thereafter, security training of all employees using the online security training platform Knowbe4. Users are required to do one hour of security training per year in additional to 20 minutes of training per quarter. Users are required to take tests online to ensure they've retained the knowledge. Topics covered are spear phishing emails, compromised website, social engineering, strong passwords, ransomware, handling sensitive information, mobile device security;
    - Company actively tests security defenses. Staff participate in simulated phishing exercises to reinforce previous training. Company also conducts monthly external penetration tests and daily internal vulnerability scans to ensure the integrity of our security measures;
    - Preventing terminated employees from accessing Class Member Information;
    - Appropriately configured and updated firewall, antivirus, and spyware software;
    - Separation of Duties;
    - Business Continuity Planning;

- Disaster Recovery Planning;
- Pandemic Recovery Planning

14) Company's physical security requires that employees use an encoded card-key to gain access to the facility as all doors are mechanically locked at all times. Employees can only enter or exit through a front door or back door, both of which are protected by security cameras. Inside the facility, secure areas in the office that contain checks or sensitive material are also protected by the electronic card-key badge access and limited to select employees. Security cameras monitor the areas that contain the sensitive material and audits are conducted periodically on the area. Access to the server room is strictly limited to only five individuals and protected by the encoded card-key badge access. Security cameras monitor the inside and outside of the secured area with audits being conducted periodically.
15) Company staff are required to maintain in compliance with the Information Security Policies, Compliance Manual, and Non-Disclosure Agreement. The matters covered in the Code of Business Conduct and Ethics are of the utmost importance to the Company and are essential to the Company's ability to conduct its business in accordance with its stated values. We expect all of our officers, directors, employees, agents, contractors and consultants to adhere to these rules in carrying out their duties for the Company. The Company will take appropriate action against any officer, director, employee, agents, contractor or consultant whose actions are found to violate these policies or any other policies of the Company. Disciplinary actions may include immediate termination of employment or business relationship at the Company's sole discretion. If the Company has suffered a loss, then it may pursue its remedies against the individuals or entities responsible. If laws have been violated, then the Company will fully cooperate with the appropriate authorities.

Definitions

1) **"Class Member Information"** means Class Member name, address, or other contact information and class member claim filing information necessary for Company to perform services required by applicable Agreements or Court Orders in context to the Administration of a Settlement or other Class Action litigation.
2) **"Client"** means collectively Plaintiff Counsel and Defense Counsel.
3) **"Client Data"** means proprietary or personal data regarding Client or any of its Class Members under the Settlement Agreement, as provided by Client.
4) **"Company"** means CPT Group, Inc. a reputable third-party Claims Administrator selected by all the Parties (Plaintiff and Defense Counsel) to administer the Settlement or Notification Mailing.
5) **"Sensitive Personal Information"** means any non-public information of CPT or Client disclosed by either party to the other party, either directly or indirectly, in writing, orally or by inspection of tangible objects, or to which the other party may have access, which a reasonable person would consider confidential and/or which is marked "confidential" or "proprietary" or some similar designation by the disclosing party. Confidential Information shall not include any information which the recipient can establish: (i) was or has become generally known or available or is part of the public domain without direct or indirect fault, action, or omission of the recipient; (ii) was known by the recipient prior to the time of disclosure, according to the recipient's prior written documentation; (iii) was received by the recipient from a source other than the discloser, rightfully having possession of and the right to disclose such information; or (iv) was independently developed by the recipient, where such independent development has been documented by the recipient.

EXHIBIT 2

CPTGroup
Class Action Administrators

TRANSMISSION METHODS FOR SENSITIVE INFORMATION

CPT Group, Inc. ("CPT") maintains strict guidelines for the submission, transfer, and protection of Client Data and Wire Information.

A. CLIENT DATA TRANSMISSION METHODS

Counsel shall submit all Client Data to CPT as follows:

1. Link provided by CPT to secure FTP (sharefile) for transfer of data files.
2. All files uploaded should be password protected.
3. Password provided to CPT personnel telephonically.
4. Once files are uploaded to and retrieved, files are deleted (files set on autodelete after 7 days of upload).

Counsel agrees and acknowledges that the above method is the only method authorized by CPT to receive Client Data. Attempts to transmit Client Data by other means are customarily not accepted. In the event Counsel utilizes other means to transmit or attempt to transmit Client Data, CPT disclaims all responsibility for such transmissions or attempted transmissions.

B. BANK WIRE INFORMATION

Incoming from Defense Counsel to QSF.

CPT provides Qualified Settlement Fund bank account wire instructions to Defense Counsel as follows:

1. Wire instructions are printed in PDF format, are uploaded with password protection, and are made available to Defense Counsel via secure Sharefile.
2. CPT will call Defense Counsel directly and provide the password telephonically.
3. Defense Counsel is requested to then call CPT prior to wiring funds to confirm receipt of all applicable information.

Defense Counsel agrees and acknowledges that the above method is the only method authorized by CPT to communicate QSF wire instructions. CPT will decline attempts by Defense Counsel to receive such instructions by other means. In the event Defense Counsel utilizes other means to transmit or attempt to transmit wire instructions, CPT disclaims all responsibility and liability for such transmissions or attempted transmissions including without limitation for any unauthorized access, acquisition, destruction or loss of such wire instructions.

Outgoing from QSF to Plaintiff Counsel.

1. CPT does not send passwords via email either internally or externally.
2. For wire instructions for Plaintiff Counsel, such instructions should be communicated to CPT either by phone or by secure Sharefile.
3. CPT will confirm wire information on file with the bank name and last four digits of the account number only.

Plaintiff Counsel agrees and acknowledges that the above method is the only method authorized by CPT to communicate wire instructions. CPT will decline attempts by Plaintiff Counsel to receive such instructions by other means. In the event Plaintiff Counsel utilizes other means to transmit or attempt to transmit wire instructions, CPT disclaims all responsibility and liability for such transmissions or attempted transmissions including without limitation for any unauthorized access, acquisition, destruction or loss of such wire instructions.

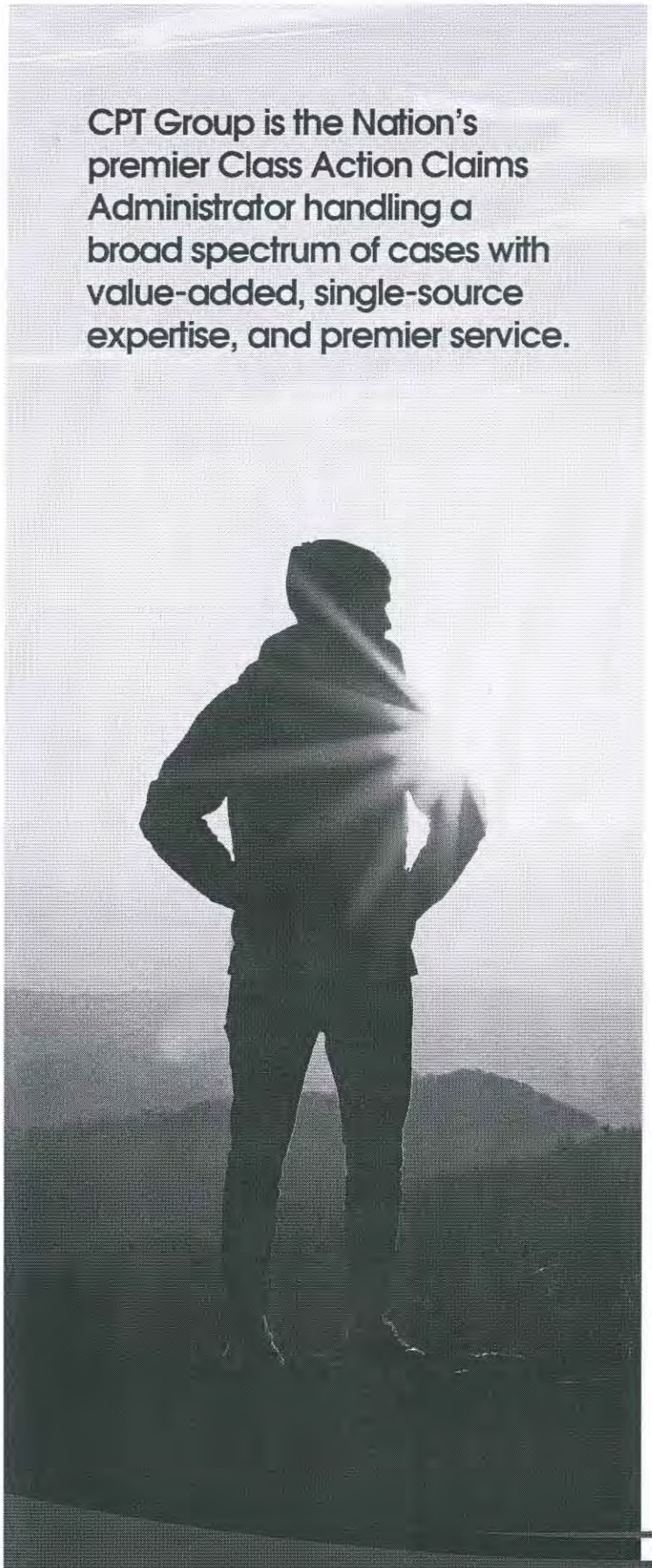
EXHIBIT 3

CPT Group

Class Action Administrators

The Industry's Premier
Class Action Administrator

CPT Group is the Nation's premier Class Action Claims Administrator handling a broad spectrum of cases with value-added, single-source expertise, and premier service.



Putting CPT Group in place as your Administrator influences every element of the process thereafter. Rely on us to analyze, plan, and administrate with integrity, drawing from a broad base of administration experience with class action settlement and beyond.

Value Added Philosophy
CPT Group's cadre of experts understands how each piece of the administrative puzzle fits seamlessly into the big picture. Dynamic, capable, and service-centric our elite staff delivers peak productivity and value. The longevity of our Administrators, stringently tested Case Managers, and trusted Consultants merge to assure neutrality, attention to detail and quality for "true-number" proposals and no costly surprises.

Best In Class Service
From informed Case Managers who are your single point of contact, to secure in-house resources, we work as one to bring you superior service you can rely on. Count on us to be fully up to date, aware of all contingencies, and espond with speed and accuracy.

Capabilities

Selecting CPT Group is the first step in determining the outcome of your settlement. Multifaceted capabilities, the distinct advantage of experience, particularly in cross category settlements, require that all pieces are organized, positioned correctly and put into place.

One team. One purpose. We put you first.

Proprietary Technology and Superior Workflow
Without doubt, the security of settlement information is of the utmost importance.

AdminLink: Internal Case Information Access Management

Exclusive proprietary technology offers access to real time reports, response rates and more, 24/7. With AdminLink, our operations staff can access current case information in one single location, ensuring every CPT staff member involved in your case is up to date and has all the information they need at their fingertips.

Comprehensive Marketing

Our onsite print/mail house and web development team not only affords you greater value and tighter security, we assure full legal compliance in all materials and up to date information for all class members, thereby reducing demands on client time and resources.

Comprehensive Service

Pre-Settlement Consulting

Entrusting class action administration to CPT Group is the first step in the confident achievement of the goals of the goals of the lawsuit. Our full spectrum consultation services address every critical area of need, providing clear and actionable planning combined with cost-effective administration.

- Preliminary Approval Declarations
- Settlement Agreement Consultation
- Timelines
- Scheduling
- Statistical Reporting
- Notice Campaign Planning
- Neutral Third Party Administrator

Legal Notification

CPT Group is adept at third-party data hosting and communication services using proprietary technology across multiple platforms, including print, media and online. Clear-language documents, translated according to class member needs, support and guide members through a seamless case rollout, regardless of scope or complexity.

- Pre-Certification/Belaire West/Privacy Mailing
- Class Certification Noticing
- Settlement Notification
- Formatting Legal Notices
- Electronic Notification email/website
- Translation Services
- In-House Production
- Expert Legal Noticing Campaigns
- In-House Translation Services

Data Management

Quality, accuracy, speed and security are the cornerstones of CPT's proprietary technology and data management systems. We developed our specialized data management, analysis and reporting tools to move the skillset up, innovate new and better solutions and create a superior workflow with complete and timely accountability and efficiency.

- Data Analysis
- Data Entry
- Data Management
- Secure Data Transfer
- Data Reporting

Class Member Assistance

Customer response and targeted outreach receive multilevel attention. We have a massive capacity to handle this all-important aspect of settlement administration. Our multilingual call center offers class members 1:1 responsiveness. Interactive Voice Response assures that class members receive the assistance and support they require. Our proprietary, case-specific call tracking system uses dedicated toll-free numbers, and highly trained

representatives to document and maintain an accurate class member history of interaction.

- Live Call Center Support (multilingual)
- Interactive Voice Response (IVR) capabilities
- Proprietary Call Tracking System

Claims Administration

At the heart of CPT's administrative capabilities is our ability to process claims accurately, efficiently and in full compliance. Our skilled approach to using technology and controlling management costs is the bedrock of our effectiveness. Regardless of class size or case intricacy, we address all aspects of administration to provide comprehensive and complete solutions.

- In-House Secure Data Processing
- Track & Process Undeliverable Mail
- Claims Processing (mail/online)
- Host & Maintain Case Websites
- Secure Claims Validation

Settlement Fund Administration

CPT's centralized fund distribution process manages fully audited and securely supervised accounts, handling all aspects of Federal and State tax filings and forms printing and distribution to all recipients.

- Secure Disbursement Processing
- Qualified Settlement Fund (QSF) Management (establish/maintain)
- Federal and Multi-State Tax Reporting (W2/1099)
- Physical Checks, ACH, eCheck, Merchant eGift Cards, Merchant Physical Gift Cards, and Prepaid Debit Cards Options
- Escheatment of Unclaimed Settlement Funds Cy Pres Distribution

Widespread Experience

- FLSA
- Wage & Hour
- Labor & Employment
- PAGA
- Consumer
- Product Liability
- Data Breach Notification
- Government Services
- Insurance
- Securities
- Finance
- Antitrust
- ERISA

Contact Us 800.542.0900

CPT Group, Inc. is not just part of the solution. It is the solution. Please allow us to answer your questions and discuss your immediate and future needs.

EXHIBIT 4

CPTGroup
Class Action Administrators

What our clients have to say about CPT Group, Inc.

"I have worked with CPT for 10+ years. CPT is detail-oriented, excellent at meeting deadlines, anticipates potential issues while proposing resolutions, mindful of sensitive private information and safeguards it accordingly, reliable and communicates proactively. CPT is priced competitively for service that surpasses its competition. I have worked with numerous service providers; CPT is by far the best."
Anthony Orshansky, Esq., CounselOne, P.C.

"CPT has extraordinary customer service. They always go above and beyond to resolve any questions we may have. Their responses to our emails are always prompt and are incredibly helpful with last minute needs. Their weekly reports are incredibly useful!"
Craig Ackermann, Esq., Ackermann & Tilajef, P.C.

"I have successfully worked with CPT in administering several multi-million settlements and several Bel-Air privacy notices. CPT was cost-conscious in each instance, often capping their costs to ensure Court approval. Moreover, they quickly respond to inquiries, and expeditiously address problems that surface — maintaining a professional demeanor at all times."
Raul Perez, Esq., Capstone Law, APC.

"I have utilized the services of CPT over the past five or six years to handle all aspects of wage and hour class actions of various sizes. They consistently deliver on time with extremely competitive pricing. The case managers are reliable, efficient and accessible to handle any issue that comes up. I am so pleased with CPT's handling of wage and hour matters that I am now turning to them to administer our consumer class actions as well."
Marcus J. Bradley, Esq., Bradley & Grombacher, LLP.

"CPT's employees pay great attention to detail, are extremely hard-working, are particularly conscious of deadlines, foresee potential issues that may arise and address them proactively, are smart, high-IQ individuals and are easy to work with. I've worked with many of the "best" Class Action Administration firms, and CPT is the best!"
Zach Dostart, Esq., Dostart Hannink & Coveney, LLP.

"CPT Group is by far my preferred Settlement Administrator!"
Tim Johnson, Esq., Ogletree Deakins Nash Smoak & Stewart

"CPT is always quick to respond ot any calls or emails and work on the tasks needed. They follow up and always keep their word on pricing. We have used CPT many times and never once have had an unpleasant experience. That is hard to find with any vendor."
Doug Johnson, Esq., Johnson & Johnson

"CPT understands Class Actions and the requirements for properly noticing the Class. They have experience project manager overseeing the Administration."
Diana Khoury, Esq., Cohelan Khoury & Singer

"I am extremely happy with all that you have done with the administration of this matter. Excellent service, from start to finish, as to all matters and you stayed within budget! You don't know how happy that makes me. CPT is our #1 admin company. Please feel free to use me as a reference."
Denise M. Caprioli, Esq., McMillion & Hirtensteiner

"I routinely go back to CPT for class action services because they have proven over and over that they provide excellent service for a great value. When I hire CPT, I know that I can get instant, personal attention on any issue that comes up, and that my matter will be handled with the attention to detail that I expect. I lke being able to call and reach people I trust."
Jeff Ames, Esq., Paul Plevin Sullivan & Connaughton

"I have used CPT successfully over the last four or five years on a variety of wage hour class action cases. I find them to be very professional class action administrators in their on-time delivery of work product, their great process of keeping counsel updated and their reasonable pricing. I will use them again."
Robert Yonowitz, Esq., Fisher & Phillips LLP

"Fast, friendly responses to all my questions. High quality work."
Patrick Stark, Esq., Ford, Walker, Haggerty, & Behar

"CPT can handle all aspects of our wage and hour class actions, from privacy opt out notices to administering claims. CPT handles these matters quickly and efficiently and always on budget."
Derek S. Sachs, Esq., Lewis Brisbois Bisgaard & Smith LLP

"It's one thing to retain a third-party administrator. It's another to retain professionals who communicate well and will go the extra mile to ensure that all parties are completely satisfied."
Joel P. Kelly, Esq., Jackson Lewis

"CPT is great, they have tremendous service, knowledgeable staff and make the experience seamless and efficient. I would recommend them for jobs big or small."
Eric B. Kingsley, Esq., Kingsley & Kingsley

"CPT is as professional as they come. Their team really goes the extra mile to work with you and your team. Do yourself a favor and get to know the CPT Group."
Brian S. Kabateck, Esq., Kabateck Brown Kellner, LLP

"On behalf of the defendants, we were extremely pleased with the service that CPT Group provided and would not hesitate using your services again."
Philip L. Ross, Esq., Littler Mendelson, P.C.

"I truly appreciate your patience and assistance on this. I will certainly recommend you and your company in the future when "class action administration" services are needed...it seems the administration part of the case has been handled with minimal headaches for me personally."
Rhonda Wolf, Esq. General Counsel, United Oil Company

"I have used CPT Group as a wage and hour class action administrator in several cases. On each occasion, CPT has been thorough, responsive, and efficient. I have enjoyed working with CPT and look forward to working with CPT in the future."
Howard Z. Rosen, Esq., Posner & Rosen LLP

"The administration of a class action settlement–even an uncomplicated one—involves a lot of moving parts, and there are a lot of companies that proclaim expertise in this filed. But my "go to" claims/settlement administrator is CPT Group because they manage things seamlessly—which is something my Firm counts on. CPT anticipates and solves problems before they become big "issues." And they are all good people too."
Dylan Pollard, Esq., Pollard & Bailey

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am an employee in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 8889 W. Olympic Blvd., Suite 200, Beverly Hills, California 90211.

On January 23, 2019, I served the foregoing document, described as:
"PLAINTIFF RENE ARIAS'S NOTICE AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF JOSHUA WEBSTER; EXHIBITS; [PROPOSED] ORDER"
on all interested parties in this action by placing a true copy thereof in a sealed envelope, addressed as follows:

Counsel for Defendants Paul S. Cowie, Esq. Brooke S. Purcell, Esq. **SHEPPARD, MULLIN, RICHTER & HAMPTON, LLP** 4 Embarcadero Center, 17th Floor San Francisco, CA 94111	

☐ **(BY MAIL)** As follows:

I placed such envelope, with postage thereon prepaid, in the United States mail at Los Angeles, California.

I am "readily familiar" with the firm's practice of collecting and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day, with postage thereon fully prepaid, at Los Angeles, California, in the ordinary course of business. I am aware that, on motion of the party served, service is presumed invalid if the postal cancellation or postage meter date is more than one day after the date of deposit for mailing in this affidavit.

☐ **(BY PERSONAL SERVICE)** I caused such envelope to be delivered by hand to the attorney listed above.

☒ **(BY ELECTRONIC SERVICE)** I sent such document via Case Anywhere.

I declare, under penalty of perjury under the laws of the State of California, that the above is true and correct.

Date: January 24, 2019

Joshua Webster