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10
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF FRESNO**
13

14 DANELLE EDWARDS, as an individual and on
15 behalf of all others similarly situated,

16 Plaintiff,

17 vs.

18 HEALTHCOMP, LLC, a Florida Corporation;
19 and Does 1 through 50, inclusive,

20 Defendants.
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22
23
24
25
26
27
28

Case No: 20CECG02338

CLASS ACTION

**PLAINTIFF'S MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT OF
MOTION FOR FINAL APPROVAL OF
STIPULATION OF CLASS ACTION AND
PAGA SETTLEMENT**

Date: October 20, 2022
Time: 3:30 p.m.
Dept.: 502
Judge: Hon. Rosemary McGuire

Complaint Filed: August 10, 2020

1	I.	INTRODUCTION	1
2	II.	STATEMENT OF CASE	2
3		A. Factual Background	2
4		B. Procedural Background.....	3
5		C. Joint Stipulation of Class Settlement Summary.....	4
6		1. Class Settlement Amount.....	4
7		2. The Settlement Class.....	4
8		3. Calculation of Settlement Shares	5
9		4. Attorneys’ Fees and Litigation Expenses	5
10		5. Releases.....	6
11		D. Notice Administration and Class Response.....	7
12	III.	LEGAL STANDARD.....	8
13		A. The Settlement Is Entitled to a Presumption of Fairness.....	9
14		B. The Settlement Is Fair, Reasonable, and Adequate	12
15	IV.	APPROVAL OF SETTLEMENT ADMINISTRATOR FEES	14
16	V.	CONCLUSION.....	15

CASES

<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> (2000) 85 Cal.App.4th 1135, 1146	8
<i>Boyd v. Bechtel Corp.</i> (1979) 485 F. Supp. 610	9
<i>Bush v. Superior Court</i> (1992) 10 Cal. App. 4th 1374, 1382	7
<i>Doty v. Costco</i> , No. 05-cv-03241 (C.D. Cal. 2007).....	11
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794, 1801	8
<i>Ellis v. Naval Air Rework Facility</i> (1980) 87 F.R.D. 15.....	9
<i>Fisher Bros v. Cambridge-Lee Industries, Inc.</i> (E.D. Pa. 1985) 630 F. Supp. 482	10
<i>In re Austrian & German Bank Holocaust Litigation</i> (S.D.N.Y. 2000) 80 F. Supp. 2d 164	10
<i>In re Warner Communications Securities Litigation</i> (1985) 618 F. Supp. 735	9
<i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal.App.4th 116, 128.....	7, 11
<i>Microsoft I-V Cases</i> (2006) 135 Cal.App.4th 706, 723	8
<i>Officers for Justice v. Civil Service Com.</i> (9th Cir. 1982) 688 F.2d 615	7
<i>Parker v. City of Los Angeles</i> (1974) 44 Cal.App.3d 556	5
<i>Schiller v. David’s Bridal, Inc.</i> , 2012 WL 2117001 (E.D. Cal. 2012).....	11
<i>Sorenson v. PetSmart</i> , No. 2:06-cv-02674-JAM (E.D. Cal. 2008).....	11
<i>State of California v. Levi Strauss & Co.</i> , 41 Cal.3d 460 (1986)	8
<i>Stoetzner v. U.S. Steel Corp.</i> (3rd Cir. 1990) 897 F.2d 115.....	10
<i>Wershba v. Apple Computer, Inc.</i> (2001) 91 Cal. App. 4th 224.....	7

STATUTES

Cal. Lab. Code § 2698	2
California Private Attorneys’ General Act (“PAGA”)	2

1 **I. INTRODUCTION**

2 Plaintiff Danelle Edwards (“Plaintiff”), by this Motion for Final Approval of Stipulation of
3 Class Action and PAGA Settlement (“Motion”)¹, submits the Stipulation for Class Action and PAGA
4 Settlement (“the Settlement”) between herself and Defendant HealthComp, LLC (“Defendant”)
5 (collectively “the Parties”) to this Court for final approval. On or about June 30, 2022 the Court
6 preliminarily approved the Settlement, conditionally certified the Class for settlement purposes only,
7 and appointed Plaintiff to represent the conditionally approved settlement class defined as follows:

8 All current and former non-exempt California employees of HealthComp employed at
9 any time from August 10, 2016 to the date of preliminary approval of the Settlement.
10 (June 30, 2022 Order Re Plaintiff’s Motion for Preliminary Approval of Stipulation of Class Action
11 and PAGA Settlement at 1:11-14.)

12 This class and the individuals composing it will be referenced herein as “the Settlement Class”
13 “Settlement Class Members” or “the Class Members.” The Settlement Class consists of 826² current
14 and former employees of Defendant. **No part of the \$1,115,000 Settlement will revert to the**
15 **Defendant, and all Class Members are participating in the settlement³. Also, none of the Class**
16

17 ¹ The arguments contained in this brief are made for settlement purposes only. Defendant has
18 informed Plaintiff that although Defendant supports final approval and has reviewed this brief and its
19 supporting declarations as to form, it reserves its right to contest any representations made by Plaintiff
20 herein as it relates to the merits of the lawsuit, Plaintiff’s factual allegations or description of the
21 procedural history, the propriety of class certification, the propriety of any fee awards,
22 characterizations of the litigation to date, any assessments or projections of the strengths or weakness
23 of any contention before this Court or on appeal, and any calculation of Individual Settlement
24 Amounts.

25 ² Based on review of documents informally exchanged during the negotiation process Plaintiff
26 believed that there were 788 Class Members. However, under closer inspection during preparation of
27 the Class List, it was determined that there are 826 individuals who fall within the class definition.
28 This distinction is negligible and does not affect in any way the merits of the Settlement.

³ As detailed in the Declaration of Lindsay Kline filed concurrently herewith, one Request for
Exclusion was submitted purporting to be on behalf of a Class Member, but the Request did not
provide all of the necessary identifying information that would allow the Administrator and the Parties
to confirm the identity of the Class Member. The Administrator sent a notice to the Class Member to
give them the opportunity to provide the additional information (last four digits of SSN) with an
additional fifteen (15) days to provide the requested information, and no response was received.
Therefore, the Request for Exclusion is not valid under the terms of the Settlement and is classified as
“denied.”

1 **Members objected to the Settlement.** (Declaration of Lindsay Kline (“Kline Decl.”) at ¶¶11-13.)
2 **The average Class Member will receive a settlement payment of approximately \$807.89,** which
3 is a substantial amount, particularly in view of the hourly wage of the Class Members, and the size of
4 the Settlement Class.

5 Following preliminary approval, Class Members received notice of the Settlement and
6 responded favorably to its terms. As mentioned above, none of the Class Members objected and none
7 of the Class Members indicated any intention to appear at the final approval hearing. The extensive
8 Court-approved notice and opt-out procedures were followed, and the Settlement provides for
9 unclaimed or uncashed settlement fund procedures in compliance with California law.

10 The proposed Settlement provides substantial benefits to the Class Members and is the product
11 of over two years of litigation by Class Counsel to obtain an excellent result for the Class Members.
12 The settlement of this action is fair, reasonable, and adequate and in the best interests of the Class.
13 Based on these facts, and based upon the analysis herein, Plaintiff now moves for final approval of the
14 Settlement pursuant to CRC 3.769(g) and to dismiss the Complaint with prejudice. Final approval and
15 dismissal should be granted.

16 **II. STATEMENT OF CASE**

17 **A. Factual Background**

18 Defendant is a third-party independent benefits administrator for self-funded employers.
19 (Declaration of Jared Hague (“Hague Decl.”) [filed on April 27, 2022] at ¶3.) Plaintiff’s employment
20 with Defendant started on or about July 30, 2018 when she was hired by Defendant as a subrogation
21 specialist. (Declaration of Danelle Edwards (“Edwards Decl.”) [filed on April 27, 2022] at ¶3.)
22 Plaintiff and the Settlement Class Members are all non-exempt hourly employees in California.
23 (Hague Decl. at ¶3.) Defendant has two offices in the city of Fresno. (*Id.*) The overwhelming majority
24 of the approximately 826 Settlement Class Members performed clerical and administrative tasks in an
25 office-based setting that would fall within the scope of IWC Wage Order 4 (Professional, Technical,
26 Clerical, Mechanical and Similar Occupations). (*Id.*; Edwards Decl. at ¶¶3-5). During the course of
27 her onboarding process, Plaintiff signed an arbitration agreement by which she purported to waive her
28 right to assert any claims on a class basis. (Hague Decl. at ¶4; Edwards Decl. at ¶6). Plaintiff has

1 confirmed through informal discovery that the presentation and execution of an arbitration agreement
2 substantially identical to that signed by Plaintiff is a standard part of Defendant’s onboarding process
3 for new employees. (Hague Decl. at ¶4). Plaintiff’s employment relationship with Defendant ended
4 on or about August 9, 2019. (Edwards Decl. at ¶7).

5 **B. Procedural Background**

6 On or about May 18, 2020, Plaintiff provided written notice to Defendant and the California
7 Labor and Workforce Development Agency (“LWDA”) of her intent to pursue claims for civil
8 penalties against Defendant under the California Private Attorneys General Act (“PAGA”) for
9 violations of the California Labor Code. (Hague Decl. at ¶6). The May 18, 2020 correspondence was
10 sent via certified mail to Defendant’s agent for service of process and submitted electronically to the
11 LWDA on the same date. (*Id.* at ¶6). Plaintiff did not receive any response to the May 18, 2020 PAGA
12 correspondence from LWDA, thereby allowing her to proceed with her PAGA causes of action under
13 Labor Code § 2699.3(a)(2)(A). (*Id.*).

14 On or about August 10, 2020, Plaintiff filed this Action in Fresno County Superior Court. The
15 Complaint is a “hybrid” individual and representative action, with six causes of action alleged on a
16 class basis (Causes of Action One through Six); ten causes of action alleged on an individual basis
17 (Causes of Action Seven through Sixteen); and nine causes of action alleged on a representative basis
18 pursuant to the California Private Attorneys General Act of 2004 (hereinafter “PAGA”) (Causes of
19 Action Seventeen through Twenty-Five), although the individual causes of action have a separate
20 factual basis from the class and PAGA claims and could have been brought as a separate action. (*Id.*
21 at ¶5). On or about November 20, 2020, Plaintiff filed a First Amended Complaint. The sole additional
22 cause of action in the First Amended Complaint was an individual claim against Defendant for
23 Interference with Leave Rights under the Family and Medical Leave Act, unrelated to the class and
24 PAGA claims. The other causes of action were unchanged. (*Id.* at ¶7). The First Amended Complaint
25 is the operative Complaint in this case and all subsequent references to the Complaint refer to
26 Plaintiff’s First Amended Complaint.

27 On or about April 27, 2022, Plaintiff filed a Motion for Preliminary Approval of Stipulation
28 for Class Action and PAGA Settlement. The Court heard Plaintiff’s Motion on or about June 24, 2022

1 and shortly thereafter issued its June 30, 2022 granting preliminary approval to the Settlement and
2 directing the Settlement Administrator to send notice to the Settlement Class Members of their options
3 and rights under the terms of the Settlement. As set forth in greater detail herein, the Settlement
4 Administrator complied with its obligations and the Settlement Class has responded very favorably to
5 the Settlement.

6 **C. Joint Stipulation of Class Settlement Summary**

7 **1. Class Settlement Amount**

8 In total, Defendant will fund a settlement of the gross maximum amount of \$1,115,000 referred
9 to within the Settlement as the “Gross Settlement Amount.” (Settlement at I.16.) The Gross Settlement
10 Amount is all inclusive of all payments contemplated under the Settlement and accounts for: (1) all
11 Individual Settlement Payments; (2) a penalty payment \$75,000 in satisfaction of Plaintiff’s claim for
12 civil penalties under PAGA, 75% of which will go to the California Labor Workforce and
13 Development Agency (“LWDA”) and 25% of which will be included in the Individual Settlement
14 Payments; (4) settlement administration costs of \$8,995; (5) an award of attorneys’ costs not to exceed
15 \$10,000; and (6) an award of attorneys’ fees not to exceed \$371,629. (Settlement at I.3, 16, 20, 26,
16 35.) No money will revert to Defendant and Defendant will satisfy its share of the payroll tax
17 obligations associated with the Individual Settlement Payments separate and apart from the Settlement
18 (Settlement at I.20, III.10.)

19 The Settlement Administrator will calculate the “Net Class Settlement Fund”, or “NCSF”
20 based on the Gross Settlement Amount less payment to the LWDA, settlement administration costs
21 and attorneys’ fees and costs, and other required deductions for Settlement Class Members’ share of
22 payroll taxes and related wage deductions. (Settlement at I.20.) The NCSF will be used to calculate
23 each Settlement Class Member’s Individual Settlement Payments (Settlement at III.15 – 16.)

24 **2. The Settlement Class**

25 The Settlement Class is limited to all non-exempt hourly employees of Defendant who
26 performed work in California at any time from August 10, 2016 through June 30, 2022, consisting of
27 approximately 826 individuals. (Supplemental Declaration of Jared Hague re Final Approval (“Supp.
28 Hague Decl.”) at ¶3; Kline Decl. at ¶¶6-10.) Because the Settlement also contemplates settlement of

1 Plaintiff's claims under the Private Attorneys General Act ("PAGA"), which has only a one-year
2 statute of limitation, the Settlement also includes a separate calculation of civil penalties for the 662
3 Settlement Class Members whose workweeks fell within the more limited timeframe that applies to
4 PAGA. (Settlement at III.15.) The benefit of the Settlement Class definition is that the Settlement
5 Class Members have already been identified using Defendant's own records and are limited to
6 Defendant's current and former employees in California.

7 **3. Calculation of Settlement Shares**

8 Each of the Settlement Class Members will be eligible to receive his or her individual share of
9 the Net Settlement Amount based on the total number of pay periods worked by each Settlement Class
10 Member during the Class Period. (Settlement at III.14, III.16.) The benefit of this formula is that it
11 relies upon objective evidence of the term of employment, which Settlement Class Members can easily
12 review and confirm for themselves. There are differences in how the Individual Settlement Amounts
13 will be calculated because of the distinctions between Code of Civil Procedures section 382, which
14 applies to the California Class, and Labor Code section 2699, which applies to the Plaintiff's claims
15 under the PAGA. Only those Settlement Class Members who worked during the period applicable to
16 Plaintiff's PAGA claims will receive an Individual PAGA Payment as defined by the Settlement.
17 (Settlement at III.15.)

18 The Settlement Administrator will calculate each Settlement Class Member's individual share
19 by dividing the NCSF by the aggregate total number of pay periods worked by the Settlement Class
20 Members, resulting in a "Pay Period Value." (Settlement at III.16.) The Settlement Administrator will
21 multiply that value by the pay periods worked by each of the Settlement Class Members. (*Id.*)

22 **4. Attorneys' Fees and Litigation Expenses**

23 The Settlement permits Plaintiff's Counsel to request attorneys' fees not to exceed \$371,629—
24 one-third of the \$1,115,000 Gross Settlement Amount. One-third of the total settlement is a generally-
25 accepted figure and appropriate for conditional certification. (*Parker v. City of Los Angeles* (1974) 44
26 Cal.App.3d 556, 557-568). The Settlement also permits Plaintiff's Counsel to request litigation costs
27 not to exceed \$10,000 for their actual documented litigation expenses. (Settlement at I.11.) As
28 provided within the Settlement, Plaintiff filed a Motion for Attorney Fees and Costs on or about

1 August 23, 2022 that details the hourly rates and hours expended in this litigation by Class Counsel
2 and costs incurred to date. (Supp. Hague Decl. at ¶4.) The Motion for Attorney Fees and Costs was
3 also posted on a webpage maintained by Simpluris so that Settlement Class Members could view the
4 motion as part of their decision about whether to participate in the Settlement or object to the
5 Settlement. (Kline Decl. at ¶5.) Plaintiff's Counsel also requested costs in the amount of \$7,264.57.
6 There are no firms or attorneys representing the Plaintiff in this matter other than proposed Class
7 Counsel, such that there are no applicable concerns regarding fee-splitting.

8 **5. Releases**

9 The proposed release, which the Court preliminarily approved on June 30, 2022, only releases
10 claims associated with the specific factual allegations made in the Plaintiff's First Amended
11 Complaint. (Settlement at I.31-32; III.3-5.) Specifically, in exchange for the Gross Settlement
12 Amount, the Settlement provides that as of the Effective Date, Plaintiff and Participating Class
13 Members release the Released Parties for the Class Period of the Released Claims, defined as:

14 Any and all claims arising under federal, state, and/or local statutory, constitutional,
15 contractual, or common law for wages, damages, costs, penalties, liquidated damages,
16 punitive damages, interest, attorney fees, litigation costs, expenses, other fees of any
17 kind, restitution, equitable relief, other relief under California Business & Professions
18 Code Section 17200 et seq. ("Section 17200"), whether known or unknown, asserted
19 or unasserted, accrued or un-accrued, that have been, could have been, or in the future
20 can or might be asserted in any court, tribunal or proceeding (including but not limited
21 to any claims arising under federal, state, local, foreign or common law), by or on
22 behalf of any of the Participating Class Members, whether individual, direct, class,
23 representative, legal, equitable, or other type or in any other capacity against Defendant
24 and the Released Parties, which the Class Members ever had, now have, or may have
25 had, from the beginning of time to the Effective Date, by reason of, arising out of,
26 relating to, or in connection with the acts, events, facts, matters, transactions,
occurrences, statements, representations, misrepresentations, omissions, or any other
matter whatsoever related directly or indirectly to the Action or based on the facts
alleged in the Complaint including, but not limited to, failure to timely pay California
overtime wages; failure to provide timely, off-duty meal and/or rest breaks; failure to
promptly pay all wages due and owing at the time of the employee's separation from
employment; failure to provide accurate itemized wage statements; and engaging in
any unlawful/unfair/fraudulent business practices in violation of Section 17200 as it
relates to the facts and circumstances alleged in Plaintiff's Complaint.

27 In addition, the Settlement Agreement provides that as of the Effective Date, Plaintiffs,
28 individually and on behalf of the Labor and Workforce Development Agency and members of the

1 PAGA Representative Group release the Released PAGA Claims, defined as:

2 [A]ny and all claims for civil penalties that could have been assessed or collected by
3 Plaintiff or the LWDA, a State of California Executive Branch Agency under the
4 PAGA, from the Released Parties based on the allegations set forth in Plaintiff's May
5 18, 2020 letter to the LWDA ("PAGA Letter") and/or based on the facts alleged in the
6 Complaint, including any and all claims under California Labor Code sections 201,
7 203, 204, 210, 216, 225.5, 226, 226.3, 226.7, 256, 432, 510, 512, 558, 1174, 1194,
8 1197, 1197.1, 1198.5, 1199, 2810.5, all of which are expressly referenced in Plaintiff's
9 PAGA Letter, and any other claims for civil penalties for failure to pay overtime, failure
10 to pay all wages owed each pay period, failure to provide compliant meal periods,
11 failure to provide compliant rest periods, failure to issue accurate itemized wage
12 statements, failure to pay wages due and payable twice each calendar month, failure to
13 pay wages due upon demand, failure to maintain accurate payroll records for its non-
14 exempt employees, failure to provide notice of pay, and failure to pay all wages due
15 and owing upon termination.

16 The release does not extend to areas or claims not within the scope of the factual allegations set forth
17 in the operative Complaint, such as workers' compensation, unemployment, wrongful termination or
18 disability benefits claims. (*Id.* at III.4)

19 **D. Notice Administration and Class Response**

20 The Court approved Simpluris, Inc., an experienced settlement administration company, to act
21 as the "Settlement Administrator." On or about July 14, 2022, Counsel for Defendant provided the
22 Settlement Administrator with a mailing list containing the Class Members' names, last known
23 addresses, Social Security Numbers, and applicable employment information. (Kline Decl. at ¶7.) The
24 mailing addresses contained in the Class List were processed and updated utilizing the National
25 Change of Address Database ("NCOA") maintained by the U.S. Postal Service. (*Id.* at ¶8.) The NCOA
26 contains requested changes of address filed with the U.S. Postal Service. In the event that any
27 individual had filed a U.S. Postal Service change of address request, the address listed with the NCOA
28 was utilized in connection with the mailing of the Notice Packet. (*Id.*)

On July 29, 2022, the Settlement Administrator distributed the Court-approved Notice Packet,
which included a Notice of Class Action Settlement and Class Member Information Sheet, to 826
Class Members via First Class Mail. (*Id.* at ¶9.) The Notice included all information pertaining to the
final approval hearing, the telephone number for the Settlement Administrator, and the telephone
numbers and contact information for Class Counsel. (*Id.*, Ex. A.) The Notice also advised Class

Members that they could exclude themselves or object to the Settlement by September 12, 2022. (*Id.* at ¶¶11, Ex. A.)

The Settlement Administrator also performed advanced address traces on all Notices returned as undeliverable. (*Id.* at ¶10.) Through the advanced address searches, the Settlement Administrator was able to locate 13 updated addresses and promptly mailed Notice Packets to those updated addresses. (*Id.*) Ultimately, only three (3) out of the 826 Class Members' Notices were undeliverable because the Settlement Administrator was unable to locate a current address. (*Id.*)

Not a single Class Member objected to the Settlement, and none of the Class Members submitted a valid Request for Exclusion. (*Id.* at ¶¶12-14; *see also* FN2 *supra*.) Counsel for Plaintiff was contacted by two Settlement Class Members who had general questions about the criteria used to identify the Class Members and the timing of disbursement of settlement funds. Both expressed appreciation for the Settlement, and neither indicated an intention to appear at the final approval hearing. (Supp. Hague Decl. at ¶5.) This response speaks to the fairness, reasonableness, and adequacy of the Settlement.

III. LEGAL STANDARD

The law favors settlements. *Bush v. Superior Court* (1992) 10 Cal. App. 4th 1374, 1382. This is particularly true in class actions where substantial resources can be conserved by avoiding the time, cost, and rigors of formal litigation. Here, the Court has already found that the Settlement is within the range of reasonableness to justify preliminary approval of the Settlement and dissemination of notice to the Settlement Class, which was diligently executed. (*See generally* Kline Decl.)

Pursuant to both state and federal rules of civil procedure, "a class action shall not be dismissed or compromised without the approval of the Court and notice of the proposed dismissal or compromise shall be given to all members of the Class in such manner as the Court directs . . ." Cal. Code Civ. P. § 1781(f); Cal. Rules of Court, Rule 3.769. In deciding whether to grant final approval to a proposed class action settlement, the Court's overriding concern is whether the proposed settlement is "fair, adequate, and reasonable." *Dunk v. Ford Motor Company* (1996) 48 Cal. App. 4th 1794, 1801 (quoting *Officers for Justice v. Civil Service Com.* (9th Cir. 1982) 688 F.2d 615, 625, *cert. denied* (1983) 459 U.S. 1217).

1 The decision to approve or reject a proposed settlement lies within the Court’s sound
2 discretion. See *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal. App. 4th 116, 128; *Wershba v. Apple*
3 *Computer, Inc.* (2001) 91 Cal. App. 4th 224, 234–35. Nevertheless, in considering a potential
4 settlement for approval, a court is not to turn the approval hearing “into a trial or rehearsal for trial on
5 the merits . . . [or] to reach any ultimate conclusions on the contested issues of fact and law which
6 underlie the merits of the dispute.” *Officers for Justice*, 688 F.2d at 625. In practical terms, the
7 settlement of a class action follows three parts: 1) Preliminary approval of the proposed settlement; 2)
8 Notice to Class Members, and 3) a Final Approval hearing or “Fairness Hearing” at which evidence
9 and argument may be heard on the fairness, adequacy, and reasonableness of the settlement. Here, the
10 Court has granted preliminary approval of the Settlement and the Notice procedure has been followed,
11 yielding no objections and only one potential opt-out among the Settlement Class.

12 **A. The Settlement Is Entitled to a Presumption of Fairness**

13 As a threshold matter, a class settlement is presumed to be fair when “(1) the settlement is
14 reached through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow
15 counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the
16 percentage of objectors is small.” *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000)
17 85 Cal. App. 4th 1135, 1146. Additionally, in evaluating the fairness of a settlement, “[d]ue regard
18 should be given to what is otherwise a private consensual agreement between the parties.” *Dunk*, 48
19 Cal. App. 4th at 1801. Even then, however, California courts recognize that, “the court’s determination
20 is simply an amalgam of delicate balancing, gross approximations, and rough justice.” *In re Microsoft*
21 *I-V Cases* (2006) 135 Cal. App. 4th 706, 723.

22 As previously explained in the Plaintiff’s Motion for Preliminary Approval and reemphasized
23 herein, the Settlement meets each of the requirements for application of a presumption of fairness, and
24 the Settlement is fair, reasonable, and adequate, and deserving of final approval.

25 **1. The Settlement Was Reached through Arm’s Length Negotiation**

26 This Settlement comes after substantial investigation, discovery and negotiations. The Parties
27 engaged in extensive informal discovery that included providing information about the Settlement
28 Class Members and their number of pay periods worked in California that Plaintiff’s Counsel used,

1 along with other information, to identify the potential value of the claims of Settlement Class
2 Members. (See Hague Decl. [filed on April 27, 2022], ¶¶22-80.) Ample information was obtained
3 from Plaintiff and through the course of informal discovery to allow for meaningful settlement
4 negotiations to take place.

5 Furthermore, “what transpires in settlement negotiations is highly relevant to the assessment
6 of a proposed settlement’s fairness.” *State of California v. Levi Strauss & Co.* (1986) 41 Cal. 3d 460,
7 482. The Parties participated in mediation with a well-known and experienced mediator who is well-
8 versed in this area of law. (Hague Decl. [filed on April 27, 2022], ¶¶14-18.) Counsel for both sides
9 came well-prepared and knowledgeably argued their positions regarding all applicable legal theories,
10 competing valuations of potential class-wide damages, and analysis of Defendant’s affirmative
11 defenses. (*Id.*)

12 The negotiations were conducted at arm’s-length and the resulting settlement was the outcome
13 of an informed and educated analysis of certification and liability issues. (*Id.*) The mediator’s role in
14 mediating this matter was an extremely helpful tool in managing the expectations of the Parties and
15 providing a useful, neutral analysis of the issues and risks to both sides. The uncertainty of the ruling
16 by the trier of fact with respect to the merits and damages gave the Parties the perspective and incentive
17 to thoroughly assess the risks of the case and enter a well-reasoned settlement based upon those risks.
18 A trial is fraught with unpredictability, and if a trial victory were achieved—which is far from
19 guaranteed—surviving any post-trial motions or appeals would have come at great litigation costs and
20 expenses to the Class. Accordingly, Plaintiff determined that the proposed settlement was and is
21 reasonable.

22 **2. Class Counsel Have Conducted Sufficient Discovery and Investigation to Justify** 23 **the Settlement**

24 The Parties exchanged an extensive amount of information as part of the mediation process to
25 allow a full evaluation of the strengths and weaknesses of the case. Among the documents produced
26 by Defendant during litigation were exemplars of timekeeping and payroll documents provided to
27 Settlement Class Members and data reflecting the number of Settlement Class Members’ pay periods
28 during which they performed services for Defendant in California. Alleged deficiencies in Defendant’s

1 policies providing Settlement Class Members with meal and rest periods that comply with California
2 law, timekeeping records reflecting potential meal period violations, records reflecting payment of
3 bonuses that were not included in Defendant’s calculation of the regular rate of pay, and statutory and
4 civil penalties derivative therefrom, form the crux of Plaintiff’s theory of Defendant’s liability in this
5 case. (See Hague Decl. [filed on April 27, 2022], ¶¶22-80.)

6 Based on the foregoing the litigation most certainly reached a stage where “the parties certainly
7 have a clear view of the strengths and weaknesses of their cases.” *In re Warner Communications*
8 *Securities Litigation* (1985) 618 F. Supp. 735, 745, *aff’d* (1986) 798 F.2d 35; *Ellis v. Naval Air Rework*
9 *Facility* (1980) 87 F.R.D. 15, 18, *aff’d* (9th Cir. 1981) 661 F.2d 939; *Boyd v. Bechtel Corp.* (1979)
10 485 F. Supp. 610, 616–17. The substantial discovery and investigation conducted by Plaintiff justifies
11 application of the presumption of fairness.

12 **3. Class Counsel Are Experienced in Wage and Hour Litigation**

13 Experienced counsel, operating at arm’s length, have weighed all the foregoing factors and
14 endorse the Settlement. As the Courts have explained, the view of the attorneys actively conducting
15 the litigation, is “entitled to significant weight.” *Fisher Bros v. Cambridge-Lee Industries, Inc.* (E.D.
16 Pa. 1985) 630 F. Supp. 482, 488; *see also Ellis*, 87 F.R.D. at 18; *Boyd*, 485 F. Supp. at 616–17.

17 Applied here, the experience of counsel clearly justifies a presumption of fairness in evaluating
18 the Settlement. Class Counsel has extensive experience in wage and hour class actions from both the
19 plaintiff and defense perspectives. (See Declaration of S. Brett Sutton (“Sutton Decl.”) ¶¶ 3–15 [filed
20 on April 27, 2022]; Hague Decl. ¶¶81-82.) This experience allowed Class Counsel and Plaintiff to
21 realistically evaluate the strengths and weaknesses of the case and effectively and efficiently prosecute
22 this action and recommend an appropriate settlement. Plaintiff’s attorneys have each been appointed
23 class counsel in numerous wage and hour class actions litigated in both California and federal courts
24 and have handled numerous class action settlements through final approval.

25 **4. The Settlement Class Responded Favorably to the Settlement**

26 The reaction of the settlement Class overwhelming supports approval of the Settlement.
27 Significantly, none of the Class Members objected or submitted a valid Request for Exclusion. (Kline
28 Decl. at ¶¶11-13.) Likewise, there are no valid disputes by any of the Settlement Class Members

1 concerning the calculation of their individual settlement amounts or the number of pay periods
2 attributed to their employment with Defendant during the relevant time period. (*Id.* at ¶14.)

3 The absence of any objector strongly supports the fairness, reasonableness and adequacy of
4 the Settlement. *See In re Austrian & German Bank Holocaust Litigation* (S.D.N.Y. 2000) 80 F. Supp.
5 2d 164, 175 (“If only a small number of objections are received, that fact can be viewed as indicative
6 of the adequacy of the settlement.”); *Stoetznor v. U.S. Steel Corp.* (3rd Cir. 1990) 897 F.2d 115, 118–
7 19 (29 objections out of 281 member class “strongly favors settlement”). Here, the overwhelming
8 approval of the Class is evident.

9 Counsel for Plaintiff will likewise submit the Motion for Final Approval and papers in support
10 thereof to the California Labor and Workforce Development Agency for its review of those aspects of
11 the Settlement pertaining to PAGA. (Supp. Hague Decl. at ¶6). However, Plaintiff has not received
12 any communication from that agency related to this case to date, including in response to the
13 submission of the July 30, 2022 Order Granting Preliminary Approval to Joint Stipulation of Class
14 Action and PAGA Settlement, and does not anticipate that any representative of the Agency will
15 appear at the final approval hearing.

16 **B. The Settlement Is Fair, Reasonable, and Adequate**

17 Even analyzing the Settlement beyond the presumption of fairness that it should be accorded,
18 the Settlement still passes muster for final approval under the “fair, reasonable, and adequate” standard
19 that courts use to evaluate class settlements. California courts recognize several factors that bear on
20 the fairness, adequacy, and reasonableness of a proposed class settlement. *See Kullar*, 168 Cal. App.
21 4th at 128. In relevant part, these factors include: 1) the amount offered in settlement; 2) the strength
22 of plaintiff’s case; 3) the risk, expense, complexity, and likely duration of further litigation; 4) the risk
23 of maintaining class action status throughout trial; 5) the experience and views of counsel; and 6) the
24 reaction of the class members to the proposed settlement. As demonstrated below, the Settlement
25 satisfies all requirements and should be finally approved.

26 **1. The Amount of the Settlement Is Fair, Adequate and Reasonable**

27 The \$1,115,000 Gross Settlement Amount unquestionably demonstrates the fairness of the
28 Settlement considering Plaintiff’s view of the realistic exposure in the case. As Class Counsel

1 previously demonstrated for the Court in Plaintiffs’ Motion for Preliminary Approval, after extensive
2 analysis and review of Settlement Class Member records, Plaintiff’s counsel was able to make
3 reasonably accurate assessments of the risks involved in continued litigation and trial and estimate the
4 likelihood of success on the claims asserted on behalf of the Class. Plaintiff’s counsel’s assessment of
5 the case supported the conclusion that \$1,115,000 was a fair, adequate, and reasonable settlement. (See
6 Hague Decl. [filed on April 27, 2022] at ¶¶22-80.)

7 The average estimated individual net settlement amount of approximately \$807.89 and the
8 highest estimated individual settlement payment of \$1,933.81 also demonstrates the adequacy of the
9 Settlement. (Kline Decl. at ¶17.) This is a very good result and will provide a significant benefit to the
10 Class Members. This figure compares very favorably in comparison to the result achieved in other
11 wage and hour class action cases. *See, e.g., Doty v. Costco*, No. 05-cv-03241 (C.D. Cal. 2007) (\$58
12 average gross recovery); *Sorenson v. PetSmart*, No. 2:06-cv-02674-JAM (E.D. Cal. 2008) (\$57
13 average gross recovery); *Schiller v. David’s Bridal, Inc.*, 2012 WL 2117001 (E.D. Cal. 2012) (\$198.70
14 average recovery.) The average individual net share in this case of \$807.89 is particularly significant
15 considering the recognized fact that wage claims of the type involved in this case “are not types of
16 claims that generally produce substantial individual damages awards . . .” *Schiller, supra* at *17. Thus,
17 the results obtained for the Class Members strongly weighs in favor of final approval.

18 **2. The Settlement Is Reasonable in Light of the Strengths and Weaknesses of the Case**

19 “Compromise is inherent and necessary in the settlement process . . . even if the relief afforded
20 by the proposed settlement is substantially narrower than it would be if the suits were to be successfully
21 litigated, this is no bar to a class settlement because the public interest may indeed be served by a
22 voluntary settlement in which each side gives ground in the interest of avoiding litigation.” *Wershba*,
23 91 Cal. App. 4th at 246.

24 As already described *supra*, prior to reaching this settlement, Class Counsel conducted
25 extensive informal discovery and detailed investigation into the claims alleged by Plaintiff. The
26 information obtained through discovery allowed Plaintiff and Class Counsel to evaluate Defendant’s
27 realistic exposure. This in turn allowed Plaintiff and Class Counsel to negotiate the best possible
28 settlement on behalf of the Class Members.

1 **3. The Risk, Expense, Complexity and Duration of Litigation All Weigh In Favor of**
2 **Settlement Approval**

3 This Action has already lasted for more than two years and is highly likely to continue for
4 additional years if the case does not resolve through settlement. The length of the litigation and trial,
5 and accompanying likelihood of appeal, is a natural consequence of the fact that class action litigation
6 is, by nature, highly complex and involves potentially hundreds of witnesses, extensive data and
7 documentary evidence, and requires significant expert testimony. This litigation has already resulted
8 in substantial expense for all parties involved and entailed substantial judicial resources, and those
9 expenses will likely increase sharply through hearing on class certification and through trial if the
10 Settlement is not approved. Thus, this factor weighs in favor of granting final approval to the
11 Settlement.

12 **4. The Experience and Views of Counsel Favor Approval**

13 As already articulated *supra*, Class Counsel's experience in wage and hour class action
14 litigation should be afforded deference in terms of the Court's evaluation of the Settlement. Class
15 Counsel has benefited from their years of experience on both plaintiff and defense wage and hour
16 litigation, through extensive formal and informal discovery and with the assistance of an experienced
17 mediator, to carefully evaluate this Action and arrive at a settlement which, in the view of Class
18 Counsel, represents the best possible outcome for the Class Members.

19 **IV. APPROVAL OF SETTLEMENT ADMINISTRATOR FEES**

20 Plaintiff requests final approval for settlement administration costs of \$8,995.00. (Kline Decl.
21 at ¶18.) The Settlement Administrator promptly and properly distributed the Notice to the Class
22 Members and has been performing its duties in accordance with the Settlement and the Court's
23 preliminary approval order. (*Id.*, *generally.*) Simpluris' work in connection with this matter will
24 continue with the calculation of the settlement payments, issuance and mailing of the settlement
25 checks, etc., as well as completing the necessary tax reporting on such payments.

26 The Settlement Administrator has agreed to accept \$8,995.00 for its services. This fee includes
27 all costs incurred to date, as well as all estimated costs involved in completing the settlement
28 administration. (Kline Decl. at ¶18.) Accordingly, the requested payment is fair and reasonable, and

1 should be accorded final approval along with the rest of the settlement terms.

2 **V. CONCLUSION**

3 Based on all the foregoing, Plaintiff respectfully requests that the Court enter an order granting
4 final approval of the Settlement and judgment in favor of Plaintiff as to Causes of Action One through
5 Six and Eighteen through Twenty-Six and dismiss this Action with prejudice.

6
7 DATE: September 19, 2022



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