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10 **SUPERIOR COURT OF CALIFORNIA**
11 **IN AND FOR THE COUNTY OF LOS ANGELES**

12 PHILLIP ALONZO, as an individual and on
13 behalf of all others similarly situated,

14 Plaintiff,

15 vs.

16 BRENNTAG PACIFIC, INC., a California
17 corporation; and DOES 1-50, Inclusive,

18 Defendants.

CASE NO. 20STCV20030

Assigned for All Purposes to:
Hon. Theresa Beaudet
Dept. 50

MEMORANDUM ISO MOTION FOR
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT

[Filed concurrently with Memorandum of
Points and Authorities; Declarations of
Zachary M. Crosner, Phillip Alonzo, and
Evelin Reyes; [Proposed] Order]

Date: October 17, 2022
Time: 10:00 a.m.
Dept.: 50

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	FACTUAL BACKGROUND AND PROCEDURAL POSTURE	1
III.	THE PROPOSED SETTLEMENT TERMS	3
A.	Certification of the Settlement Class	3
B.	The Benefit Conferred on the Settlement Class	3
C.	Settlement Administration	4
F.	Release of Claims	5
G.	PAGA Claims and Notice to the LWDA	5
E.	Attorney's Fees and Costs	5
IV.	ARGUMENT	6
A.	Standard of Review for a Class Action Settlement	6
B.	The Proposed Settlement Merits Final Approval	7
1.	The Settlement Is the Product of Arm's-Length, Informed Negotiations	7
2.	The Class Reacted Favorably to the Settlement	7
3.	The Settlement Is Fair and Reasonable Considering the Benefits Conferred, the Case Value, and Significant Litigation Risks	8
V.	PLAINTIFF'S ENHANCEMENT AWARDS	13
VI.	SETTLEMENT ADMINISTRATION COSTS	13
VII.	CONCLUSION	14

TABLE OF AUTHORITIES

CASES

7-Eleven Owners for Fair Franchising v. Southland Corp. (2000) 85 Cal.App.4th 1135, 1150.....	12
Amaral v. Cintas Corp. No. 2 (2008) 163 Cal.App.4th 1157, 1203-04	10
Bradescu v. Hillstone Restaurant Group, Inc. (C.D. Cal. Sep. 18, 2014) 2014 WL 5312546, at *7	10
Carrington v. Starbucks Corp. (2018) 30 Cal.App.5th 504	11
Class Plaintiffs v. City of Seattle (9th Cir. 1992) 955 F.2d 1268, 1276, cert. denied, 506 U.S. 953	6
Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th 1794, 1801	6, 7
Escano v. Kindred Healthcare Operating Co. (C.D. Cal. March 5, 2013) 2013 WL 816146, at *10.....	10
Fleming v. Covidien (C.D. Cal. 2011) 2011 U.S. Dist. LEXIS 154590, *8-9.....	11
In re: American Bank Note Holographics, 127 F.Supp.2d 418, 425 (S.D.N.Y. 2001)	8
In re: Taco Bell Wage and Hour Actions (E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. Lexis 48557	11
Jennings v. Open Door Mktg. Inc. (N.D. Cal. Oct. 3, 2018) 2018 U.S. Dist. LEXIS 171356, at *27	11
Kakani v. Oracle Corp. (N.D. Cal. June 19, 2007) 2007 WL 1793774, at *7; c.f.....	13
Lane v. Facebook, Inc. (9th Cir. 2012) 696 F.3d 811, 819	12
Mandujano v. Basic Vegetable Prods., Inc., 541 F.2d 832, 837 (9th Cir. 1976)	8
Marin v. Costco Wholesale Corp. (2008) 169 Cal.App.4th 804, 807.....	9
Potter v. Pacific Coast Lumber Co. (1951) 37 Cal.2d 592, 602	6
Slavkov v. First Water Heater Partners I (N.D. Cal. July 25, 2017) 2017 U.S. Dist.	

1	LEXIS 11630	11
2	Van Bronkhorst v. Safeco Corp. (9th Cir. 1976) 529 F.2d 943,950.....	6
3	Van Kempen v. Matheson Tri-Gas, Inc. (N.D. Cal. Aug. 25, 2017) 2017 U.S. Dist.	
4	LEXIS 137182	11
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6	White v. Experian Information Solutions, Inc. (C.D. Cal. 2011) 803 F.Supp.2d	
7	1086, 1098.....	12, 13
8		
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STATUTES

§ 11.41 6

Cal. Rule of Court 3.769 6

Labor Code § 201 10

Labor Code § 203 10

Labor Code § 226 10

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1 **I. INTRODUCTION**

2 Plaintiff and Class Representative Phillip Alonzo seeks final approval of a non-
3 reversionary class action settlement resolving wage and hour claims on behalf of 326
4 individuals who worked for Defendant Brenntag Pacific, Inc. (“Brenntag” or “Defendant”) as
5 non-exempt employees in California during the period of March 9, 2017 to August 13, 2021.
6 The proposed \$800,000 total settlement provides about \$516,000 in cash payments to the
7 Class, with an average award of about \$1,600. The remaining balance will cover a modest
8 service award to Plaintiff, settlement administration costs, civil penalties to the state, and
9 reasonable attorney’s fees and costs. The parties and their counsel finalized the settlement
10 after extensive and difficult arms-length negotiations overseen by an experienced and
11 highly-regarded mediator. The Court conditionally certified the Class and preliminarily
12 approved the settlement on May 31, 2022.

13 Since then, the Court-approved notice form was mailed to the Class Members, who
14 reacted very favorably to the settlement. No Class Members requested exclusion, and there
15 are no objections. Accordingly, on behalf of himself and the Settlement Class, Plaintiff
16 respectfully requests the Court grant this motion, give full and final approval to the
17 settlement, and enter judgment accordingly.

18 **II. FACTUAL BACKGROUND AND PROCEDURAL POSTURE**

19 The details of the procedural and factual background of this matter were outlined in
20 the Plaintiff’s Motion for Preliminary Approval of Class Action Settlement (filed on or about
21 December 21, 2021). To re-familiarize the Court with this litigation, Brenntag is a global
22 market leader in chemicals and ingredients distribution. It has more than 17,000 employees
23 worldwide and operates a network of more than 670 sites in 77 countries. Brenntag is
24 headquartered in Sante Fe Springs, California and has at least six locations throughout California.
25 Most of Defendant’s California employees, including Plaintiff, worked at one of the company’s
26 chemical production and distribution facilities or as distribution drivers. [Declaration of Zachary
27 M. Crosner (“Crosner Decl.”), ¶ 3.]

28 Plaintiff was employed by Defendant for approximately 18 months from 2018 to 2019, as

1 a warehouseman at Defendant's Fresno facility. His duties included unloading rail cars of
2 chemicals, filling up tanker trucks with chemicals, filling containers with chemicals, operating a
3 forklift, and other warehouse-related duties. He alleges he was not paid for all hour worked in
4 that, at the start of a shift and when returning from meal periods, he and he class members had to
5 don/doff protective gear and wash off and that time was not counted or paid for. He further
6 alleges Brenntag underpaid for overtime because it did incorporate meal per diems in the regular
7 rate of pay. Plaintiff also alleges Defendant failed to maintain a written policy meal and rest
8 break policy, and failed to instruct its employees on compliant meal period policies whatsoever
9 until July 2019 and then implemented a meal period waver system in 2020 that was was illegal
10 because employees were forced to sign as a condition of employment. Beyond that, Plaintiff's
11 review of the time records produced suggest substantial "de facto" meal period violations for
12 missed, late, and short meal breaks. Finally, Brenntag evidently never paid premiums for meal or
13 rest break violations despite its own records indicating violations occurred. [Crosner Decl., ¶ 4.]

14 Based on these allegations, on May 21, 2020, Plaintiff filed a class action lawsuit against
15 Defendant asserting claims for (1) failure to pay minimum wages, (2) failure to pay overtime, (3)
16 failure to provide meal periods, (4) failure to provide rest periods, (5) failure to provide accurate
17 wage statements, (6) waiting time penalties, (7) unfair competition, and (8) PAGA. Shortly
18 thereafter, Defendant indicated that Plaintiff executed a severance agreement upon termination of
19 employment and accordingly had released his class action claims. Plaintiff then filed an amended
20 complaint dismissing all claims except for the PAGA cause of action. [Crosner Decl., ¶ 5.]

21 Brenntag has at all times denied Plaintiff's allegations and maintained its payroll policies
22 and procedures comply with California law, that it paid the class members all wages due, and that
23 its compensation plan properly compensates the class members for all hours worked at no less
24 than the applicable minimum wage. Defendant also strongly contends the case cannot be
25 maintained as any kind of class or representative action, arguing determining the number of
26 potential off the clock hours worked by each class member, or the number of de facto meal period
27 violations would result individualized issues predominating and that a trial on a representative
28 basis would be unmanageable. [Crosner Decl., ¶ 6.]

1 Ultimately, after initial discovery and meet and confer discussions about the merits of the
2 case, the parties agreed to attempt early mediation, and to further discuss a potential class-wide
3 resolution in addition to the PAGA claims. The settlement was reached in June 2021 after
4 extensive investigation, discovery and negotiations. The negotiations were at arms-length, and
5 facilitated by experienced and well-respected neutral the Hon. Carl J. West (Ret.), over the course
6 of a full day of mediation. [Crosner Decl., ¶¶ 6-7.] This Court preliminarily approved the
7 settlement on May 31, 2022.

8 Class Notices were mailed to class members on August 5, 2022, with a 45-day
9 window (to September 19, 2022) for class members to opt out or object to the proposed
10 settlement. [Declaration of Evelin Reyes (“Reyes Decl.”), ¶ 5.]

11 **III. THE PROPOSED SETTLEMENT TERMS**

12 Under the settlement, Brenntag will pay \$800,000 into a common fund, the Gross
13 Settlement Amount (“GSA”). Attorney’s fees of up to \$233,333.33 (1/3 of the GSA), litigation
14 costs of up to \$15,000 (although only \$11,192.73 is requested), settlement administration costs of
15 no more than \$5,000, a service award to Plaintiff of no more than \$7,500, and a payment of
16 \$26,250 to the Labor & Workforce Development Agency for PAGA penalties, will be paid from
17 the GSA. The remainder of around \$516,000 will be allocated pro rata among the Class Members
18 based on their total weeks worked during the Class Period. No portion of the GSA will revert to
19 Brenntag. [Crosner Decl., ¶ 9.]

20 **A. Certification of the Settlement Class**

21 The Court conditionally certified a settlement class defined to include all individuals
22 employed by Defendant as a non-exempt employee in California during the period from March 9,
23 2017, through August 13, 2021. [Crosner Decl., ¶ 9.] The Settlement Administrator ultimately
24 mailed class notices to 326 individuals identified as members of the Class. [Reyes Decl., ¶¶
25 5-8.] Nothing has changed to require reconsideration of the Court’s certification of the
26 Settlement Class.

27 **B. The Benefit Conferred on the Settlement Class**

28 As noted, the settlement obligates Brenntag to pay \$800,000 to resolve the claims of the

1 Settlement, inclusive of attorney's fees and costs. Approximately \$516,000 from the GSA will be
2 distributed to the Participating Class Members. This is a cash settlement that does not require
3 Participating Class Members to submit a claim form to receive their settlement share.
4 Participating Class Members will receive their settlement checks automatically via First Class
5 U.S. Mail. Twenty percent of each settlement share will be allocated to wages and the remaining
6 eighty percent will be allocated to penalties and interest, which allocation is consistent with
7 Brenntag's potential liability as discussed below. Brenntag will pay any and all applicable
8 employer-side payroll taxes separately and in addition to the GSA. Subject to the Court's
9 approval, any amounts not claimed (because a class member does not cash a settlement check)
10 will be forwarded to the State Controller's Unclaimed Property Fund. [Crosner Decl., ¶ 11.]

11 Each participating Class Member will receive a share of the Net Settlement Amount based
12 on his or her total weeks worked for Brenntag during the Class Period while employed in a non-
13 exempt position. Thus, each individual Settlement Payment will be calculated using criteria
14 typically used in determining appropriate amounts of unpaid wages, unpaid premium wages for
15 missed meal and rest breaks, and potential statutory penalties under applicable law. These
16 methods will ensure each Class Member receives a portion of the settlement funds corresponding
17 to the relative value of his or her potential claims. The proposed allocation provides a reasonable
18 way to compensate Class Members based on the amount of time they worked for Brenntag and
19 the number of instances they allegedly missed a meal break and/or rest break, were not provided
20 compensation in lieu of such missed breaks, or lost hours worked due to time rounding. The
21 average class member award will be approximately \$1,600, and the largest class member award
22 will be over \$2,700. [Reyes Decl., ¶ 12.]

23 **C. Settlement Administration**

24 Simpluris, Inc., as the Court-approved Settlement Administrator, mailed the Notice
25 Packet to the Class members after making all reasonable effort to ascertain the best mailing
26 address, including running each address through the National Change of Address database
27 and "skip-tracing" any Notice Packets returned as undeliverable. [Reyes Decl., ¶¶ 5-9.] The
28 Class Notice, previously approved by the Court, duly informed Class Members of the

1 settlement terms, including the estimated relief each Class Member will receive, the amounts
2 to be requested for attorney's fees and the class representative enhancement awards, and the
3 right to opt out of or object to the settlement. [Reyes Decl., ¶ 8, Exh. A.] Simpluris mailed
4 326 Notice Packets on August 5, 2022. [Reyes Decl., ¶ 8.] Ultimately, zero Notice Packets
5 were deemed undeliverable, representing a 100% success rate. [Reyes Decl., ¶ 9.] The 45-
6 day response window for objecting to the settlement expired on September 19, 2022. [Reyes
7 Decl., ¶¶ 5.] As of the filing of this motion, Simpluris has received no requests for exclusion,
8 and zero objections to the settlement. No disputes have been submitted regarding the
9 information used to calculate class member settlement shares. [Reyes Decl., ¶¶ 13-15.]

10 **F. Release of Claims**

11 All Participating Class Members will release Brenntag from all claims alleged in the
12 operative complaint, or that could have been brought based on the factual allegations in the
13 operative complaint, including PAGA claims, during the Class Period. The release is limited to
14 the claims that were actually pleaded or could have been pleaded based on the alleged facts in the
15 operative complaint. [Crosner Decl., ¶ 16.]

16 **G. PAGA Claims and Notice to the LWDA**

17 Finally, the settlement provides for \$35,000 to be allocated to civil penalties under
18 PAGA and Plaintiff requests the Court approve said amount. Consistent with PAGA,
19 \$26,750 of this amount will be paid to the LWDA as the state's share of the civil penalties,
20 with the remainder included in the Net Settlement Amount for distribution to the Class. The
21 settlement agreement and this motion were submitted to the LWDA through its online portal prior
22 to filing. [Crosner Decl., ¶ 14; Exh. 1.]

23 **E. Attorney's Fees and Costs**

24 The Settlement Agreement allows for an award of attorney's fees to Class Counsel of
25 up to one-third of the GSA, or \$233,333.33 as well as litigation costs expenses up to
26 \$15,000.00 (although only \$11,192.73 is requested). Plaintiff's counsel filed a separate
27 motion for attorney's fees and costs, concurrently with this motion, attesting to the nature
28 and scope of the work performed and costs and expenses incurred. [Crosner Decl., ¶ 13.]

1 **IV. ARGUMENT**

2 **A. Standard of Review for a Class Action Settlement**

3 The law favors settlement, particularly in class actions where substantial resources
4 can be conserved by avoiding the time, cost, and rigors of formal litigation. H. Newberg &
5 A. Conte, 4 Newberg on Class Actions (4th ed. 2002), § 11.41; Class Plaintiffs v. City of
6 Seattle (9th Cir. 1992) 955 F.2d 1268, 1276, cert. denied, 506 U.S. 953; Van Bronkhorst v.
7 Safeco Corp. (9th Cir. 1976) 529 F.2d 943,950; Potter v. Pacific Coast Lumber Co. (1951) 37
8 Cal.2d 592, 602. Nevertheless, to make certain the rights of absent parties are not unjustly
9 compromised, the settlement of a class action requires court approval. Cal. Rule of Court
10 3.769; Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th 1794, 1801; Wershba v. Apple
11 Computer (2001) 91 Cal.App.4th 224, 245. The purpose of that judicial review is to protect
12 against fraud or collusion, and to ensure fairness to absent class members. Dunk, 48
13 Cal.App.4th at 1800-01; Newberg, at §§ 11.22, *et seq.* Review is accomplished through a
14 two-step process intended to determine whether, under the totality of circumstances, the
15 settlement is fair, reasonable and adequate. Dunk, 48 Cal.App.4th at 1801; Wershba, 91
16 Cal.App.4th at 245.

17 On a motion for final approval, the trial court is charged with determining whether, in
18 light of the total circumstances of the action and the response of the class members to the
19 proposed settlement, the settlement is fair, reasonable, and adequate. Dunk, 48 Cal.App.4th at
20 1801-02; Wershba, 91 Cal.App.4th at 244-45. The court has broad discretion in making that
21 determination and may consider a number of relevant factors, including: the strength of
22 plaintiff's case; the likelihood of potential recovery; the risk, expense and likely duration of
23 further litigation; the amount offered in settlement; the extent of discovery and stage of the
24 proceedings; the experience and opinion of counsel; and the reaction of class members to the
25 settlement. Id. In light of the strong judicial policy favoring the settlement of class actions,
26 courts generally apply a presumption of fairness to a proposed class action settlement when:
27 (1) the settlement is reached through arm's-length bargaining; (2) investigation and
28 discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is

1 experienced in similar litigation; and (4) the percentage of objectors is small. Dunk, 48
2 Cal.App.4th at 1802; Wershba, 91 Cal.App.4th at 245.

3 **B. The Proposed Settlement Merits Final Approval**

4 The proposed settlement of this action warrants final approval under the standards
5 summarized above. The settlement is fair, reasonable and adequate, and represents a
6 favorable resolution of highly disputed claims. Further, the settlement was overwhelmingly
7 approved by the class members, as there were no objections and only one class member
8 requested exclusion, for a 100% participation rate.

9 **1. The Settlement Is the Product of Arm's-Length, Informed**
10 **Negotiations**

11 The settlement is not the result of fraud or collusion. Rather, the proposed settlement
12 was reached following arm's-length negotiations presided over by the Hon. Carl J. West
13 (Ret.), a highly respected and well-known mediator with extensive experience mediating
14 wage and hour class actions. [Crosner Decl., ¶7.] Moreover, Plaintiff and his counsel were
15 well-informed about the facts and the law. [Crosner Decl., ¶¶ 6, 15.] Plaintiff's counsel
16 Zachary Crosner and Michael Crosner all have years of extensive experience litigating wage
17 and hour class actions and representative actions.¹ Defendant Brenntag likewise was
18 represented by highly-qualified and experienced defense counsel. Both sides advocated
19 vigorously for their clients and nothing was "left on the table."

20 Prior to mediation, Plaintiff engaged in significant formal and informal discovery.
21 [Crosner Decl., ¶¶ 6, 15.] Plaintiff's counsel are confident they obtained sufficient information to
22 enable them to understand the law and facts of this case and make an informed decision regarding
23 the proposed settlement and whether it is in the best interests of the class.

24 **2. The Class Reacted Favorably to the Settlement**

25 The settlement was well-received by the class. As of the filing of this motion, no
26 objections have been filed, and not a single class member has requested exclusion out of 326

27 _____
28 ¹ Crosner Legal's experience and qualifications are set forth in detail in the Crosner Declaration in support
of Plaintiffs' motion for attorney's fees, filed concurrently herewith.

1 settlement class members. [Reyes Decl., ¶¶ 13-14.] As many courts recognize, class member
2 reaction to the settlement is one of the most important factors to consider in determining if final
3 approval should be granted. Mandujano v. Basic Vegetable Prods., Inc., 541 F.2d 832, 837 (9th
4 Cir. 1976); see also In re: American Bank Note Holographics, 127 F.Supp.2d 418, 425 (S.D.N.Y.
5 2001) (“It is well-settled that the reaction of the class to the settlement is perhaps the most
6 significant factor to be weighed in considering its adequacy”) (internal quotation marks omitted).

7 **3. The Settlement Is Fair and Reasonable Considering the Benefits**
8 **Conferred, the Case Value, and Significant Litigation Risks**

9 The proposed settlement involves a substantial sum of money that, when distributed,
10 will confer meaningful monetary benefits on the Class members. As described above, each
11 individual award will be based on an allocation consistent with the nature of the claims
12 asserted and will fairly and equitably allocate the available funds in relation to the degree of
13 damage each Class member incurred. While Class members who worked for only a short
14 period of time will receive relatively small sums, those with longer tenures and who worked
15 more hours and shifts throughout the class period will receive appropriately larger awards.

16 Prior to mediation, the parties engaged in informal discovery to facilitate settlement
17 discussions. Thus, Plaintiffs reviewed documents and information regarding Brenntag’s payroll
18 practices, a random sampling of pay stubs and time records for the class members, applicable
19 compensation plans, meal and rest break policies, etc., and information from Defendant regarding
20 class size and breakdown, work weeks/pay periods, rates of pay, and other information used to
21 formulate a damages model. Plaintiffs then had that information analyzed by a consulting expert
22 to assist in determining potential violation rates and other data used to formulate a damages
23 model. Plaintiffs’ counsel are confident they obtained sufficient information to understand the
24 law and facts of this case and make an informed decision regarding the proposed settlement and
25 whether it is fair and reasonable. [Crosner Decl., ¶¶ 6, 15.]

26 Using that data, Plaintiff ran calculations and estimated Brenntag’s likely maximum
27 exposure on the class claims at approximately \$5,382,000, including about \$865,000 on the
28 unpaid minimum wage/donning and doffing claims, about \$138,000 on the underpaid

1 overtime/regular rate issue, approximately \$3,550,000 on the meal and rest break claims,
2 approximately \$727,000 on the wage statement claims, and approximately \$534,000 on the
3 waiting time penalty claims. [Crosner Decl., ¶¶ 23-24.]

4 Plaintiff's counsel substantially discounted the value of these claims, however, in light of
5 the multiple and considerable risks posed by proceeding with the litigation, as Defendant raised
6 numerous defenses and vigorously defended against these claims. On the unpaid wage claims,
7 Plaintiff alleges Brenntag failed to record and pay Plaintiff and the class members for all of the
8 hours. Specifically, Plaintiff alleges he and the class members had to "don and doff" protective
9 gear and wash thoroughly since they worked with a variety of highly toxic chemicals, and that
10 this was performed "off the clock." Brenntag argued it accurately tracks and pays for all hours
11 worked, and that its payroll policies and donning/doffing guidelines are legal and fully comply
12 with California law, and that no cognizable amount of "off the clock" work occurred. Defendant
13 also notes proving liability on this claim likely might involve substantial individualized questions
14 and accordingly make class certification difficult or render a PAGA trial unmanageable. [Crosner
15 Decl., ¶ 25.]

16 Plaintiff also alleges Defendant failed to pay sufficient overtime by not incorporating their
17 bonuses and other non-discretionary remunerations in the regular rate of pay for purposes of
18 calculating overtime pay. Defendant compensated the class members with non-discretionary
19 bonuses as well as a per diem for meals. Under state and federal law, in any pay period where an
20 hourly employee earns certain other compensation, such as a non-discretionary bonus in addition
21 to his or her base hourly wages, the regular rate is computed by dividing the employee's total
22 compensation in the period in which the other compensation is earned by the total hours worked
23 in that period. Marin v. Costco Wholesale Corp. (2008) 169 Cal.App.4th 804, 807. Review of the
24 payroll records provided by Defendant suggests it did not "true up" overtime paid by
25 recalculating the regular rate to include such non-discretionary compensation. While Plaintiff
26 believes this is one of his stronger claims, he also is cognizant that the amounts underpaid are
27 relatively small. [Crosner Decl., ¶ 26.]

1 On the meal break claims, Plaintiff argues Defendant failed to maintain a compliant policy
2 and, even if it did, its own time records show a de facto violation rate of around 50 percent.
3 Considering the time-sensitive and extremely meticulous and hazardous nature of the job duties
4 being performed by the class members in order to meet production and delivery deadlines,
5 Plaintiff believes such violations were quite common, and were not properly compensated with
6 premium pay. [Crosner Decl, ¶ 27.] In response to Brenntag’s argument that many class members
7 waived meal periods, Plaintiff believes Defendant requires its employees to sign a meal period
8 waiver as a condition of employment, and many courts have found that “the apparently universal
9 signing of the second meal waiver lends itself to the inference that signing the waiver is a
10 condition of employment and gives rise to a class question.” Escano v. Kindred Healthcare
11 Operating Co. (C.D. Cal. March 5, 2013) 2013 WL 816146, at *10; Bradescu v. Hillstone
12 Restaurant Group, Inc. (C.D. Cal. Sep. 18, 2014) 2014 WL 5312546, at *7.

13 As with meal breaks, Defendant argues its rest break policies complied with California
14 law and authorized and permitted employees to take all required breaks. Defendant further
15 contended that, in light of the fact that it is not required to maintain a record of rest periods, any
16 evidence of failure to authorize rest periods and/or discouragement from taking rest periods
17 would be purely anecdotal and individual issues would predominate on liability. Defendant also
18 may contend that it is only liable if Plaintiffs can prove, on a shift-by-shift basis, the aggrieved
19 employees actually did not receive a fully compliant rest break. This arguably would make a trial
20 unmanageable since the number of instances an employee missed a rest break would have to be
21 tested on a case by case basis to determine if there was compliance. [Crosner Decl., ¶ 28.]

22 Finally, Plaintiff alleged derivative claims under Labor Code § 226 (alleged inaccurate
23 wage statement violations) and §§ 201-203 (waiting time penalties), both based on the failure to
24 properly record and pay for all hours worked, and pay all overtime owed, and these claims will
25 rise or fall along with the primary claims, in addition to being subject to “good faith” and other
26 defenses available to Defendant. E.g., Amaral v. Cintas Corp. No. 2 (2008) 163 Cal.App.4th
27 1157, 1203-04 (holding employer did not willfully fail to pay wages under Labor Code § 203
28 even though the class prevailed on the merits on the underlying claim for failing to pay living

1 wages). Accordingly, Plaintiff discounted the derivative claims significantly in light of these
2 multiple potential defenses. [Crosner Decl., ¶ 29.]

3 As far as potential PAGA liability, the theoretical penalties totaled around \$1.5-1.6
4 million should Plaintiff prevail on all claims and establish violations of the multiple Labor Code
5 sections at issue for every single eligible pay period. [Crosner Decl., ¶ 30.] As with the class
6 claims, Plaintiff discounted the potential PAGA penalties for the multi-layered defenses proffered
7 by Defendant on the merits, and further discounted these claims since the Court possesses wide
8 discretion to reduce such penalties even if Plaintiff ultimately prevailed. Fleming v. Covidien
9 (C.D. Cal. 2011) 2011 U.S. Dist. LEXIS 154590, *8-9 (court reduced the potential penalties by
10 over 82% after a bench trial); Carrington v. Starbucks Corp. (2018) 30 Cal.App.5th 504 (after a
11 bench trial, the trial court awarded penalties of just \$5 per pay period, a 90% reduction, which
12 decision was upheld on appeal); In re Taco Bell Wage and Hour Actions (E.D. Cal. Apr. 8, 2016)
13 2016 U.S. Dist. Lexis 48557 (PAGA penalties denied after trial).

14 Accordingly, the Parties allocated \$35,000 to PAGA penalties, which amount is
15 reasonable and in line with comparable settlements in other class actions in California. Van
16 Kempen v. Matheson Tri-Gas, Inc. (N.D. Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182
17 (granting final approval of \$5,000 PAGA penalty from \$370,000 settlement, or 1.4 percent of
18 total settlement); Slavkov v. First Water Heater Partners I (N.D. Cal. July 25, 2017) 2017 U.S.
19 Dist. LEXIS 116303 (finding a \$7,500 PAGA payment reasonable when measured against the
20 overall settlement of \$345,000 and the possible weaknesses in plaintiffs' case, or 2.2 percent of
21 total settlement). Additionally, the LWDA has been informed of the terms of the PAGA portion
22 of the settlement, and will be able to weigh in as necessary. Jennings v. Open Door Mktg. Inc.
23 (N.D. Cal. Oct. 3, 2018) 2018 U.S. Dist. LEXIS 171356, at *27 (approving settlement with
24 PAGA penalties of 0.6% where "[p]laintiffs [have] submitted the settlement agreement to the
25 LWDA, and the LWDA has not objected to the settlement").

26 Thus, Defendant raised various defenses to each of Plaintiff's claims, any one of which, if
27 successful, could have derailed Plaintiff's case. Accordingly, Plaintiff faced risky issues going
28 forward with this litigation, and given the need to secure class certification, try the case, and deal

1 with post-trial appeals, it would have taken years to realize any recovery in this action. Plaintiff's
2 counsel discounted the value of the class claims consistent with the risks discussed above, and
3 carefully weighed the likelihood of the class receiving substantially greater benefit if the litigation
4 continued. Plaintiff's counsel concluded – in light of these very real and substantial risks –
5 settlement on the proposed terms and without prolonged and costly litigation was in the best
6 interests of the class. The overall \$800,000 recovery represents a significant percentage of
7 Defendant's potential exposure, and is roughly 15% of the maximum theoretical value of the class
8 claims. Given these risks, a total recovery for the class of \$800,000, with an average award of
9 some \$_____ per class member, is a fair result within the range of reasonableness considering all
10 potential outcomes. [Crosner Decl., ¶¶ 31-33.]

11 Importantly, the mere fact that a settlement does not provide the same recovery as might
12 be achieved at trial is not a proper indicator of whether the settlement is fair, reasonable, and
13 adequate. Wershba, 91 Cal.App.4th at 246, 250 (“even if the relief afforded by the proposed
14 settlement is substantially narrower than it would be if the suits were to be successfully litigated,
15 this is no bar to a class settlement because the public interest may indeed be served by a voluntary
16 settlement in which each side gives ground in the interest of avoiding litigation”); 7-Eleven
17 Owners for Fair Franchising v. Southland Corp. (2000) 85 Cal.App.4th 1135, 1150 (“The fact that
18 a proposed settlement may amount to only a fraction of the potential recovery does not, in and of
19 itself, mean that the proposed settlement is grossly inadequate and should be disapproved”); Lane
20 v. Facebook, Inc. (9th Cir. 2012) 696 F.3d 811, 819 (“[T]he question whether a settlement is
21 fundamentally fair . . . is different from the question whether the settlement is perfect in the
22 estimation of the reviewing court”); White v. Experian Information Solutions, Inc. (C.D. Cal.
23 2011) 803 F.Supp.2d 1086, 1098 (rejecting contention settlement was not fair and reasonable
24 even though it represented 99% discount off the maximum value of the claims). Importantly as
25 well, the proposed settlement is non-reversionary and will provide benefits to the Class Members
26 without a claims process. White, 803 F.Supp.2d at 1098; c.f., Federal Judicial Center, Managing
27 Class Action Litigation: A Pocket Guide for Judges (3d ed. 2010) at 20, available at
28 www.fjc.gov/sites/default/files/2012/ClassGd3.pdf (reversionary provisions and/or cumbersome

claims process may indicate lack of fairness). Plaintiff and his counsel submit the settlement is within the “range of reasonableness,” and is fair and adequate for the Class.

It is also significant that the settlement funds do not revert back to Brenntag, and provide immediate benefit to a class of workers without a lengthy claims process. White, 803 F.Supp.2d at 1086; Kakani v. Oracle Corp. (N.D. Cal. June 19, 2007) 2007 WL 1793774, at *7; c.f., Federal Judicial Center, Managing Class Action Litigation: A Pocket Guide for Judges (3d ed. 2010) at 20, at <http://www.fjc.gov/sites/default/files/2012/ClassGd3.pdf> (reversionary provisions and/or cumbersome claims process may indicate lack of fairness). In sum, Plaintiffs and their counsel have concluded the settlement, which assures Class Members prompt and reasonable compensation, is in the best interests of the class.

V. PLAINTIFF’S ENHANCEMENT AWARDS

Pursuant to the terms of the settlement, Plaintiff seeks modest incentive award of \$7,500 each for his service in bringing these claims on behalf of the Class. This request is reasonable given the risks he undertook on behalf of the Class Members. By contacting and retaining counsel to pursue these claims, Plaintiff helped make this settlement possible for the absent Class Members (plus the aforementioned true up payments), while shouldering the risk of being liable for Defendant’s litigation costs. Plaintiff also exposed himself to unwanted notoriety related to filing a public lawsuit (discoverable even through a simple google search) for the benefit of other employees, placing themselves at risk of discrimination by future prospective employers. As set forth in more detail in his declaration submitted herewith, among taking many other actions assisting in the successful litigation of this case, Plaintiff provided substantial factual information and documents to counsel, attended numerous meetings/phone conferences with counsel to discuss the case, and kept abreast of all significant developments. [Declaration of Phillip Alonzo, ¶¶ 2-10; Crosner Decl., ¶ 26.] Finally, there are no class member objections submitted with respect to the amounts Plaintiffs propose to receive. [Reyes Decl., ¶ 14.] Accordingly, the requested enhancement payment to Plaintiff is appropriate and justified as part of the settlement.

VI. SETTLEMENT ADMINISTRATION COSTS

1 The settlement provides for a payment to Simpluris of no more than \$5,000 for its services
2 as the Settlement Administrator. As set forth in the Declaration of Evelin Reyes, Simpluris has
3 performed and will continue to perform its required duties through final distribution of the
4 settlement funds, and incurred \$5,000 in fees and expenses. [Reyes Decl., ¶ 16.] Accordingly,
5 Plaintiff respectfully requests the Court approve payment of \$5,000.00 to Simpluris from the
6 GSA. [Crosner Decl., ¶ 27.]

7 **VII. CONCLUSION**

8 For all the foregoing reasons, Plaintiff Phillip Alonzo respectfully requests that the Court
9 grant this motion and grant final approval of the proposed class action settlement and approve the
10 payment of PAGA penalties to the State. Plaintiff further requests the Court approve payment of
11 the Settlement Administrator's fees and expenses, approve the requested class representative
12 enhancement payments, approve the award of attorney's fees and costs as requested in Plaintiff's
13 Motion for Attorney's Fees and Costs, and enter judgment in this action. Finally, Plaintiff
14 requests the Court set a final compliance hearing for October 16, 2023, or a later date convenient
15 for the Court.

16
17 Dated: September 21, 2022

CROSNER LEGAL, PC

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19 By: 
20 Zachary Crosner
21 Attorneys for Plaintiff PHILLIP ALONZO
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