

COHELAN KHOURY & SINGER

Isam C. Khoury (SBN 58759)

ikhoury@ckslaw.com

Michael D. Singer (SBN 115301)

msinger@ckslaw.com

J. Jason Hill (SBN 179630)

jhill@ckslaw.com

605 C Street, Suite 200

San Diego, CA 92101

Tel: (619) 595-3001/Facsimile: (619) 595-3000

DAVTYAN LAW FIRM, INC.

Emil Davtyan (SBN 299363)

support@davtyanlaw.com

880 E. Broadway

Glendale, CA 91205

Telephone: (818) 875-2008/Facsimile: (818) 722-3974

Attorneys for Plaintiff VERNELL BATTLE, JR., on behalf of himself and others

SUPERIOR COURT OF CALIFORNIA

FOR THE COUNTY OF ORANGE – CIVIL COMPLEX CENTER

VERNELL BATTLE, JR., on behalf of himself
and other similarly-situated employees,

Plaintiff,

vs.

SAFRAN CABIN, INC., a Delaware
Corporation; and DOES 1 through 25, inclusive,

Defendants.

CASE NO. 30-2020-01140831-CU-OE-CXC
ASSIGNED FOR ALL PURPOSES TO:
The Honorable Peter J. Wilson
Department CX 102

CLASS ACTION

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR ORDER GRANTING
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Hearing Information

Date: September 22, 2022
Time: 2:00 p.m.
Dept: CX 102
Judge: Hon. Peter J. Wilson

Complaint filed: May 26, 2020
Trial date: Not set

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1 **I. INTRODUCTION**

2 Plaintiff Vernell Battle, Jr. (“Plaintiff”) seeks preliminary approval of a non-reversionary wage
3 and hour class and Private Attorneys General Act (PAGA) settlement of five million four hundred fifty-
4 five thousand dollars (\$5,455,000). The proposed Settlement will benefit approximately 2,397
5 individuals employed by Defendant Safran Cabin, Inc. (“Safran Cabin”) in California at any time from
6 May 26, 2016, through January 29, 2022 (the Class Period¹). Declaration of Isam C. Khoury, (“Khoury
7 Decl.”), ¶¶9, 11, Ex. A – Joint Stipulation of Class Action and PAGA Settlement and Release
8 (“Agreement” or “SA”).

9 **II. THE PARTIES, CLASS, AND AGGREIVED EMPLOYEES**

10 **A. Plaintiff and Defendant**

11 Safran Cabin is a supplier of airplane cabin interiors for business and military aircraft.with
12 approximately four operational locations throughout California at issue during the Class Period.
13 Plaintiff worked as an hourly non-exempt technician for Safran Cabin (formerly known as C&D
14 Zodiac, Inc., which was informally referred to as “Zodiac Aerospace”) from approximately March 14,
15 2016, until approximately February 18, 2020. Plaintiff worked primarily as an installation technician
16 in the building and fitting of aircraft interiors. He worked in Orange County at the Cypress facility in
17 the State of California. He was paid approximately \$19.55 per hour. Khoury Decl. ¶10; Declaration of
18 Vernell Battle Jr. ¶3.

19 **B. The Class and Aggrieved Employees**

20 The Class Members are, “all individuals employed by Safran Cabin, Inc., in the State of
21 California, any time from May 26, 2016, through January 29, 2022. The 2,397 Class Members worked
22 an estimated 363,603 workweeks in the Class Period. The PAGA Members are, “all individuals
23 employed by Defendant in the State of California as hourly non-exempt employees at any time during
24 the PAGA Period” of April 28, 2019, through January 29, 2022 (“PAGA Period”). An estimated 1,741
25 PAGA Members worked an estimated 68,592 pay periods during the PAGA Period. Khoury Decl. ¶11.
26 Plaintiff generally performed installation work for aircraft interiors; however, there are multiple job
27

28 ¹ Unless otherwise indicated, all defined terms herein are the same as in the Joint Stipulation of Class
Action and PAGA Settlement and Release.

1 titles and positions within the Class, including administrative and accounting positions, sales positions,
2 and assemblers and machinists. Class Members were hourly paid, non-exempt employees and typically
3 worked a schedule of five (5) days per week, eight (8) hours per day, for a total of approximately forty
4 (40) hours per week.

5 **III. PROCEDURAL HISTORY, INVESTIGATION AND DISCOVERY**

6 Plaintiff's counsel formally requested his personnel file and obtained job applications, work
7 schedules, and time and pay records. Safran Cabin produced the requested documents. On April 28,
8 2020, Plaintiff filed the PAGA Notice with the Labor and Workforce Development Agency ("LWDA")
9 advising of his intent to pursue claims on behalf of the PAGA Members. Khoury Decl. ¶12.

10 On May 26, 2020, Plaintiff filed his initial Class Action Complaint, asserting claims for: (1)
11 failure to pay minimum and/or regular wages for all hours worked (Cal. Labor Code §§ 1194, 1194.2,
12 1197.2); (2) failure to pay overtime wages (Cal. Labor Code §§ 510, 1194); (3) failure to provide
13 compliant meal periods (Cal. Labor Code §§ 226.7, 512, and IWC Wage Orders); (4) failure to provide
14 accurate itemized wage statements (Cal. Labor Code § 226); (5) failure to timely pay all wages owed
15 at termination or separation from employment (Cal. Labor Code § 203); and (6) unfair competition and
16 restitution for unpaid wages (Cal. Business & Professions Code §§17200 et seq.). Khoury Decl. ¶13.

17 On July 8, 2020, Plaintiff filed his First Amended Class Action Complaint and Representative
18 Action, adding claims for PAGA civil penalties for all underlying Labor Code claims alleged in his
19 initial complaint (specifically, Counts 7-10 of the First Amended Class Action Complaint and
20 Representative Action). Khoury Decl. ¶14.

21 On October 22, 2021 Plaintiff filed an Amended PAGA Notice with the LWDA. On January 18,
22 2022, Plaintiff filed his Second Amended Class Complaint and Representative Action, the operative
23 complaint in this Action, adding the additional PAGA claims set forth in the Amended PAGA Notice
24 for alleged violation of Labor Code 2802, rest period violations, and failure to maintain accurate records
25 (Labor Code section 1174), and adding a class claim for rest period violation. Khoury Decl. ¶15.

26 Plaintiff served Safran Cabin with formal discovery including special interrogatories, requests for
27 admissions, and requests for production of documents. The Parties engaged in extensive meet and
28 confer efforts and decided to attempt to resolve Plaintiff's claims through mediation. Khoury Decl. ¶16.

1 The Parties agreed to mediate Plaintiff's claims and participated in mediation on September 7,
2 2021, with Mark S. Rudy, Esq. In preparation for mediation, Plaintiff requested and Safran Cabin
3 informally produced documents and data for the Class Period, including: (1) employee handbooks and
4 policies; (2) the number of current and former employees; (3) aggregate number of Workweeks; (4)
5 aggregate number of pay periods; (5) timekeeping records for ten percent of the Class; (6) amount of
6 meal and rest period premium wages paid; (7) itemized wage statements; and (8) exemplar arbitration
7 agreements/class action waivers signed by Class Members. Khoury Decl. ¶17.

8 **IV. PLAINTIFF'S CONTENTIONS AND DEFENDANT'S DEFENSES**

9 Plaintiff contended that for the majority of the class period he and non-exempt employees were
10 underpaid due to Safran Cabin's non-neutral time rounding practice. Employees were allowed to clock
11 in up to seven minutes before the start of their scheduled shift. This pre-shift time was not considered
12 and wages were paid only from the scheduled start time. There was no offsetting "window" after the
13 start of the scheduled shift. Plaintiff alleged that over time, the use of this non-neutral rounding system
14 resulted in underpaid minimum, regular, and overtime wages for hundreds of hours for all impacted
15 employees using the same clock system. Khoury Decl. ¶18. See, *Morillion v. Royal Packing Co.* (2000)
16 22 Cal. 4th 575, 578; *Troester v. Starbucks Corp.* (2018) 5 Cal. 5th 829, 847 [a rounding system must
17 be fair and neutral on its face and as applied – over a period of time – in order to lawfully comply with
18 California's requirement that workers be paid for "all hours worked."]; *Leyva v. Medline Indus.* (9th
19 Cir. 2013) 716 F.3d 510, 512; *Corbin v. Time Warner Entertainment-Advance/Newhouse Partnership*
20 (9th Cir. 2016) 821 F.3d 1069, 1077 ["If an employer's rounding practice does not permit both upward
21 and downward rounding, then the system is not neutral."]; *See's Candy Shops, Inc. v. Superior Court*
22 (2012) 210 Cal. App. 4th 889, 701, n.4; and *Silva v. See's Candy Shops, Inc.* (2016) 7 Cal. App. 5th
23 235, 251.

24 Safran Cabin contended its rounding practice was for the convenience of the employees and that
25 employees were specifically instructed not to work during the pre- shift window and used those minutes
26 for personal tasks. Accordingly, Safran Cabin contended its rounding system operated neutrally and
27 did not result in any systematic underpayment of its employees.

28 Plaintiff also contended Safran Cabin's policies resulted in non-compliant first and second meal

periods and rest periods as required under Labor Code sections 226.7 and 512, and Industrial Welfare Commission Wage Order 1-2001, sections 11 and 12 and that Safran Cabin, for a portion of the class period, employed an auto-deduct system which did not accurately record the meal period entries of its employees, resulting in potential liability for PAGA penalties. Review of the sampled time punch records documented 79% of shifts were subject to the auto deduct procedure which was utilized from May 26, 2016 through October 24, 2018 involving 477,253 shifts. Alleged violations relating to late or short meal breaks and missing breaks in the remaining shifts in this time period produced an 8% meal period “violation” rate. The shifts, after the auto deduct practice ceased on October 24, 2022 through the end of the class period (397,363), were analyzed and produced an alleged aggregate 16% violation rate for short, late or missed meal periods. Khoury Decl. ¶19.

With respect to the meal period auto deduct alleged violations Safran Cabin asserted that the employees at issue were on a “bell” system where all work stopped for grouped employees at the same time and that this negated the requirement that such meal periods be recorded.² This simultaneous initiation of meal periods was confirmed by Plaintiff’s damage consultant after review of data provided.

In conjunction with a review of the sampled data Plaintiff’s consultant also analyzed whether the Labor Code section 226.7 meal period premium payments (\$582,800) were made using the appropriate hourly rate pursuant to *Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal.5th 858 (2021). This required determining how many shifts involved pay periods in which shift premiums were recorded. The records revealed that very few of the premium payments would qualify and that the aggregate “underpayment” extrapolated to the class pay periods totaled less than \$400.

With respect to Plaintiff’s claims relating to missed second meal periods in shifts of more than 10 hours, Safran Cabin produced compliant second meal period policies and waivers which it asserted relieved it from any liability for this claim. Khoury Decl. ¶20.

Plaintiff also contended Safran Cabin had a class wide policy which failed to authorize or permit

² IWC Order No. 1-2002 (7). RECORDS (A) Every employer shall keep accurate information with respect to each employee including the following: (1) Full name, home address, occupation and social security number. (2) Birth date, if under 18 years, and designation as a minor. (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. **Meal periods during which operations cease and authorized rest periods need not be recorded.**

1 non-exempt employees to receive rest periods of at least ten minutes per four (4) hours, or major
2 fraction, worked, and failed to pay rest period premium wages equal to one (1) hour of pay at the regular
3 rate of compensation for each workday a compliant rest period was not authorized or permitted. Khoury
4 Decl. ¶21.

5 Safran Cabin argued it followed California law at all times by authorizing and permitting rest
6 breaks, not discouraging employees from taking them, and that to the extent any employees missed a
7 break, it was voluntarily. Khoury Decl. ¶22. It also argued that certification would be very problematic
8 given its compliant policies and the fact that rest periods were not required to be recorded and that it
9 would be entitled to individual inquiries which would defeat class certification. *Id.*

10 Plaintiff also contended, based on the underlying claims, Safran Cabin's wage statements did not
11 display all required information, including actual hours worked, and rates earned for all hours worked.
12 Labor Code §226. Plaintiff also alleged derivative penalties pursuant to Labor Code section 203 for
13 separated employees who were not paid all wages owed at termination. Finally, Plaintiff sought PAGA
14 civil penalties related to the labor code violations alleged and civil penalties for failure to Reimburse
15 Business Expenses (Labor Code Sections 2800, 2802.)

16 **V. MEDIATION**

17 With significant investigation, research, and consultant's analysis of the voluminous data, and a
18 Class-wide damage model, the Parties attended mediation with Mark S. Rudy, Esq. on September 7,
19 2021, and engaged in serious and informed arm's-length negotiations. By the end of the day, the Parties
20 reached an agreement in principal on a proposed settlement. Thereafter the parties continued
21 negotiations with the assistance of the mediator and finally signed a Memorandum of Understanding
22 on January 18, 2022. The Parties subsequently negotiated additional settlement terms and entered into
23 a formal Agreement. Khoury Decl. ¶23.

24 **VI. SUMMARY OF PROPOSED SETTLEMENT**

25 **A. Settlement Terms**

26 Safran Cabin will pay the Gross Settlement Amount (GSA) of \$5,455,000.00, which includes: (a)
27 attorneys' fees of \$1,818,333.33 (one-third of GSA) to compensate Class Counsel for all work
28 performed and remaining to be performed securing final Court approval (66 2/3% to Cohelan Khoury

1 & Singer / 33 1/3% to Davtyan Law Firm, Inc. Khoury Decl. ¶25); (b) reasonable litigation costs up to
2 \$20,000.00; (c) Class Representative Service Award payment of \$7,500.00 to Plaintiff for work as the
3 Class representative, risks undertaken for costs if the case had not successfully concluded, and benefits
4 conferred on the Class; (d) \$250,000.00 in PAGA Payment (with \$187,500.00/75% payable to the
5 LWDA, and \$62,500.00/25% payable to the PAGA Members); and (e) Settlement Administration Costs
6 estimated to be \$18,000. Safran Cabin will pay the employer's share of payroll taxes in addition to the
7 GSA. Khoury Decl. ¶24; SA ¶20.

8 After Court-approved deductions, the estimated Net Settlement Amount (NSA) of \$3,341,166.67
9 will be distributed pro-rata to Class Members based on the number of Workweeks worked during the
10 Class Period. Class Members who do not opt-out will receive an estimated \$9.19 for each Workweek
11 worked during the Class Period, and an average estimated payment of \$1,393.90. Khoury Decl. ¶26.
12 Class Members employed during the PAGA Period will receive a share of the \$62,500 in Individual
13 PAGA Payments based on number of Workweeks worked during the PAGA Period whether they opt-
14 out or not. Khoury Decl. ¶27. No portion of the GSA will revert to Safran Cabin under any
15 circumstances. After 180 days of issuance, all uncashed checks will be sent to the State of California
16 Controller, Unclaimed Property Division for further handling on behalf of the Class Member whose
17 check was voided. Khoury Decl. ¶28; SA ¶57(a)(viii).

18 **B. Released Claims**

19 Class Members who do not opt out, will release all:

20 claims under state or local law, whether statutory, common law, or administrative law, whether
21 in law or equity, which all Class Members have had, now have, or may have in the future against
22 the Released Parties³ for any acts occurring during the Class Period that arose from the facts and
23 claims alleged in the Class Action Complaint, as well as the claims that arise out of the facts,
24 matters and occurrences referred to in the Class Action Complaint that could have been alleged
25 as separate claims, causes of action, lawsuits or other theories of relief. Released Claims includes
all types of relief available for the theories of relief in the Action, including: (a) all claims for
failure to pay minimum wages and regular wages under Cal. Labor Code §§ 204, 1194, 1194.2,
and 1997; (b) all claims for failure to pay overtime wages under Cal. Labor Code §§ 510 and
1994; (c) all claims for failure to provide timely and required meal periods under Cal. Labor Code

26 ³ "Released Parties" means Defendant and its affiliated companies, owners, parents, members,
27 subsidiaries, related companies, and business concerns, past and present, including successors and
28 predecessors, and each of them, as well as each of their insurers, partners, trustees, directors,
shareholders, officers, agents, attorneys, servants, and employees, past and present, and each of them.
SA ¶34.

§§ 226.7 and 512 and the applicable IWC Wage Order; (d) all claims for failure to provide required rest breaks under Cal. Labor Code § 226.7 and the applicable IWC Wage Order; (e) all claims for failure to provide accurate itemized wage statements under Cal. Labor Code §§ 226 and 1174; (f) all claims for failure to pay wages owed at termination or separation under Cal. Labor Code §§ 201, 202, and 203; (g) all claims for violation of the Unfair Competition Law, Cal. Business & Professions Code §§ 17200, *et seq.*, including injunctive relief; (h) liquidated damages; (i) interest; (j) attorneys’ fees; and (k) attorneys’ costs. Released Claims shall exclude all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers’ compensation, and claims outside of the Class Period. SA ¶33.

C. Settlement Administration and Notice to the Class

Simpluris, Inc. (the Settlement Administrator), will search the National Change of Address database, update Class Member addresses, perform skip-tracing, and mail the Notice of Class Action Settlement (Settlement Notice) to each Class Member in Safran Cabin’s employment records. Khoury Decl. ¶29; SA ¶56(a)(i); Declaration of Eric Springer on behalf of Simpluris, Inc. ¶6, Exh. C.

The Settlement Notice explains (1) how to participate in the Settlement without submitting a claim; (2) dispute the basis of an Individual Settlement Payment; (3) object or opt-out; (4) the release to be given⁴, (5) date of Final Approval hearing, and how to obtain further information. Khoury Decl. ¶30.

The method of distributing the Settlement is fair and reasonable and does not give preferential treatment to any Class Member. The information used is readily available from Safran Cabin’s records, and the Settlement Administrator can apply the formula fairly and transparently. Khoury Decl. ¶31.

VII. ARGUMENT

A. Class Action Settlements Are Subject to Court Review and Approval

“Before final approval, the court must conduct an inquiry into the fairness of the proposed settlement.” CRC, Rule 3.769(g). Where a settlement is reached on terms agreeable to all Parties, a court should disapprove of the settlement “only with considerable circumspection.” *Jamison v. Butcher & Sherrerd* (E.D. PA. 1975) 68 F.R.D. 479, 481. (California courts may look to federal authority guidance on class issues. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 239-40 (2001)).

At the preliminary approval stage, a court “limits its inquiry to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion

⁴ Class members are not required to provide a C.C.P 1542 waiver.

between, the negotiating parties.” *In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 (2006).

B. The Settlement is Fair, Reasonable, and Adequate

In deciding whether to approve a proposed class action settlement under Code of Civil Procedure § 382, the Court must find the proposed settlement is “fair, adequate and reasonable.” *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. The trial court considers all relevant factors, such as: “the strength of 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, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.” *Id.* The Court’s primary function is to determine the Settlement is not the product of fraud, overreaching, or collusion, and is fair, reasonable, and adequate. *Dunk, supra*, at 1801.

A proposed class action settlement is presumed fair where: (1) the parties reached agreement after extensive 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 objectors is small. *Id.*, at 1802.

A settlement is not judged solely against what might have been recovered at trial, nor must a settlement provide 100% of the damages sought to be fair and reasonable. *Linney v. Cellular Alaska Partnership*, 151 F.3d 1234, 1242 (9th Cir. 1998). Adequacy must be judged as “a yielding of absolutes. . . Naturally, the agreement reached normally embodies a compromise; in exchange for the saving of cost and elimination of risk, the parties each give up something they might have won had they proceeded with litigation . . .” *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 624 (9th Cir. 1982) (citation omitted). “It is well-settled law that a cash settlement amounting to only a fraction of the potential recovery does not . . . render the settlement inadequate or unfair.” *Id.* at 628.

Plaintiff and his Counsel gave serious consideration to all facts and arguments and concluded the Settlement is fair and reasonable. The proposed Settlement reflects an excellent recovery for the Class and is well within the “ballpark” of reasonableness and should be granted preliminary approval. Khoury Decl. ¶56.

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1 **1. Serious, Informed, Non-Collusive Negotiations Led to Settlement**

2 The Settlement was reached because of arm’s-length negotiations facilitated by a well-respected
3 and experienced mediator, Mark S. Rudy, Esq. Though cordial and professional, negotiations have been
4 adversarial and non-collusive. Khoury Decl. ¶17, 23.

5 Plaintiff believes in the merits of his case but recognizes the inherent risks of litigation and the
6 benefit to the Class of receiving settlement funds immediately, and not risking unfavorable decisions
7 on class certification, the merits of the case, damages, or a lengthy appeal.

8 **2. Discovery and Stage of the Proceedings Support Settlement**

9 Class Counsel investigated the claims and Safran Cabin’s defenses before filing PAGA charges
10 with the Labor and Workforce Development Agency. With discovery responses outstanding, the parties
11 agreed to mediation. Thereafter, Plaintiff requested, and Defendant produced, policy documents,
12 information, and data for a representative sample of the Class⁵, aggregate Workweeks and pay periods,
13 and average hourly rates, to allow liability for the claims to be assessed and Class-wide damages to be
14 estimated. Khoury Decl. ¶32. Proof of Class claims involving alleged rounding and meal period
15 violations is based largely on written policies and an analysis of time and pay records. *Id.* See *See's*
16 *Candy Shops, Inc. v. Superior Court*, 210 Cal.App.4th 889 (2012); *Donohue v. AMN Services, LLC* 11
17 Cal.5th 58 (2021); *Ferra v. Loews Hollywood Hotel, LLC, supra*.

18 Extensive investigation and information exchanged gave the Parties a clear understanding of the
19 strengths and weaknesses of their positions before negotiations. Khoury Decl. ¶33. See *Munoz v. BCI*
20 *Coca-Cola Bottling Co. of Los Angeles*, 186 Cal. App. 4th 399, 410 (2010) (approving settlement where
21 “considerable information [exists] from which to assess the strength of the class claims” and risks and
22 expense of litigation).

23 **3. Counsel are Experienced in Similar Litigation**

24 Plaintiff’s Counsel have significant experience in litigating wage and hour employment class
25 actions. This allowed Counsel to compare settlement of Class claims with the risks of further litigation,
26 including trial and appeals. Khoury Decl. ¶¶2-8, 34; Declaration of Emil Davtyan ¶¶3-6. Defense

27 _____
28 ⁵ Defendant produced a randomly selected sample of pay and timekeeping records for ten (10%) of
putative class members.

counsel, Alaya B. Meyers and Tracy R. Williams of Little Mendelson, P.C., a well-known and respected defense firm, are highly skilled defense attorneys who defended their client vigorously throughout this case, including through mediation and subsequent negotiations. Khoury Decl. ¶35.

Class Counsel believes the Settlement is fair, reasonable, and in the Class’ best interest in light of the monetary recovery, risks of certification/decertification, summary adjudication, the lengthy process of establishing damages, delay and uncertainty of appeals, the substantial prior settlement payments, and the risk releases obtained would be found enforceable.

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.*, 630 F.Supp. 482, 488 (E.D. Pa. 1985). The Settlement satisfies the three *Dunk* requirements, should be presumed fair, adequate, and reasonable, and preliminarily approved.

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 concluded the proposed Settlement is reasonable. As described below, Safran Cabin strongly disputed certification, liability, and damages.

C. The Settlement is a Reasonable Compromise of Claims

“[T]o ensure that the recovery represents a reasonable compromise, given the magnitude and apparent merit of the claims being released, discounted by the risks and expenses of attempting to establish and collect on those claims by pursuing the litigation,” information is presented to the Court, as a fiduciary for absent class members. *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 129 (2008). *Kullar* does not require the parties to submit an illusory prediction of the outer reaches of exposure without taking into account the actual risks of certification, decertification, dispositive motions, and trial. *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal.App.4th 399, 408 (2010). *Kullar* also does not require an explicit statement of the maximum amount the plaintiff class could recover if it prevailed on all claims provided there is a record which allows “an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation.” *Munoz*, 186 Cal.App.4th at 409.

Munoz examined the trial court record including number of class members, payroll data,

1 declarations regarding hours worked, and variances in duties and rest and meal period experience. It
2 found this “an adequate basis from which to garner a reasonably adequate understanding of the amount
3 that is in controversy within the meaning of *Kullar*.” *Id.*

4 Class Counsel relied on similar documents and data as in *Munoz*, including time and pay records
5 for Class Members. Class Counsel reviewed, organized, and analyzed all information, and worked with
6 experienced damages consultants to calculate Class-wide damages through the date of mediation.
7 Khoury Decl. ¶36.

8 Plaintiff’s “rounding” claim was based on Safran Cabin’s pay practices which plaintiff alleged
9 did not compensate the Class for all hours worked due to its non-neutral time application.

10 Additionally, Plaintiff contended that for a period of time (May 18, 2016 through October 24,
11 2018) meal period time entries were not recorded and that Safran Cabin used an “auto-deduct” function
12 to account for meal periods for the vast majority of shifts. Safran Cabin’s payroll system allowed for
13 calculation of potential short and late meal period violations for the remaining shifts for those
14 employees not on the “bell “system.” In *Donohue v. AMN Services, LLC*, *supra*, the California
15 Supreme Court addressed the concept of burden shifting to the employer when recorded meal periods
16 identified short missed or late entries stating “we hold that time records showing noncompliant meal
17 period raise a rebuttable presumption of meal period violations...” Safran Cabin provided total meal
18 period premiums paid and plaintiff’s damage analysis credits such payments.⁶

19 There are approximately 2,397 putative Class Members from May 26, 2016, though January 29,
20 2022. The number of PAGA Members from April 28, 2019, through January 29, 2022 is 1,741.
21 Defendant has documented a total of approximately 363,603 workweeks during the Class Period. The
22 total number of pay periods during the PAGA Pay Period are 68,592. The number of terminated or
23 separated employees in the 3-year statute of limitations period for Labor Code section 203 is 1,655.
24 The combined average rate of pay was less than Plaintiff’s pay and is reported to be \$18.11 per hour.
25 Khoury Decl. ¶37.

26 Plaintiff’s derivative claims include failure to provide accurate itemized wage statements, timely
27

28 ⁶Defendant provided data from 2018 to 2021 as to meal premiums paid (not rest periods), showing the
total meal premiums paid from 2018-2021 to be \$582,516.

1 final wages, and PAGA violations. Khoury Decl. ¶38.

2 **1. Labor Code § 1194 Unpaid Wages due to Rounding**

3 Over time, the use of Safran Cabin’s rounding system (which did not pay for up to seven minutes
4 of pre-shift recorded time) resulted in alleged underpaid minimum, regular, and overtime wages for
5 impacted employees using the same time clock and payroll system. See, *Morillion v. Royal Packing*
6 *Co.* (2000) 22 Cal.4th 575, 578; *Troester v. Starbucks Corp.* (2018) 5 Cal. 5th 829, 847 [a rounding
7 system must be fair and neutral on its face and as applied – over a period of time – in order to lawfully
8 comply with California’s requirement that workers be paid for “all hours worked.”]; *Leyva v. Medline*
9 *Indus.* (9th Cir. 2013) 716 F.3d 510, 512; *Corbin v. Time Warner Entertainment-Advance/Newhouse*
10 *Partnership* (9th Cir. 2016) 821 F.3d 1069, 1077 [“If an employer’s rounding practice does not permit
11 both upward and downward rounding, then the system is not neutral...”]; *See’s Candy Shops, Inc. v.*
12 *Superior Court* (2012) 210 Cal.App.4th 889, 701, n.4; and *Silva v. See’s Candy Shops, Inc.* (2016) 7
13 Cal.App.5th 235, 251.

14 Plaintiff’s own pay records were reviewed. The range of underpayment on down-rounded shifts
15 was approximately 1-2 minutes representing approximately 10.3 hours of unpaid overtime accruing
16 gradually during his four-year tenure, for an estimated loss at Plaintiff’s overtime rate (\$29.33 per hour)
17 of approximately \$302.00.

18 In preparation for mediation, Defendant produced a ten percent data sample of pay and
19 timekeeping records that was analyzed by Plaintiff’s damages consultants. Safran Cabin had in place a
20 time system which allowed employees to clock in up to seven minutes before the start of their scheduled
21 shift. The analyzed sample showed the company practice of rounding up to seven pre-shift minutes and
22 paying only from the start of the scheduled shift. Plaintiff’s consultant calculated the alleged “loss”
23 sustained by class members during these pre-shift minutes (which Safran Cabin contended were grace
24 periods not subject to rounding rules) totaled of \$313,965 (7585 “unpaid” hours x \$18.11 x1.5 OT rate
25 =\$227,489 plus interest of \$76,474). Khoury Decl. ¶39.

26 Safran Cabin’s defense relied on its written policy which specifically stated “The employee
27 should not work or clock in more than seven minutes before their scheduled shift” and contended that
28 their policy was indeed complaint since employees were not expected or required to engage in work

related activities prior to their start time. Khoury Decl. ¶40.

Defendant also argued that certification would be problematic and that plaintiff would be required to prove that employees were actually working during the rounding windows and that this would create significant manageability issues and defeat certification. Class counsel has had considerable experience litigating “rounding” claims through appellate argument and was very familiar with potential defenses to certification.

This claim was discounted in light the potential certification hurdles and claimed defenses by 50% to an exposure value of \$156,982. Khoury Decl. ¶41.

2. Labor Code § 226.7 Meal Period Premiums

As noted, Safran Cabin used an “auto-deduct” function to account for a large majority of meal periods through October 25, 2018. Plaintiff took the position that an entry showing missed, late, or short meal periods presumptively established liability. *Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58. With respect to “missing” or auto deducted meal period entries Safran Cabin “rebutted” the claim of violation pursuant to the recording exception provided in the applicable IWC wage order which provides that “Meal periods during which operations cease and authorized rest periods need not be recorded.” Specifically, a significant number of employees were subject to a “bell system” where work would automatically cease during meal periods. Review of the sample data provided confirmed that employees were given their meal breaks together as a group or groups. Plaintiff did not consider this an absolute defense, as operations ceased for discrete groups at varied times rather than all employees. Consequently, this claim was discounted considerably but not completely.

The data provided documented that approximately 79% of the meal periods in this time frame were subject to the auto deduct. The remaining pre-October 24, 2018 shifts, which were not subject to the auto deduct policy, were separately analyzed by plaintiff’s consultant. It was determined that 8% of the non-auto deduct shifts were presumptively violations being short (less than 30 minutes) or late (not commencing before the end of the fifth hour). Khoury Decl. ¶42.

For the remaining 397,363 shifts for the post auto deduct time frame October 25, 2018 through April 18, 2022 a 16% violation rate was calculated. Based on data provided by Safran Cabin it was estimated that there were 477,253 shifts before the October change in policy (54.6%) and 397,363 shifts

(45.4%) after the policy change. Khoury Decl. ¶43.

a. Auto Deduct Calculation 5/26/16-10/24/18

Assuming a 79% violation rate for the auto deduct claim the exposure would be 477,253 shifts x \$18.11 = \$11,486,000. In light of the IWC wage order exception, and consideration of Plaintiff's belief that operations did not entirely cease, this claim valued for negotiation was discounted by 50% to \$5,743,000. Khoury Decl. ¶44.

The remaining pre-October 25, 2018 shifts with an alleged 8% violation rate would generate a Maximum exposure of \$691,444. This was discounted for certification hurdles by 25% to \$518,500. Khoury Decl. ¶45.

b. Post Auto Deduct 10/25/2018-4/18/22

In light of the *Donahue v AMN* decision which presumptively provides employees with the initial advantage in presenting violations noted in the records, plaintiff believed that these claims would likely be certified. However, certification was still subject to creative defenses which have arisen since the decision including manageability and defense demands for individual inquiry as to each alleged "violation."

This claim was calculated as \$1,151,399 (397363 shifts x. 16% x \$18.11 average hourly rate.) This claim was also discounted for inherent certification and proof at trial issues by 25% to \$820,000. Khoury Decl. ¶46.

c. Second Meal Period Violations

Plaintiff analyzed shifts between 10 and 12 hours to assess whether the records showed second meal period violations. The records failed to show any recorded second meal periods; however, Defendant provided evidence that (a) the Class Members agreed to waive second meal periods and (b) second meal periods were not common, substantially reducing if not eliminating any liability or ability to certify a class on this aspect of the meal period claim. Class Counsel has litigated numerous meal period claims and has through interviews confirmed the common sense result that employees generally do not wish to take a second meal period and prefer to leave work earlier instead. Consequently, Plaintiff did not place a value on this claim.

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d. Meal Period Premium Rate Underpayments

Defendant paid Labor Code section 226.7 meal period premium payments of \$582,800 at the base hourly rate. In most instances, this constituted the “regular rate” of pay consistent with its obligations under *Ferra v. Loews Hollywood Hotel, LLC, supra*, with the exception of a small number of shifts in which class members were paid amounts above their base hourly rate for shift differential pay. Plaintiff analyzed the number of shifts in which class members worked shift differentials while qualifying for a premium payment and found that the aggregate “underpayment” extrapolated to the class pay periods totaled less than \$400.

3. Labor Code 226.7 Rest period claims.

Since rest periods are not required to be recorded, for purposes of negotiation at mediation Plaintiffs’ counsel assumed a violation rate of 16% based on the documented meal period experience. This resulted in alleged exposure of \$2,534,287 (874,616 shifts x 16% x \$18.11). Based on Plaintiff’s experience and input from Defendant that it maintained compliant policies providing rest periods, this amount was discounted by 90% to \$253,428. Proof of this claim was discounted substantially because of the total lack of supportive time records and increased challenges to establishing the merits of each employee’s possible rest break claims, as well as the significant hurdles in certifying a rest break claim. Khoury Decl. ¶47.

4. Labor Code 2802

Defendant provided reimbursement policies in effect during the class period which were facially complaint and authorized reimbursement for business related expenses. The parties nevertheless explored liability and potential exposure for unreimbursed business expenses at the mediation, such as potential claims for tool or uniform expenditures. Given the nature of the class employee duties, unpaid business-related expenses were generally found to be rare. With the added difficulty in quantifying the possible aggregate exposure, a settlement value assessment for mediation discussion was assessed at \$50,000 for release of this claim. Khoury Decl. ¶48.

5. Labor Code § 226 Wage Statement Penalties

Wage statements must show, among other things, “total hours worked by the employee” and “corresponding number of hours worked at each hourly rate.” Labor Code § 226 (a)(2)(9). An

1 employer's failure to provide accurate itemized wage statements requires it to pay the greater of actual
2 damages or \$50 per employee for the initial pay period and \$100 per employee for each subsequent pay
3 period, not to exceed \$4,000.

4 Plaintiff alleged a derivative claim wage statement claim based on the rounding claim, which as
5 noted was contested by Safran Cabin which argued clear policies and instructions not to work during
6 the pre-shift seven minutes.⁷ Using the metrics data provided by Safran Cabin's counsel, there are
7 approximately 1,543 people in the applicable limitations period with bi-weekly pay periods. Plaintiff's
8 consultant determined that 67% of the employees were paid less than their clocked time as a result of
9 time rounding, which would generate a derivative wage statement claim were plaintiff to prevail at trial
10 on the rounding claim. To recover these penalties, Plaintiff must prove the underlying violations, and
11 prove this was a "willful violation" against Safran Cabin's good faith defenses. "The fact that a defense
12 is ultimately unsuccessful will not preclude a finding that a good faith dispute did exist." *Wilson v.*
13 *Skywest Airlines, Inc.*, 19-cv-01491-VC, (N.D. Cal. Jul. 12, 2021) citing 8 C.C.R. § 13520(a).

14 The statute provides for \$50 for the initial pay period and \$100 for each subsequent pay period
15 with a maximum of \$4000. The penalty claim was calculated as follows: $1543 \times .67 \times \$4,000 =$
16 $\$4,135,240$. Khoury Decl. ¶49. This claim, being derivative and, given the defenses available and the
17 requirement that the rounding claim be certified and prevail at trial, was reduced by 90% to \$413,524.
18 Khoury Decl. ¶50.

19 **6. Labor Code § 203 Penalties**

20 An employer must pay all wages due to an involuntarily terminated employee at the time of
21 termination, or within 72 hours to an employee voluntarily terminating. If an employer willfully fails
22 to timely pay all wages to separated employees, the wages continue at the same rate for up to 30 days.
23 Labor Code § 203.

24 The only claim which clearly supported waiting time penalties was for unpaid wages under the
25
26

27 ⁷ At the time of mediation, the Supreme Court had not yet decided *Naranjo v. Spectrum Security*
28 *Services, Inc.*, 13 Cal.5th 93 (2022), finding meal and rest period violations supported derivative wage
statement claims.

“rounding “claim.”⁸ Plaintiff would be required to prove this underlying claim for unpaid wages and show a “willful” violation. Plaintiff’s counsel believed there was no more than a 25% probability of prevailing based on difficulties in certifying and proving the underlying violation, particularly showing willfulness given the basis of the wage claim was subject to proof that work was actually unpaid during the pre-shift seven-minute window. Even if wages were found to owed, a court could find Safran Cabin had a good faith belief it was paying all wages, and “a good faith dispute that any wages are due will preclude imposition of waiting time penalties under Section 203.” *Hill v. Walmart Inc.*, 2021 U.S. Dist. LEXIS 20950, *17 (N.D. Cal. January 14, 2021).

Using the data provided by Safran Cabin, there are 1,236 terminated/separated employees. Only those that sustained a “loss” as a result of the rounding claim would be potentially eligible, for which Plaintiff used the .67 percent affected by rounding underpayments for the entire class. The calculation for the 30-day pay assessment is thus \$3,599,340 (1,236 x .67 employees x \$18.11 per hour x 8 hours per day x 30-days). Safran Cabin argued that the unpaid time was not a result of their policies, since pre-shift work was not required or anticipated, and therefore Plaintiff could not establish liability for such penalties, and that it was unlikely a court would find failure to pay wages willful or that it had no good faith defense that it believed its rounding/grace period policies operated neutrally. Based on these issues and defenses, Plaintiff’s counsel believed there was only a 25% probability of prevailing based on difficulties in certifying and proving the underlying violation and particularly showing willfulness, and used a 75% discount to reach an estimated realistic exposure for this claim of \$899,835. Khoury Decl. ¶51.

TOTAL NON-PAGA REASONABLE EXPOSURE CALCULATIONS FOR MEDIATION:

Rounding:	\$ 156,982.00
Meal Period Violations	\$5,743,300.00
Meal Period Violations	\$ 518,500.00
Meal Period Violations	\$ 820,000.00

⁸ At the time of the mediation, review of *Naranjo v. Spectrum Security Services, Inc.*, 40 Cal.App.5th 444, 474 (2019) (Finding rest and meal period premiums do not support waiting time penalties) was pending in California Supreme Court.

Meal Period Violations	\$ 400.00
Rest Period Violations	\$ 253,428.00
Unreimbursed Expenses	\$ 50,000.00
Wage Statement Violations	\$ 413,524.00
Waiting Time Penalties	\$ 899,835.00
TOTAL:	\$8,855,969.00

7. Labor Code §§ 2699 PAGA Penalties

“PAGA penalties are paid 75% to the California Labor and Workforce Development Agency and 25% to aggrieved employees. Thus, in wage and hour class action cases that settle, very little of the total settlement is paid to PAGA penalties in order to maximize payments to class members.” *Magadia v. Wal-Mart Assocs.*, 384 F. Supp. 3d 1058, 1101 (2019).

“[T]he amount of the common settlement fund reserved for PAGA penalties [is adequate], as courts frequently approve settlements in wage and hour class action and PAGA actions that minimize the total amount of the settlement that is paid to PAGA penalties in order to maximize payments to class members.” (citations omitted) *Mejia v. Walgreen Co.*, 2020 U.S. Dist. LEXIS 220685, *26 (E.D. Cal. Mar. 24, 2021).

Initial violation rates were used, based on the defense argument, “courts have held that employers are not subject to heightened penalties for subsequent violations unless and until a court or commissioner notifies the employer that it is in violation of the Labor Code.” *Vieyara-Flores v. Sika Corp.*, 2019 U.S. Dist. LEXIS 98081, *13 (C.D. Cal. 2019).

A court has authority to completely reduce penalties, as long as not to “zero.” *Thurman v. Bayshore Transit Management, Inc.*, 203 Cal. App. 4th 1112, 1135 (2012). *See Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504, 517 (2018) (Plaintiff requested “nearly \$70 million in penalties,” trial court’s \$150,000 award upheld on appeal).

There are 1,741 allegedly aggrieved employees and approximately 79,155 pay periods during the PAGA period, April 28, 2019, to April 18, 2022. Using initial violation rates for these pay periods, maximum penalties were estimated for seven potential violations:

///

a. Labor Code § 203

Using the data provided by Safran Cabin, there are 791 terminated/separated employees which would generate a claim of \$79,100.

b. Labor Code § 1194 unpaid wages

Data analysis indicated that approximately 67% of the pay periods involved “rounded “time. Given $67\% \times 79,155 = 54,033$ PAGA pay periods. $= 53,033$ pay periods $\times \$100 = \$5,303,300$.

c. Labor Code § 226 Wage Statements

Since the claim is based arises on the “rounding” claim only 67% of the pay periods would be affected. The calculation would be: $53,3033$ pay periods $\times \$100 = \$5,330,033$.

d. Labor Code § 226.7 Meal Period

Assuming a 38%⁹ “violation rate, the exposure would calculated as follows: $.38 \times 79,155 \times \$100 = \$3,007,890$

e. Labor Code § 226.7 Rest Period

The damage assessment relied on the meal period findings for purposes of negotiation since employers are not required to record rest periods. \$3,007,890.

f. Labor Code § 1174 Failure To Maintain Time and Pay Records

Assuming that Safran Cabin’s group meal provision with auto deduct did not satisfy the exemption it would be liable for the PAGA civil penalties available under Labor Code section 1174. This would represent a claim of $\$500$ per employee $\times 1,174 = \$587,000$. Khoury Decl. ¶52.

Maximum PAGA exposure of approximately \$17,288,480 was discounted by 90% to \$1,728,848 for several reasons, i.e., the risk of not proving underlying violations, Defendant’s compliant policies, and Court’s authority to reduce penalties, as long as not to “zero.” *Thurman v. Bayshore Transit Management, Inc.*, 203 Cal. App. 4th 1112, 1135 (2012). *See Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 517 (2018) (Plaintiff requested “nearly \$70 million in penalties”; trial court’s \$150,000 award upheld on appeal). Khoury Decl. ¶53.

⁹ Plaintiff’s consultant independently calculated the frequency of meal period violations for pay periods at 38% for purposes of PAGA penalties, as contrasted with the 16% allocated to shifts for meal period premiums.

The Court also has the authority to reduce or eliminate any civil penalty deemed punitive or confiscatory under the circumstances. Under all the circumstances here, regardless of liability proven or damages awarded, it would be extremely unlikely to obtain a significant amount of PAGA penalties, and perhaps no award in addition to Labor code awards for the same violations. Indeed, courts have rejected attempts to “stack” PAGA penalties with statutory penalties. *See Li v. A Perfect Day Franchise, Inc.*, 2012 U.S. Dist. LEXIS 83677, *52 (N.D. Cal. June 15, 2012) (denying PAGA penalty as duplicative of penalty provided under Labor Code section 226(e)); *see also Rodriguez v. Scripps Media*, 2015 U.S. Dist. LEXIS 9936 (C.D. Cal. Jan. 28, 2015) (“there is no basis for plaintiff to recover penalties under the PAGA §2699(f)(2) in addition to the penalties provided for in § 226(e) for a violation of § 226(a)”).

The \$250,000 PAGA allocation is well within the range approved by California courts. *See, In re Nordstrom Commission Cases*, 186 Cal. App. 4th 576, 589 (2010) (no abuse of discretion approving a class action settlement attributing \$0 to PAGA penalties.); *Alcala v. Meyer Logistics, Inc.*, 2019 LEXIS 166879, *26 (C.D. Cal. June 17, 2019) (PAGA penalties 1.25% of settlement reasonable, “falls within the zero to two percent range for PAGA claims approved by courts.”); *In re M.L. Stern Overtime Litig.*, 2009 LEXIS 31650, *1 (S.D. Cal. Apr. 13, 2009) (PAGA settlement of 2%); *Ceja-Corona v. CVS Pharm., Inc.*, 2015 U.S. Dist. LEXIS 5118 (E.D. Cal. Jan. 14, 2015) (\$10,000 penalties, \$900,000 settlement, recommendation adopted, 2015 U.S. Dist. LEXIS 25730 (E.D. Cal. Mar. 3, 2015)). (This Motion and its exhibits were provided to the LWDA, via its website on the date filed with the Court. Khoury Decl. ¶57, Ex. B).

TOTAL PAGA REASONABLE EXPOSURE CALCULATIONS FOR MEDIATION:

LC203:	\$ 79,100.00
LC1194	\$ 5,303,300.00
LC226	\$ 5,303,300.00
LC226.7 Meal Periods	\$ 3,007,890.00
LC226.7 Rest Periods	\$ 3,007,890.00
LC1174	\$ 587,000.00
Sub-Total	\$17,288,480.00

Discount Rate: 90%

TOTAL: \$ 1,728,848.00

Plaintiff and his Counsel gave serious consideration to all facts and arguments and concluded the Settlement is fair and reasonable. The Gross Settlement Amount of \$5,455,000 represents approximately 51.5% of the reasonable combined value of the claims, \$10,584,817 (Non-PAGA \$8,855,969+ PAGA \$1,728,848 = \$10,584,817), or separately, the \$5,205,000 non-PAGA settlement is 58.7% of the reasonable claim value of \$8,855,969, and the \$250,000 PAGA allocation is 14% of the reasonable PAGA claim value. Khoury Decl. ¶54.

The proposed Settlement reflects an excellent recovery for the Class and is well within the “ballpark” of reasonableness and should be granted preliminary approval.

D. The Class Notice Properly Informs the Class about the Case and Settlement

Class members are entitled to the best practical notice under the circumstances. *Kass v. Young*, 67 Cal. App. 3d 100, 106 (1977). The purpose of the notice is to give class members sufficient information to decide whether they should accept the benefits offered, opt out and pursue their own remedies, or object to the settlement. *Trotsky v. Los Angeles Fed Savings & Loan Assn.*, 48 Cal. App. 3d 143, 151-52 (1975). The notice must advise class members "that they may be excluded from the class if they so request and that they will be bound by the judgment, whether favorable or not, if they do not request exclusion." *Kass*, 67 Cal. App. 3d at 106. In a case such as this involving a significant number of class members, California authorities generally require service of the class notice by mail or similar reliable means. *Chance v. Super. Ct.*, 58 Cal. 2d 275, 290 (1962); *Cartt v. Sup. Ct.*, 50 Cal. App. 3d 960, 972 (1975).

The Parties have jointly drafted the Settlement Notice. The Settlement Notice will be mailed along with a change of address form and pre-printed return envelope and will fairly and neutrally provide a (1) summary of the Settlement’s principal terms, (2) definition of the Class, (3) Individual Workweeks during the Class Period, (4) formula for calculating Individual Settlement Awards and each Class Member’s estimated payment, (5) dates of the Class Period, (6) instructions how to submit a Request for Exclusion or object, (7) the deadline for Requests for Exclusion and objections, (8) the claims to be

1 released¹⁰, (9) the PAGA Payment, and (10) the date, time, and place set for the hearing on the Final
2 Approval Motion. (SA, Exhibit 1).

3 Before mailing the Settlement Notices, for all Class Members, the Settlement Administrator will
4 verify the addresses produced by Safran Cabin by conducting a search of the National Change of
5 Address Database of the U.S. Postal Office. SA, ¶39. In the event Notice Packets are returned as
6 undeliverable, the Administrator will then attempt to locate a current mailing address by using the Class
7 Member's social security number. *Id.*

8 Accordingly, both the method of disseminating the Settlement Notice and content of the
9 Settlement Notice satisfy due process and the requirements of California law. See C.R.C. 3.776(e)-(t);
10 *State of Cal. v. Levi Strauss*, 41 Cal. 3d 460, 485 (1986) (the class notice must "fairly apprise the class
11 members of the terms of the proposed compromise and of the options open to dissenting class
12 members.")

13 **E. The Settlement is Fair, Adequate, and Reasonable**

14 Plaintiff and his Counsel gave serious consideration to all facts and arguments and concluded the
15 Settlement is fair and reasonable. The Gross Settlement Amount represents over 51.5% of the maximum
16 value of the Class and PAGA claims. (\$5,455,000/\$10,584,817 = .51536). Khoury Decl. ¶¶54, 56.

17 Settlement Payments are characterized as 20% wages and 80% penalties and interest.¹¹ At the
18 time of the mediation prior to the issuance of *Naranjo* (finding meal and rest period premiums wages
19 sufficient to trigger derivative wage statement and waiting time penalties), actions for meal and rest
20 period premiums were not considered actions to recover wages. *Kirby v. Immoos Fire Protection, Inc.*,
21 53 Cal. 4th 1244, 1257 (2012) ["Accordingly, a section 226.7 claim is not an action brought for
22 nonpayment of wages; it is an action brought for nonprovision of meal or rest breaks."] Consequently,
23 the allocation of 20% for wages requiring employer tax withholding and 80% for penalties and interest
24

25
26 ¹⁰ No C.C.P 1542 waiver will be required from the class. Plaintiff has previously settled his claim for
discrimination and wrongful termination for \$45,000 and will not require a 1542 release.

27 ¹¹ At the time of the mediation, claims for premium pay for meal and rest period violations had been
described as "not an action brought for nonpayment of wages" by the Supreme Court. *Kirby v. Immoos*
28 *Fire Protection, Inc.*, 53 Cal.4th 1244, 1257 (2012).

more than covered the amounts attributable to the rounding wages in the *Kullar* analysis. Khoury Decl. ¶55.

A settlement is not judged solely against what might have been recovered at trial, nor must a settlement provide 100% of the damages sought to be fair and reasonable. *Linney v. Cellular Alaska Partnership*, 151 F.3d 1234, 1242 (9th Cir. 1998). Adequacy must be judged as “a yielding of absolutes. . . Naturally, the agreement reached normally embodies a compromise; in exchange for the saving of cost and elimination of risk, the parties each give up something they might have won had they proceeded with litigation . . .” *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 624 (9th Cir. 1982) (citation omitted). “It is well-settled law that a cash settlement amounting to only a fraction of the potential recovery does not . . . render the settlement inadequate or unfair.” *Id.* at 628.

The proposed Settlement reflects an excellent recovery for the Class and is well within the “ballpark” of reasonableness and should be granted preliminary approval. Khoury Decl. ¶56.

VIII. CONDITIONAL CERTIFICATION OF THE CLASS IS APPROPRIATE

When an ascertainable and sufficiently numerous class exists, with a well-defined community of interest, and class litigation would be superior to alternate means, certification is appropriate. See *Brinker Restaurant Corp. v. Superior Court*, 53 Cal. 4th 1004, 1021 (2012).

Ascertainability is determined by examining class definition, size, and means for identifying members. *Reyes v. Bd. of Supervisors*, 196 Cal. App. 3d 1263, 1271 (1987). The class is ascertainable from Safran Cabin’s records, and joinder is impracticable.

The community of interest requirement embodies three factors: predominant common questions of law or fact; class representatives with claims typical of the class; and class representatives who can adequately represent the class. *Fireside Bank v. Superior Court*, 40 Cal. 4th 1069, 1089 (2007).

Plaintiff alleges each Class Member was subject to policies and practices Plaintiff alleged caused damage to him and the Class, including policies which caused underpaid wages, including meal period premium wages, and non-compliant wage statements. Where the same alleged conduct forms the basis for claims of Plaintiff and the class, it is common for settlement purposes.

Plaintiff can adequately protect the interests of the Class. See *Wershba, Id.*, at 238. Plaintiff accepted the risks of serving as a class representative, spent significant time assisting in the prosecution

of the action, and placed the interest of the class above his own. *Clark v. American Residential Services LLC*, 175 Cal.App.4th 785, 804-807 (2009).

Plaintiff's attorneys are qualified to conduct the litigation and Plaintiff's interests are not antagonistic to the interests of the Class. *McGhee v. Bank of Am.*, 60 Cal. App. 3d 442, 450 (1976). Khoury Decl. ¶¶4-8, 56.

IX. PROPOSED SCHEDULE OF SETTLEMENT PROCEEDINGS

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

- | | |
|--|---|
| 1. Class Information provided to Administrator: | Within 14 calendar days of Preliminary Approval |
| 2. Mail Settlement Notice to the Class: | Within 15 calendar days of receipt of Class Information |
| 3. Response Deadline: | On or before the 45th calendar day from initial date Administrator mails Settlement Notice to Class |
| 4. File Motion for Final Approval and Administrator's Declaration Re Claims: | No sooner than 20 days after the close of the Response Deadline |
| 5. Final Approval Hearing: | A date convenient on the Court's calendar |

X. CONCLUSION

Plaintiff requests the Settlement be preliminarily approved, Settlement Notice approved and ordered disseminated to the Class, Simpluris, Inc. be appointed Administrator, Cohelan Khoury & Singer and Davtyan Law Firm, Inc. be appointed Class Counsel, Plaintiff Vernell Battle, Jr. be appointed as the Class Representative, and a Final Approval Hearing date be set.

Respectfully submitted,

COHELAN KHOURY & SINGER
DAVTYAN LAW FIRM, INC.

Dated: August 11, 2022

By: 
Isam C. Khoury, Esq.
Attorneys for Plaintiff Vernell Battle, Jr., on behalf of
himself and all others similarly situated