

COHELAN KHOURY & SINGER

Michael D. Singer (SBN 115301)

msinger@ckslaw.com

Jeff Geraci (SBN 151519)

jgeraci@ckslaw.com

605 C Street, Suite 200

San Diego, CA 92101

Telephone: (619) 595-3001

Facsimile: (619) 595-3000

LEBE LAW, APLC

Jonathan M. Lebe (SBN 284605)

jon@lebelaw.com

Zachary Gershman (SBN 328004)

zachary@lebelaw.com

777 S. Alameda Street, Second Floor

Los Angeles, CA 90021

Telephone: (213) 358-7046

Attorneys for Plaintiffs BENIYAM KEBEDE, ALAIN TSAI,
and MONICA I. PAZMINO, individually and on behalf of
all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

BENIYAM KEBEDE, ALAIN TSAI, and
MONICA I. PAZMINO, individually and
on behalf of all others similarly situated,

Plaintiffs,

v.

WRIKE, INC.; and DOES 1 through 25,
inclusive

Defendants.

Case No. 20CV366599

ASSIGNED FOR ALL PURPOSES TO:

The Honorable Patricia M. Lucas
Department 3

CLASS ACTION

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

Date: December 1, 2021

Time: 1:30 p.m.

Dept: 3

Judge: Hon. Patricia M. Lucas

Complaint filed: May 13, 2020

Trial date: Not set

TABLE OF CONTENTS

PAGE

I.	INTRODUCTION	1
II.	THE PARTIES	1
A.	Plaintiffs	1
B.	Defendant	1
C.	The Class and Aggrieved Employees	1
III.	PROCEDURAL HISTORY, INVESTIGATION AND INFORMAL DISCOVERY	2
IV.	PLAINTIFFS' CLAIMS AND WRIKE'S DEFENSES	2
V.	INVESTIGATION AND MEDIATION.....	3
VI.	SUMMARY OF PROPOSED SETTLEMENT	3
A.	Settlement Terms	3
B.	Settlement Administration and Class Notice	4
C.	Released Claims	5
VII.	ARGUMENT	5
A.	Class Action Settlements Are Subject to Court Review and Approval	5
B.	The Settlement is Fair, Reasonable, and Adequate.....	6
1.	Serious, Informed, Non-Collusive Negotiations Led to Settlement	6
2.	Discovery and Stage of the Proceedings Support Settlement	6
3.	Counsel are Experienced in Similar Litigation	7
4.	The Settlement is Fair and Reasonable	7
C.	The Settlement is a Reasonable Compromise of Claims	7
1.	Labor Code § 1194 Unpaid Overtime	8
2.	Labor Code § 226.7 Meal Period Premiums.....	9
3.	Labor Code § 226.7 Rest Period Premiums	9
4.	Labor Code § 226 Wage Statement Penalties	10
5.	Labor Code § 203 Waiting Time Penalties	10
6.	Labor Code §2802 Reimbursement of Business Expenses.....	11

7.	Labor Code §§ 2699 PAGA Penalties	11
D.	The Settlement is Fair, Adequate, and Reasonable	13
VIII.	CONDITIONAL CERTIFICATION OF THE CLASS IS APPROPRIATE	13
IX.	PROPOSED SCHEDULE OF SETTLEMENT PROCEEDINGS	14
X.	CONCLUSION	15

TABLE OF AUTHORITIES

PAGE

<i>Alcala v. Meyer Logistics, Inc.</i> (C.D. Cal. June 17, 2019) 2019 LEXIS 166879	12
<i>Brinker Restaurant Corp. v. Superior Court</i> (2012) 53 Cal. 4th 1004	9, 13
<i>Carrington v. Starbucks Corp.</i> (2018) 30 Cal. App. 5th 504	12
<i>Ceja-Corona v. CVS Pharm., Inc.</i> (E.D. Cal. Jan. 14, 2015) 2015 U.S. Dist. LEXIS 5118.....	13
<i>Cochran v. Schwan’s Home Service, Inc.</i> (2014) 228 Cal. App. 4th 1137	3, 11
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794	6, 7
<i>Fireside Bank v. Superior Court</i> (2007) 40 Cal. 4th 1069	14
<i>Fisher Bros. v. Cambridge Lee Industries, Inc.</i> (E.D. Pa. 1985) 630 F.Supp. 482	7
<i>Hill v. Walmart Inc.</i> (N.D. Cal. January 14, 2021)2021 U.S. Dist. LEXIS 20950	11
<i>In re M.L. Stern Overtime Litig.</i> (S.D. Cal. Apr. 13, 2009) 2009 LEXIS 31650.....	13
<i>In re Microsoft I-V Cases</i> (2006) 135 Cal. App. 4th 706	5
<i>Jamison v. Butcher & Sherrerd</i> (E.D. Pa. 1975) 68 F.R.D. 479	5
<i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal. App. 4th 116	7, 8
<i>Linney v. Cellular Alaska Partnership</i> (9th Cir. 1998) 151 F.3d 1234.....	13
<i>McGhee v. Bank of Am.</i> (1976) 60 Cal. App. 3d 442.....	14

1	<i>Magadia v. Wal-Mart Assocs.</i>	
2	(2019) 384 F. Supp. 3d 1058.....	11, 13
3	<i>Mejia v. Walgreen Co.</i>	
4	(E.D. Cal. Mar. 24, 2021) 2020 U.S. Dist. LEXIS 220685	12
5	<i>Muldrow v. Surrex Solutions Corp.</i>	
6	(2012) 208 Cal. App. 4th 1381	2, 9
7	<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i>	
8	(2010) 186 Cal. App.4th 399	7, 8
9	<i>Naranjo v. Spectrum Security Services, Inc.</i>	
10	(2019) 40 Cal. App. 5th 444	10
11	<i>Naranjo v. Spectrum Security Services, Inc.</i>	
12	(January 2, 2020) 2020 Cal. LEXIS 167	10
13	<i>Officers for Justice v. Civil Serv. Comm'n</i>	
14	(9th Cir. 1982) 688 F.2d 615.....	13
15	<i>Reyes v. Bd. of Supervisors</i>	
16	(1987) 196 Cal. App. 3d 1263.....	14
17	<i>Thurman v. Bayshore Transit Management, Inc.</i>	
18	(2012) 203 Cal. App. 4th 1112	12
19	<i>Vieyara-Flores v. Sika Corp.</i>	
20	(C.D. Cal. 2019) 2019 U.S. Dist. LEXIS 98081	12
21	<i>Wershba v. Apple Computers, Inc.</i>	
22	(2001) 91 Cal.App.4th 224	5, 14
23	<i>Wesson v. Staples the Office Superstore, LLC</i>	
24	(September 9, 2021) 2021 Cal. App. LEXIS 743	12

STATUTES AND REGULATIONS

PAGE

25	<u>California Labor Code</u>	
26	§ 203.....	10, 11, 12
27	§ 226.....	10
28	§ 226.3.....	12
29	§ 226 (a)(2)(9)	10
30	§ 226.7	9, 12
31	§ 510(a)	8
32	§ 1194.....	8, 12
33	§ 2699 et seq	11
34	§ 2802.....	11, 12
35	<u>California Rules of Court</u>	
36	Rule 3.769(g)	5

I. INTRODUCTION

Plaintiffs seek preliminary approval of a \$2,000,000 non-reversionary wage and hour class and Private Attorney Generals' Act (PAGA) settlement for commissioned employees who worked for Wrike, Inc. ("Wrike"), any time from April 6, 2016 to March 31, 2021 ("Class Period"). The settlement includes \$1,796,000 new money and \$204,000 Wrike paid pre-mediation to 102 employees for individual settlement agreements. Declaration of Jeff Geraci ("Geraci Decl.") ¶11.

II. THE PARTIES

A. Plaintiffs

Beniyam Kebede worked as an Account Manager from August 2019 to January 2020. Alan Tsai was a Strategic Account Manager from October 2018 to August 2020. Monica Pazmino was a Senior Account Manager from October 2019 to April 2020. Geraci Decl. ¶12.

B. Defendant

Wrike provides cloud-based project management applications, known as "software as a service," with customers paying a monthly amount for those services. Wrike's headquartered in San Jose, with offices in San Diego, Japan, Australia, among other places. Geraci Decl. ¶13.

C. The Class and Aggrieved Employees

The Class is, "All current and former commissioned employees who worked for Defendant within the State of California during the Class Period." Joint Stipulation of Settlement and Release of Class Action ("Settlement Agreement," "SA"). ¶I.D. Geraci Decl. ¶14. An estimated 222 class members worked an estimated 14,679 weeks during the Class Period; 158 aggrieved employees worked 3,677 pay periods from April 6, 2019 to March 31, 2021. *Id.* at ¶15.

An estimated 189 people served in exempt Sales Positions. Another 33 worked as Sales Development Representatives and were reclassified as non-exempt effective November 1, 2017. The other Sales Positions remained exempt until November 1, 2020, when all but a few of the highest-level Strategic Account Managers were reclassified as non-exempt. Geraci Decl. ¶16.

Services were sold to new or existing customers. Personal cell phones were sometimes used to communicate with clients. Because compensation could be increased by production, overtime was often worked. Geraci Decl. ¶17.

III. PROCEDURAL HISTORY, INVESTIGATION AND INFORMAL DISCOVERY

The action was filed May 13, 2020, alleging failure to provide: all minimum, regular, and overtime wages; compliant rest and meal periods; accurate wage statements; timely final wages; reimbursement of business expenses. PAGA claims were filed June 30, 2020. Geraci Decl. ¶18.

The original plaintiff was dismissed, and a Second Amended Complaint adding plaintiffs, Beniyam Kebede, Alain Tsai, and Monica Pazmino was filed September 30, 2020. A Third Amended Complaint adding PAGA claims was filed October 26, 2020. *Id.*

After receiving PAGA charges, and a catalyst letter advising Plaintiffs would challenge subsequent settlements and seek attorneys' fees on amounts paid, Wrike paid \$2,000 each to 102 class members (\$204,000) ("Prior Releasers"). Geraci Decl. ¶19.

Wrike moved to compel arbitration of Ms. Pazmino's claims and stay the others in November 2020. (46 class members signed arbitration provisions). Plaintiffs opposed and soon after the Parties agreed to mediate and stay the motion. Geraci Decl. ¶20.

IV. PLAINTIFFS' CLAIMS AND WRIKE'S DEFENSES

Commissioned sales employees may be exempt from overtime wages in California when earning more than 1.5 times minimum wage per workweek, with more than half of compensation from commissions. *Muldrow v. Surrex Solutions Corp.*, 208 Cal. App. 4th 1381, 1387 (2012). Plaintiffs alleged Wrike misclassified class members as exempt primarily because, in some weeks, less than half their compensation was commission. Plaintiffs also alleged Wrike did not provide rest and meal periods, or reimbursement for cell phone and internet expenses. Geraci Decl. ¶21.

Wrike denied liability, asserting, even if liability were found, damages would be limited because some positions were reclassified soon after the class period began, and virtually all others, four months before it ended. Wrike contended class members met the commission exemption in all weeks they met the compensation test, and in weeks they did not, they met the administrative exemption. These issues require highly fact specific inquiries, making both certification and proof of liability challenging, and similar issues have been decided against employees. For example, *Muldrow* found recruiters primarily engaged in sales and exempt. *Id.* No meal period violation was found because Muldrow did "not impede or discourage them from" from taking breaks. *Id.* at 1398.

1 Wrike argued it did not discourage breaks, and provided evidence it provided food, and
2 separate spaces to relax and eat. This was confirmed in employee interviews. Geraci Decl. ¶22.

3 Wrike reimbursed expenses for most of the class period, but Plaintiffs contended they were
4 inadequate, and applied specifically only to cell phone, not internet, expenses. Wrike credibly
5 argued it was unnecessary to use cell phones while in the office, and only a reasonable percentage
6 of an employee's cell phone charges must be reimbursed. This argument may have prevailed.
7 "Because of the differences in cell phone plans and work-related scenarios, the calculation of
8 reimbursement must be left to the trial court and parties in each particular case." *Cochran v.*
9 *Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1145 (2014).

10 **V. INVESTIGATION AND MEDIATION**

11 The Parties agreed to mediate with Louis Marlin, Esq., a respected mediator of wage and
12 hour class actions. To prepare, documents and data were exchanged, including class pay data, and
13 aggregate workweeks and pay periods for the class and PAGA periods. Plaintiffs' consultant
14 analyzed the data and created a damage model. Geraci Decl. ¶23.

15 With significant investigation, research, informal discovery, and analysis of data by
16 Plaintiffs and their damages consultant, the Parties mediated with Mr. Marlin on March 24, 2021.
17 After a full day of arms'-length negotiations, the Parties reached an agreement in principle and
18 signed an MOU. The Parties continued to negotiate all necessary terms and entered the Settlement
19 Agreement presented for preliminary approval. Geraci Decl. ¶24 – Exhibit 1.

20 **VI. SUMMARY OF PROPOSED SETTLEMENT**

21 **A. Settlement Terms**

22 Wrike will pay the maximum Gross Settlement Amount ("GSA") of \$2,000,000,
23 (\$1,796,000, plus \$204,000 paid to 102 class members pre-mediation) which includes: (a)
24 attorneys' fees of \$666,666 (1/3 of GSA; the SA allows up to 35% of GSA) to compensate Class
25 Counsel for work performed and remaining to secure final Court approval (apportioned 50/50
26 between Class Counsel with Plaintiff's consent. Geraci Decl. ¶26); (b) litigation costs of \$12,500;
27 (c) Class Representative Service Awards of \$10,000 each to Plaintiffs Kebede, Tsai, and Pazmino,
28 for work as Class Representatives, risks undertaken for costs if the case had not successfully

1 concluded, and benefits conferred on the Class; (d) PAGA Payment of \$50,000 [\$37,500 to LWDA
2 (75%)/\$12,5000 to Aggrieved Employees (25%)]; and (e) Settlement Administration costs of
3 \$5,500. Wrike will pay employer's payroll taxes in addition to the GSA. Geraci Decl. ¶25.

4 After Court-approved deductions, the estimated Net Settlement Amount ("NSA") of
5 \$1,031,334, will be distributed to Participating Class Members. Individual Settlement Payments
6 will be calculated by first allocating \$2,000 each to the estimated 120 class members (\$240,000),
7 who did not receive \$2,000 for a release before mediation. The Administrator will divide total
8 number of weeks worked by all class members in the Class Period by the remainder of the NSA,
9 \$791,331, to determine "workweek dollar value." ($\$791,331 / 14,679 \text{ weeks} = \53.91). The
10 Administrator will then multiply the number of weeks each Prior Releasor worked by 1.0, then by
11 the workweek dollar value. For class members who did not previously receive a \$2,000 payment,
12 the Administrator will multiply number of weeks worked by 1.1, then by the workweek dollar
13 value. This provides a greater amount to class members who did not risk exclusion from the class
14 by accepting an individual settlement this class Settlement. Geraci Decl., ¶27; SA ¶III.F.5(a).

15 The parties estimate Participating Settlement Class Members who worked the entire class
16 period will receive a total of \$16,017 ($260 \text{ wks} \times \$53.91 + \$2,000$), with an average estimated total
17 payment of \$5,565 ($\$791,331 / 222 + \$2,000$). An estimated 158 aggrieved employees will divide
18 the 25% PAGA payment based on pay periods worked during the PAGA period, April 6, 2019 to
19 March 31, 2021, even if they opt-out of the class settlement. Geraci Decl. ¶28. Checks uncashed
20 180 days after issuance will be sent to the State Controller, Unclaimed Property Division, on behalf
21 of class members. Geraci Decl. ¶29.

22 **B. Settlement Administration and Class Notice**

23 Simpluris, Inc. ("Settlement Administrator") will search the National Change of Address
24 database, update Class Member addresses, and mail a Notice of Class Action Settlement ("Class
25 Notice") to each Member in Wrike's employment records. Geraci Decl. ¶30; SA ¶III.I.2(b-d).

26 The Class Notice explains: how to participate in the Settlement without submitting a claim;
27 dispute the basis of an Individual Settlement Payment; object or opt-out; release to be given, date
28 of Final Approval hearing, and how to obtain further information. Geraci Decl. ¶31; SA ¶III.I.2(c).

C. Released Claims

Released claims are defined as: “all causes of action and factual or legal theories that were alleged in the Complaints or reasonably could have been alleged based on the facts and legal theories contained in the operative Complaint, including all of the following causes of action: (a) failure to pay minimum wages; (b) failure to pay overtime wages; (c) failure to provide meal periods; (d) failure to provide rest breaks; (e) failure to provide accurate itemized wage statements; (f) failure to reimburse business expenses; (g) failure to timely pay wages due during employment; (h) failure to timely pay wages due upon separation of employment; (i) violations of the Unfair Competition Law; (j) civil penalties under PAGA; (k) any other claims or penalties under the wage and hour laws pleaded in the Class Action; and (l) all damages, penalties, interest and other amounts recoverable under said causes of action under California and federal law, to the extent permissible, including but not limited to the California Labor Code, the applicable Wage Orders, and the California Unfair Competition Law as to the facts alleged in the Class Action (collectively, the “Released Claims”). The Released Claims include all claims for compensatory, consequential, incidental, liquidated, punitive, and exemplary damages; restitution; interest; costs and fees; injunctive or equitable relief; and any other remedies available at law or equity during the Class Period.” SA ¶1.EE.

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.” California Rules of Court, Rule 3.769 (g). Where settlement terms are agreeable to all Parties, a court should disapprove a settlement “only with considerable circumspection.” *Jamison v. Butcher & Sherrerd*, 68 F.R.D. 479, 481 (E.D. Pa. 1975). (State courts may be guided by federal authority when analyzing class settlements. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 239 (2001)).

At preliminary approval, 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 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 the Court must find a proposed settlement is “fair, adequate and reasonable.” *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996). 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 determines whether the Settlement is the product of fraud, overreaching, or collusion, and, taken as a whole, is fair, reasonable and adequate to all concerned. *Dunk, supra* at 1801.

A proposed settlement is presumed fair where: (1) parties agreed after extensive arms’-length negotiations; (2) sufficient investigation and discovery allow counsel and the Court to act intelligently; (3) counsel is experienced; and, (4) percentage of objectors is small. *Id.* at 1802.

The proposed Settlement is entitled to a presumption of fairness if: (1) it is the product of serious, informed, non-collusive negotiations with an experienced mediator; (2) investigation of the facts and law allow Plaintiffs, their counsel, and the Court to make informed settlement decisions; and, (3) the Class is represented by experienced counsel. The percentage of objectors (4) cannot be known until the Class has notice and an opportunity to respond. At this stage, the proposed Settlement is entitled to the presumption of fairness.

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

The Parties mediated a full day with Louis Marlin, a respected and experienced wage and hour class action mediator and reached a settlement in principle. Counsel continued arms’-length negotiations by phone and email and entered a detailed Settlement Agreement. All Counsel aggressively pursued their respective positions at all times. Geraci Decl. ¶¶23, 24.

2. Discovery and Stage of the Proceedings Support Settlement

Plaintiffs’ Counsel investigated all claims and defenses before filing the Complaint. When the Parties agreed to mediation, Plaintiffs requested, and Defendant produced, data and documents, to allow liability to be assessed and Class-wide damages to be calculated. Geraci Decl. ¶¶23, 32.

Investigation and informal discovery gave the Parties a clear understanding of their strengths and weaknesses before negotiations. *Id.*, See *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal. App. 4th 399, 410 (2010) (approving settlement where “considerable information [exists] from which to assess the strength of the class claims” and litigation risks).

Proof of wage and hour class claims is based, at any stage, almost entirely on written policies and time and pay records. Plaintiff’s counsel obtained those records, and an expert analyzed them and prepared a damage model, before a settlement was negotiated.

3. Counsel are Experienced in Similar Litigation

Plaintiffs’ Counsel have significant experience in wage and hour employment class actions. Geraci Decl. ¶¶2-10, 33; Declaration of Jonathan Lebe, (“Lebe Decl.”) ¶¶6-7. Counsel was able to compare settlement of Class claims with risks of certification, trial, and appeal. Wrike’s counsel, Ryan Crosner and Kevin Ha of Ogletree, Deakins, Nash, Smoak & Stewart, are skilled lawyers, with significant class action experience, who defended vigorously throughout. Geraci Decl. ¶34.

Experienced counsel believes the Settlement is fair, reasonable, and in the Class’ best interest in light of the monetary recovery, risks of certification, summary adjudication, the lengthy process of establishing damages, and uncertainty of appeals. Geraci Decl. ¶35; Lebe Decl. ¶10.

The view of attorneys actively conducting the litigation “is entitled to significant weight” in settlement approval. *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

Plaintiffs and their counsel concluded the proposed Settlement was reasonable. As described below, Wrike strongly disputed certification, liability, and proof of 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,” the Court acts as a fiduciary for absent class members. *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 129 (2008).

1 *Kullar* does not require the parties to submit an illusory prediction of the outer reaches of
2 exposure without taking in to account actual risks of certification, decertification, dispositive
3 motions, and trial. *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal.App.4th 399,
4 408 (2010). It also does not require an explicit statement of the maximum amount the class could
5 recover if it prevailed on all claims provided the record allows “an understanding of the amount
6 that is in controversy and the realistic range of outcomes of the litigation.” *Id.*, at 409.

7 *Munoz* examined the trial court record including number of class members, payroll data,
8 declarations regarding hours worked, and variances in duties and rest and meal period experience.
9 It found this “an adequate basis from which to garner a reasonably adequate understanding of the
10 amount that is in controversy within the meaning of *Kullar*.” *Id.*

11 Class Counsel reviewed all relevant policies and relied on similar data as in *Munoz*,
12 including time and pay records. Plaintiffs’ economist analyzed voluminous data and documents,
13 and calculated Class-wide damages through the date of mediation. Geraci Decl. ¶¶23, 24, 36.

14 **1. Labor Code § 1194 Unpaid Overtime**

15 Employers must pay for hours in excess of 8 per day or 40 per weeks at a rate not less than
16 one and one-half the employee’s regular rate. Labor Code § 510(a).

17 Wrike’s records showed less than half of compensation was paid in commission in 57.9%
18 of pay periods. Plaintiffs assumed class members worked an average of ten hours per shift, five
19 shifts per week, for an estimated total of 77,239 overtime hours during pay periods when they were
20 arguably non-exempt, at rate of \$31.335 per hour (one half regular rate of \$62.63.) Maximum
21 underpayment of overtime wages was \$2,420,284. (all dollar amounts rounded). Geraci Decl. ¶37.

22 Overtime was calculated at one half the regular rate, rather than 1.5, because, even in
23 arguably misclassified pay periods, class members received payment for the overtime hours, but
24 did not receive the overtime premium (.5) for those hours. Geraci Decl. ¶38.

25 Wrike contended class members had different titles, duties, and experiences which may
26 have defeated certification or limited the class to fewer positions. Wrike also credibly argued any
27 overtime was overstated as class members could not have worked an average of two hours per
28 shift, every shift of the Class Period. Geraci Decl. ¶39.

1 Plaintiffs' counsel believed this claim would be certified, but based on class member
2 interviews, many could not support 2 hours per shift. Based on that, Plaintiffs' counsel concluded
3 realistic exposure was 50% of maximum, or \$1,210,142. Geraci Decl. ¶40.

4 **2. Labor Code § 226.7 Meal Period Premiums**

5 "[A]n uninterrupted 30-minute period during which the employee is relieved of all duty,"
6 must "start after no more than five hours." *Brinker Restaurant Corp. v. Superior Court*, 53 Cal. 4th
7 1004, 1042 (2012).

8 A meal period violation in 50% of 38,619 estimated misclassified shifts is a maximum
9 exposure of \$1,209,354 (13,309.5 x \$62.63 regular rate). Geraci Decl. ¶41.

10 Wrike argued, although it did not have a formal meal period policy until November 2020,
11 employees were aware of when and how to take meals and Wrike provided space to take meals and
12 multiple meal options for employees to choose, and, that it "did not discourage" employees from
13 taking meal periods. *Muldrow*, at 1398.

14 Plaintiffs believed maximum damages would be reduced by the introduction, late in the
15 class period, of written meal period policies, and that a court might adopt the reasoning in *Muldrow*
16 to find employees were not discouraged from taking meal breaks. Plaintiffs' counsel concluded
17 realistic exposure was 50% of maximum, or \$604,677. Geraci Decl. ¶42.

18 **3. Labor Code § 226.7 Rest Period Premiums**

19 Employers must authorize the first rest period in "shifts from three and one-half to six hours
20 in length..." *Brinker, Id.*, at 1029 (2012).

21 A violation in 50% of 38,619 estimated shifts is a maximum exposure of \$1,209,354.
22 Geraci Decl. ¶43. As with the meal claim, Plaintiffs considered class members worked
23 autonomously and had many opportunities for breaks. Wrike correctly emphasized there was no
24 evidence rest breaks were discouraged or the nature of the work prevented them. *Id.*

25 Plaintiffs believed maximum damages would be reduced by the introduction, late in the
26 class period, of written rest period policies, and that a court might adopt the reasoning in *Muldrow*
27 to find employees were not discouraged from taking rest breaks. Plaintiffs' counsel concluded
28 realistic exposure was 50% of maximum, or \$604,677. Geraci Decl. ¶44.

4. 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).

Plaintiffs contended wage statements were non-compliant because they did not show all hours worked due to misclassification as exempt. Geraci Decl. ¶45.

Wrike argued the wage statements adequately presented required information and that it made classification decisions in good faith. It contended alleged inability to reconstruct the regular rate was not a violation. Geraci Decl. ¶46.

Plaintiffs estimated maximum exposure for the wage statement claim at \$354,600, based on 3,950 pay periods in the statutory period, limited to Section 226’s maximum penalty of \$4,000. Geraci Decl. ¶47.

Plaintiffs discounted this claim to 40% based on the risk they would not prove an underlying violation, and if proven, the wage statement violation would not be found to be “knowing and intentional,” and penalties would be significantly reduced or not awarded. This resulted in a realistic exposure of approximately \$141,840. Geraci Decl. ¶48.

5. Labor Code § 203 Waiting Time Penalties

An employer must pay all wages due to an involuntarily terminated employee at the time of termination, or within 72 hours to an employee voluntarily terminating. Labor Code § 203. If failure to pay final wages is willful, they continue at the same rate for up to 30 days.

There were an estimated 110 former employees. Maximum exposure was \$2,066,790 (110 e’ees x 10 hr day x 30 days x \$62.63 regular rate). Geraci Decl. ¶49.

The only claim which clearly supported waiting time penalties was for unpaid wages. *Naranjo v. Spectrum Security Services, Inc.*, 40 Cal. App. 5th 444, 474 (2019); review granted, 2020 Cal. LEXIS 167 (January 2, 2020) (Finding rest and meal period premiums do not support waiting time penalties, pending in California Supreme Court.)

Plaintiffs would be required to prove the underlying claim for unpaid overtime and show a “willful” violation. Plaintiffs’ counsel considered the difficulty in certifying and proving the underlying misclassification/overtime violation, particularly showing willfulness given Wrike’s

1 argument it classified employees in good faith, reviewed that periodically, and reclassified when
2 appropriate. Even if wages were found to owed, a court could find Wrike had a good faith belief
3 it was paying wages properly, and “a good faith dispute that any wages are due will preclude
4 imposition of waiting time penalties under Section 203.” *Hill v. Walmart Inc.*, 2021 U.S. Dist.
5 LEXIS 20950, *17 (N.D. Cal. January 14, 2021).

6 Plaintiffs’ counsel believed there was no more than a 50% probability of proving the
7 underlying overtime violation, and so estimated a 20% probability for the final wages claim, for a
8 realistic exposure of \$413,358. Geraci Decl. ¶50.

9 **6. Labor Code §2802 Reimbursement of Business Expenses**

10 An employer must indemnify employees for necessary expenses incurred in discharge of
11 their duties. Labor Code § 2802. A reasonable percentage of an employee’s cell phone charges, and
12 by implication, internet charges, must be reimbursed. “Because of the differences in cell phone
13 plans and work-related scenarios, the calculation of reimbursement must be left to the trial court
14 and parties in each particular case.” *Cochran v. Schwan’s Home Service, Inc.*, 228 Cal. App. 4th
15 1137, 1145 (2014).

16 Plaintiffs argued Wrike was aware class members needed a cell phone and internet access
17 to perform their duties, including because they were encouraged to provide a cell phone number to
18 clients and be available, even if not at work, and they regularly worked at home. Wrike provided
19 evidence of a reimbursement policy and payment of expenses when requested. Geraci Decl. ¶51.

20 Maximum exposure for this claim would be \$170,686 if \$50 per month for cell phone and
21 internet expenses was assumed for each of 3,413 months in the class period. Based on evidence of
22 a reimbursement policy, reimbursements paid, and the risk less than \$50 per month might be found
23 reasonable, realistic exposure was estimated at 40% of maximum, \$68,274. Geraci Decl. ¶52.

24 **7. Labor Code §§ 2699 PAGA Penalties**

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

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

6 Using initial and subsequent violation rates for 3,950 pay periods through March 31, 2021,
7 maximum penalties were estimated at \$7,783,500, for six violations: Sec. 1194 (overtime) –
8 \$751,000; Sec. 226.7 (meal) – \$751,000; Sec. 226.7 (rest) - \$751,000; Sec. 2802 (reimbursement)
9 – \$183,750; Sec. 226.3 (wage statements)– \$3,949,000; Sec. 203 – \$5,600 (final pay) (56 formers).
10 (all at \$100/\$200 per pay period, 226.3 at \$250/\$1,000, reimbursement violation monthly, rather
11 than per pay period). Geraci Decl. ¶ 53.

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

16 A reduction was first made to initial violation rates based on Defendant’s argument, “courts
17 have held that employers are not subject to heightened penalties for subsequent violations unless
18 and until a court or commissioner notifies the employer that it is in violation of the Labor Code.”
19 *Vieyara-Flores v. Sika Corp.*, 2019 U.S. Dist. LEXIS 98081, *13 (C.D. Cal. 2019). (\$2,361,850)

20 Plaintiff believed reasonable exposure was no more than 5% of exposure at initial rates,
21 \$118,093 based on factors considered in determining reasonable exposure for class claims, the
22 ability of the court to reduce penalties nearly to zero, and that “courts have inherent authority to
23 ensure that PAGA claims can be fairly and efficiently tried and, if necessary, may strike a claim
24 that cannot be rendered manageable.” *Wesson v. Staples the Office Superstore, LLC*, 2021 Cal.
25 App. LEXIS 743, *18 (September 9, 2021).

26 The \$50,000 PAGA allocation is well within the range approved by California courts. See
27 *Alcala v. Meyer Logistics, Inc.*, 2019 LEXIS 166879, *26 (C.D. Cal. June 17, 2019) (PAGA
28 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%); *Magadia, Id.*, at 1101, citing, *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). (The LWDA was served with the motion for approval when filed). Geraci Decl. ¶55 - Exhibit 2.

D. The Settlement is Fair, Adequate, and Reasonable

Plaintiff and their Counsel gave serious consideration to all facts and arguments and concluded the Settlement is fair and reasonable. The Maximum Settlement Amount represents over 65% of the reasonable value of Class claims. ($\$2,000,000/\$3,042,968 = 0.657$), and over 25% of maximum exposure ($\$2,000,000/\$7,783,500 = 0.256$). The proposed settlement is well within the “ballpark” of reasonableness. Geraci Decl. ¶54.

Settlement Payments are characterized as 20% wages and 80% penalties and interest. Geraci Decl. ¶29. This is roughly consistent with alleged maximum exposure: $\$17,462,378/100\%$ - $\$4,838,992/27.71\%$ (overtime, rest/meal premium wages), $\$2,419,496/13.86\%$ (interest), $\$10,203,890/58.43\%$ (wage statement, waiting time, PAGA penalties).

A settlement is not judged solely against what might have been recovered at trial, nor must a settlement provide 100% of 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. . .” “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.” *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 628, 624 (9th Cir. 1982) (citation omitted).

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 of adjudication, certification is appropriate. See *Brinker Restaurant Corp. v. Superior Court*, 53 Cal. 4th 1004, 1021 (2012).

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

4 The community of interest requirement embodies three factors: Predominant common
5 questions of law or fact; representatives with claims typical of the class; and class representatives
6 who, with their counsel, can adequately represent the class. *Fireside Bank v. Sup. Ct.*, 40 Cal. 4th
7 1069, 1089 (2007).

8 Plaintiffs allege each Class Member was subject to policies Plaintiffs alleged caused
9 damage to them and the Class, including policies which underpaid wages, caused missed meal and
10 rest breaks, or resulted in non-compliant wage statements. Where the same alleged conduct forms
11 the basis for claims of Plaintiffs and the class, they are common for settlement purposes.

12 Plaintiffs can adequately protect the interests of the Class. *See Wershba v. Apple*
13 *Computers, Inc.*, 91 Cal. App. 4th 224, 238. Plaintiffs each accepted the risks of serving as class
14 representatives, spent significant time assisting in the prosecution of the action, and placed the
15 interest of the class above their own. See Declarations of Benyamin Kebede, Alain Tsai, and
16 Monica Pazmino. A service award to each is appropriate. *Clark v. American Residential Services*
17 *LLC* (2009) 175 Cal.App.4th 785, 804-807.

18 Plaintiffs' attorneys are qualified to conduct the litigation and Plaintiffs' interests are not
19 antagonistic to the interests of the Class. *McGhee v. Bank of Am.*, 60 Cal. App. 3d 442, 450 (1976).

20 **IX. PROPOSED SCHEDULE OF SETTLEMENT PROCEEDINGS**

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

- | | |
|---|--|
| 22 1. Class Data provided to Administrator: | Within 30 calendar days of Preliminary Approval |
| 23 2. Mail Notice Packet to the Class: | Within 14 calendar days of receipt of Class Data |
| 24 3. Notice Response Deadline: | On or before the 45th calendar day from initial date |
| 25 | Administrator mails Notice Packet to Class |
| 26 4. File Motion for Final Approval and | No sooner than 20 days after the close of the |
| 27 Administrator's Declaration Re Claims: | Notice Response Deadline |
| 28 5. Final Approval Hearing: | A date convenient on the Court's calendar |

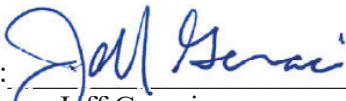
X. CONCLUSION

Plaintiff requests the Settlement be preliminarily approved, Notice approved and ordered disseminated to the Class, Simpluris appointed Administrator, Cohelan Khoury & Singer and Lebe Law, APLC, confirmed as Class Counsel, Plaintiffs Beniyam Kebede, Alain Tsai, and Monica Pazmino confirmed as Class Representatives, and a Final Approval Hearing date set.

Respectfully submitted,

LEBE LAW, APLC
COHELAN KHOURY & SINGER

Dated: October 26, 2021

By: 
Jeff Geraci
Attorneys for Plaintiff BENIYAM KEBEDE,
ALAIN TSAI, and MONICA I. PAZMINO,
individually and on behalf of others similarly
situated