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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF TULARE

DON M. VASQUEZ, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

SAPUTO CHEESE USA INC., a Delaware
corporation; and DOES 1 through 25,
inclusive

Defendants.

Case No. VCU282978

Consolidated with Case No. VCU283853

ASSIGNED FOR ALL PURPOSES TO:

The Honorable John P. Bianco

Department 2

CLASS ACTION

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
UNOPPOSED MOTION FOR
PRELIMINARY SETTLEMENT
APPROVAL**

Hearing: December 4, 2023

Time: 8:30 a.m.

Dept.: 2

Judge: Hon. John P. Bianco

Complaint filed: May 27, 2020

Trial date: Not set

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I. INTRODUCTION

Plaintiff Don Vasquez seeks preliminary approval of a \$2,400,000 wage and hour class and Private Attorneys General Act (“PAGA”) settlement for an estimated 2,350 non-exempt California employees who worked for Saputo Cheese USA Inc. (“Saputo”), anytime from May 27, 2016 to March 30, 2023 (“Class Period”). Declaration of Jeff Geraci, (“Geraci Decl.”) ¶11, Exh. 1- Stipulation of Class and PAGA Settlement (“Agreement” or “SA”).

II. THE PARTIES

A. Plaintiff

Plaintiff started with Saputo in 2006, became a Line Coordinator in 2016, and worked in Tulare until June 2019. Declaration of Don M. Vasquez (“Vasquez Decl.”) ¶3.

B. Defendant

Saputo started in 1954 and became publicly traded in 1994. It produces, markets, and distributes dairy products, such as cheese, milk, and yogurt, at five plants in California - three in Tulare, one in Stanislaus, and one in Los Angeles. With one exception, the plants have mainly operated 24 hours per day, seven days per week. Geraci Decl. ¶12.

C. The Class and Aggrieved Employees

The Class is, “All current and former nonexempt California employees of Saputo employed at any time from May 27, 2016 through and including March 30, 2023.” SA ¶6. Class Members worked an estimated 400,000 weeks during the Class Period. Geraci Decl. ¶13.

The Class includes an estimated 1,500 non-exempt California employees, who worked anytime May 12, 2019 to March 30, 2023 (“PAGA Period”). “Aggrieved employees” worked an estimated 133,000 pay periods. Geraci Decl. ¶14.

III. PROCEDURAL HISTORY

On May 27, 2020, Plaintiff filed a class action against Saputo. This case was removed July 24, 2020. On August 6, 2020, Plaintiff filed a PAGA action which was stayed pending resolution of the class action. (Case No. VCU283853). The Parties eventually reached the proposed settlement of both actions. The class action was remanded, and the actions were consolidated November 6, 2023. Geraci Decl. ¶15.

IV. PLAINTIFF'S CONTENTIONS AND SAPUTO'S DEFENSES

Plaintiff argued Saputo did not provide compliant meal or rest periods and did not adopt fully compliant written meal and rest policies until June 2017. Plaintiff also argued employees were reluctant to report not being able to take rest and meal breaks because an employee could be disciplined for failing to take a break. Geraci Decl. ¶16.

Saputo contended its policies were compliant throughout the class period, and produced evidence it communicated compliant rest and meal policies to employees in each plant, including power point slides, testimony of a human resources employee, and attendance sign-in sheets, including several signed by Plaintiff. Saputo also contended it did not discourage employees from taking breaks and produced evidence employees, including Plaintiff, had reported, and been paid for, missed breaks. Saputo also correctly pointed out there were no records which could be used to establish rest period violations. Geraci Decl. ¶17.

Plaintiff also contended rest periods were non-compliant because a few specific positions for a short time at the start of the class period may have carried radios while on rest breaks. This was for a limited period of time, was contested, and Saputo produced a written policy explicitly stating radios were not to be carried during breaks. A class member survey suggested few were required to carry a radio, or respond during breaks. Geraci Decl. ¶18.

Review of the time data showed less than 20% facial non-compliance for meal periods, which is relatively low. Saputo contended even that was overstated, and records showing missed, late or short meals, were by employee choice, and created individual issues which would be difficult or impossible to certify. Review of the pay data showed Saputo paid a substantial amount of meal period premiums during the class period. Geraci Decl. ¶19.

Plaintiff contended on a several occasions he was told to clock out but continue working. Saputo denied this and produced evidence of policies explicitly prohibiting off the clock work. A mediation survey of class members did not support this claim. Geraci Decl. ¶20.

Plaintiff argued he reported to work but was not offered at least half his scheduled shift. This could not be shown through documents. Saputo produced evidence it paid for reporting time on one occasion it could not offer adequate work. Geraci Decl. ¶21.

1 Finally, Saputo contended the estimated 17% of putative class members who worked at
2 its Newman, California plant and are covered by a collective bargaining agreement (CBA)
3 could not be establish class or PAGA claims, as any of the claims alleged required proceeding
4 through the grievance process, which Plaintiff could not have initiated, since he was not
5 covered by the CBA. Plaintiff believed it may have been possible to assert some claims
6 arguably not included in the CBA for these employees, but conceded this defense, if successful,
7 could substantially limit class any potential recovery. Geraci Decl. ¶22.

8 **V. DISCOVERY, INVESTIGATION, AND MEDIATION**

9 Plaintiff conducted sufficient formal and informal discovery to evaluate the strengths
10 and weaknesses of his claims and Saputo's defenses, which included written discovery and the
11 corporate deposition of Saputo on all relevant topics, and Plaintiff sitting for his deposition.
12 Geraci Decl. ¶23.

13 The Parties agreed to mediate in May 2022, with John S. Adler, Esq. a mediator with
14 more than 40 years of employment law experience. The matter did not settle. After re-
15 commencing discovery, and exchanging additional documents, the Parties agreed to a second
16 mediation. Geraci Decl. ¶24.

17 By the second mediation, Saputo had produced all relevant rest and meal policies, all
18 policies covering off the clock work, power point presentations, documents showing policies
19 presented in person to employees, including attendance sheets, along with 100% of time and
20 pay data through February 26, 2023. Plaintiff's consultant analyzed this data and calculated
21 class wide damages. Counsel conferred extensively about data, claims, defenses, and settlement
22 issues. Geraci Decl. ¶25.

23 With significant investigation, research, discovery, and analysis of data by Plaintiff's
24 damages consultant, On March 30, 2023, the Parties mediated with Honorable Amy D. Hogue
25 (Ret.), a distinguished attorney and former judge who served in the Los Angeles County
26 Superior Court's Complex Case Division, on assignment in the Second Appellate District, and
27 was one of the creators of the Los Angeles County Superior Court Model Class Action and
28 PAGA Settlement Agreement. Geraci Decl. ¶26.

VI. SUMMARY OF PROPOSED SETTLEMENT

A. Settlement Terms

Saputo will pay the maximum Gross Settlement Amount (“GSA”) of \$2,400,000, including: (a) Settlement Administration costs to CPT Group not to exceed \$17,500; (b) a Class Representative service payment up to \$10,000 to compensate Plaintiff for services to, and risks taken on behalf of, the Class; (c) Class Counsel Fees up to \$800,000 (one-third GSA) (50/50 between Class Counsel with Plaintiff’s consent. Geraci Decl. ¶27); (d) Class Counsel Costs estimated at \$35,000; (e) \$120,000 PAGA penalties - \$90,000 (75%) Labor Workforce and Development Agency (LWDA) and \$30,000 (25%) Aggrieved Employees. Saputo will pay employer’s share of payroll taxes in addition to GSA. Geraci Decl. ¶28; SA ¶11, 12 15, 16.

After Court-approved deductions, the estimated Net Class Settlement Fund (“NCSF”), \$1,417,500, will be distributed to Participating Class Members. Individual Gross Settlement Payments will be allocated as 20% wages (W-2), 80% penalties and interest (1099), and calculated by dividing the total number of weeks all Class Members worked during the Class Period by the NCSF and multiplying that number by the number of weeks each Class Member worked during the Class Period. Geraci Decl. ¶29.

The Settlement distribution formula is fair and reasonable and does not give preferential treatment to any Class Member and can be made from data readily available from Saputo, and the Settlement Administrator can apply the formula fairly and transparently. Geraci Decl. ¶30.

The Settlement is based on data provided by Saputo showing an estimated 400,000 Class Member Workweeks. If, by the date the Individual Gross Settlement Payments are estimated, the number of Workweeks is more than 7.5% higher than 400,000 for the Class Period, the Gross Settlement Amount shall increase by that amount, i.e. if Workweeks increase by 7.50%, the GSA will not increase, but if Workweeks increases by 7.51%, GSA increases by 7.51%. SA ¶23. Geraci Decl. ¶31.

B. Released Claims

Participating Class Members will release Saputo, its parents, subsidiaries, affiliates, insurers, successors, assigns, related entities and agents, (SA ¶33) from all claims:

[T]hat were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint, including any and all claims arising under federal, state, and/or local statutory, constitutional, contractual, or common law for wages, damages, costs, penalties, liquidated damages, punitive damages, interest, attorney fees, litigation costs, expenses, other fees of any kind, restitution, equitable relief, other relief under California Business & Professions Code Section 17200 et seq. (“Section 17200”) by or on behalf of any of the Participating Class Members, whether individual, direct, class, representative, legal, equitable, or other type or in any other capacity against Defendant and the Released Parties, which the Class Members ever had, now have, or may have had based on the Class Period facts stated in the Operative Complaint, from the beginning of time to the Effective Date, including, but not limited to, failure to timely pay minimum wage, failure to pay overtime wages, failure to pay reporting time pay, failure to provide timely, off-duty meal and/or rest breaks, failure to timely pay all wages due and owing during employment, 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, failure to reimburse employees for business expenses, engaging in any unlawful/unfair/fraudulent business practices in violation of Section 17200 and the requirements of the Industrial Welfare Commission Wage Order applicable thereto.” SA ¶31.

PAGA Employees will release Released Parties only for “claims for PAGA civil penalties” that could have been awarded “based on the facts alleged in the Complaint,” for the violations described above. SA ¶32.

C. Settlement Administration and Notice to the Class

CPT Group will mail a “Class Notice” to each Class Member. Declaration of CPT Group by Julie Green, (“CPT Decl.”), ¶7, SA, Exh. A. The Notice explains how to dispute the basis of a Settlement Payment; object or opt out; the release to be given; date of Final Approval Hearing; how to get further information; and that it is unnecessary to submit a claim form. Geraci Decl. ¶32.

VII. ARGUMENT

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

At preliminary approval, a court limits its inquiry to the extent necessary to reach a reasoned judgment “the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties.” *In re Microsoft I-V Cases* (2006) 135 Cal. App. 4th 706, 723.

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.* (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, [] 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. *Id.*

A court may presume a proposed settlement is fair where: (1) parties agreed after extensive arms’-length negotiations; (2) sufficient investigation and discovery allow counsel and Court to act intelligently; (3) counsel is experienced; and, (4) percentage of objectors is small. *Dunk, supra*, at p. 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 plaintiff, their counsel, and the court to make informed settlement

1 decisions; and, (3) the Class is represented by experienced counsel. The fourth factor,
2 percentage of objectors, cannot be known until the Class has notice and an opportunity to
3 respond. At this stage, the proposed Settlement is entitled to the presumption of fairness.

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

5 The Settlement was reached through arm's-length negotiations facilitated by an
6 experienced and respected wage and hour class action mediator. Though cordial and
7 professional, negotiations were at all times adversarial and non-collusive. Geraci Decl. ¶33.

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

9 Plaintiff's Counsel investigated all claims and defenses before filing. When the Parties
10 agreed to mediation, Plaintiff requested, and Defendant produced, data and documents to allow
11 liability to be assessed and damages to be calculated. Geraci Decl. ¶34.

12 Investigation and discovery gave the Parties a clear understanding of their strengths and
13 weaknesses before negotiations. *Id.* at ¶¶23, 35; *See Munoz v. BCI Coca-Cola Bottling Co. of*
14 *Los Angeles* (2010) 186 Cal. App. 4th 399, 410 (approving settlement where "considerable
15 information [exists] from which to assess the strength of the class claims" and litigation risks).

16 Proof of wage and hour class claims is based, at any stage, almost entirely on written
17 policies and pay records. Plaintiff's counsel obtained those records, and an expert analyzed
18 them and prepared a damage model, before a settlement was negotiated. Geraci Decl. ¶35.

19 **3. Counsel are Highly Experienced in Similar Litigation**

20 Plaintiff's Counsel have significant experience in wage and hour employment class
21 actions. Geraci Decl. ¶¶2-10; Declaration of Jonathan M. Lebe, ("Lebe Decl."), ¶9. This
22 allowed Counsel to compare settlement of class claims with the risks of further litigation,
23 including trial and appeals. Defense counsel, S. Brett Sutton and Jared Hague, are skilled and
24 experienced wage and hour class action litigators who defended vigorously throughout,
25 including during mediation and in negotiations of the settlement agreement. Geraci Decl. ¶36.

26 Experienced counsel believes the Settlement is fair, reasonable, and in the Class' best
27 interest in light of the monetary recovery, risks of certification, summary adjudication, the
28 lengthy process of establishing damages, and uncertainty of appeals. Geraci Decl. ¶37.

1 The view of the attorneys actively conducting the litigation “is entitled to significant
2 weight” in settlement approval. *Fisher Bros. v. Cambridge Lee Industries, Inc.* (E.D. Pa. 1985)
3 630 F.Supp. 482, 488. The Settlement satisfies the three *Dunk* requirements, should be
4 presumed fair, adequate, and reasonable, and preliminarily approved.

5 **4. The Settlement is Fair, Adequate, and Reasonable**

6 Plaintiff and his counsel concluded the proposed Settlement is reasonable. As noted,
7 Saputo strongly disputed certification, liability, and damages.

8 **C. The Settlement is a Reasonable Compromise of Claims**

9 “[T]o ensure that the recovery represents a reasonable compromise, given the
10 magnitude and apparent merit of the claims being released, discounted by the risks and
11 expenses of attempting to establish and collect on those claims by pursuing the litigation,”
12 information is presented to the Court, as a fiduciary for absent class members. *Kullar v. Foot*
13 *Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129. *Kullar* does not require an illusory
14 prediction of the outer reaches of exposure without taking into account actual risks of
15 certification, decertification, dispositive motions, and trial. *Munoz, supra*, at p. 408. *Kullar* also
16 does not require an explicit statement of the maximum amount the class could recover if it
17 prevailed on all claims, only a record which allows “an understanding of the amount that is in
18 controversy and the realistic range of outcomes of the litigation.” *Munoz, supra*, at p. 409.

19 *Munoz* considered the number of class members and time and pay data. It found this “an
20 adequate basis from which to garner a reasonably adequate understanding of the amount that is
21 in controversy within the meaning of *Kullar*.” *Munoz, supra*, at p. 409.

22 In advance of mediation, Plaintiff’s Counsel evaluated the claims to determine
23 Defendant’s exposure and a reasonable range of Class relief. Although Plaintiff believes the
24 claims are strong, he recognizes if litigation were to continue, he may encounter significant
25 legal and factual hurdles that could prevent any Class recovery. Geraci Decl. ¶38.

26 Class Counsel relied on similar documents and data as in *Munoz*, including time and
27 pay records. Plaintiff’s economist analyzed over four million lines of data and documents, and
28 calculated damages through the date of mediation. Geraci Decl. ¶39.

1. Labor Code § 226.7 Meal Period Premiums

“[A]n uninterrupted 30-minute period during which the employee is relieved of all duty,” must “start after no more than five hours.” *Brinker Restaurant Corp. v. Superior Court*, 53 Cal. 4th 1004, 1042 (2012). “If time records show missed, short, or delayed meal periods with no indication of proper compensation, then a rebuttable presumption arises.” *Donohue v. AMN Services, LLC*, 11 Cal. 5th 58, 77 (2021).

A total of 360,328 unique meal period violations were found in Saputo’s records and multiplied by the aggregate average regular rate of \$23.69 per hour, to calculate maximum exposure of \$7,468,581 (360,328 x \$23.69 regular rate - \$1,067,597 estimated meal period premiums paid by Saputo. Geraci Decl. ¶40.

Time records showed only 19.8% unique violations in shifts over five hours. (360,328/1,819,840 = 19.8%). Saputo correctly pointed out violations were mainly for second meals. It argued second meals were waived and the *Donohue* presumption was easily rebutted by among other things, compliant written policies, and evidence employees received policy training. It cited several cases reaching that conclusion. *Corral v. Staples the Office Superstore LLC*, (C.D. Cal. February 6, 2023) 2023 U.S. Dist. LEXIS 37881, *33-34; *Howell v. Leprino Foods Co.*, (E.D. Cal. March 23, 2022) 2022 U.S. Dist. LEXIS 52796, *25. Geraci Decl. ¶41.

Plaintiff believed maximum damages would be significantly reduced, if awarded, based on the relatively low violation rate, which tends to suggest employees may have chosen to take lunch late, or return early (the percentage of missed first meals was only 0.4%). Plaintiff’s counsel concluded realistic exposure was 25% of maximum, or \$1,867,145. Geraci Decl. ¶42.

2. Labor Code § 226.7 Rest Period Premiums

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

For the first year of the class period, Saputo’s policy did not explicitly state employees could leave the premises during rest periods, an arguable violation of the then new decision, *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 267 (2016). Proving rest period claims is more difficult than meal period claims for several reasons. No records of rest periods are

1 required, no presumption of violation arises, and regardless of workload or other impediment, it
2 is easier for employees to take 10-minute, rather than 30-minute breaks. Plaintiff believed
3 maximum damages would be reduced by the existence of compliant rest period policies, the
4 lack of evidence employees were discouraged from taking rest breaks, and evidence employees
5 had been paid after reporting missed rest periods. Geraci Decl. ¶43.

6 Plaintiff assumed a violation in 10% of 1,859,320 shifts over 3.5 hours, for maximum
7 exposure of \$4,404,729 (185,932 x \$29.59). Plaintiff's counsel concluded realistic exposure
8 was no more than 20% of maximum, or \$482,337. Geraci Decl. ¶44.

9 **3. Labor Code § 1194 Unpaid Wages (Off the Clock, Reporting Time)**

10 Employers must pay for all hours they "suffer or permit" employees to work. *Morillon*
11 *v. Royal Packing Company*, 22 Cal. 4th 575, 584-5 (2000); Labor Code § 1194.

12 Off-the-Clock. A "rest period must be, as the language implies, duty-free." *Augustus v.*
13 *ABM Security Services, Inc.* 2 Cal. 5th 257, 267 (2016). "[E]mployers must relieve their
14 employees of all duties and relinquish any control over how employees spend their break time."
15 *Augustus*, at 260. An "employers' responsibilities are the same for meal and rest periods—an
16 inference that also reflects the protective purpose of both." *Id.* at 265, 266.

17 Plaintiff argued there was a short period of time employees in certain positions carried
18 radios and were required to respond to calls during meal periods. Saputo produced evidence of
19 an explicit policy introduced no later than June 2017, and provided to employees ("Do not
20 respond to calls during meal/rest periods or carry/use/possess a radio/walkie-talkie/cell
21 phone."). Based on this, and lack of contrary evidence, Plaintiff assumed 20% of employees
22 carried radios and needed to be available to respond in 20% of shifts over five hours through
23 the end of July 2017. (10,401 shifts x .5 hrs x \$23.69). Plaintiff assumed 30 minutes in each of
24 these shifts for maximum exposure of \$123,200. Geraci Decl. ¶45.

25 Based on the difficulty of proving a claim with no supporting records, and Saputo's
26 evidence, realistic exposure was considered 20% of maximum, or \$24,260. Geraci Decl. ¶46.

27 Reporting Time. Based on time and pay records produced by Saputo, and a mediation
28 survey, it was determined this claim had little value. Even assuming every employee was

1 denied reporting time pay at some point during the class period, which the evidence did not
2 support, maximum exposure is \$222,686 (2,350 x 4 hrs x \$23.69), and realistic is 10%, or
3 \$22,269. Geraci Decl. ¶47.

4 **4. Labor Code § 226 Wage Statement Penalties**

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

7 Plaintiff contended wage statements were non-compliant because they did not show all
8 hours worked due to off the clock work and unpaid rest and meal premiums. Penalties were
9 calculated for the 1,500 employees during this period and, assuming a \$4,000 penalty for all,
10 maximum exposure was \$6,000,000. § 226(e). Geraci Decl. ¶48.

11 Plaintiff considered this derivative violation requires Plaintiff to prevail on the
12 underlying claims and show the violation was “willful.” Courts may find willfulness lacking
13 when an employer has in “good faith” relied on “a defense based in law or fact which, if
14 successful, would preclude any recovery on the part of the employee.” *Magadia v. Wal-Mart*
15 *Assocs. Inc.* 384 F. Supp. 3d 1058, 1085 (N.D. Cal. 2019), *rev’d on other grounds*, 999 F.3d
16 668 (9th Cir. 2021). Based on the risk underlying violations would not be proven, and the
17 likelihood Saputo was found to have a good faith belief lawful wage statements, realistic
18 exposure was considered 5% of maximum exposure, or \$300,000. Geraci Decl. ¶49.

19 **5. Labor Code § 203 Waiting Time Penalties**

20 An employer must pay all wages due to an involuntarily terminated employee at the
21 time of termination, or within 72 hours to an employee voluntarily terminating. If failure to pay
22 final wages is willful, they continue at the same rate for up to 30 days. Labor Code §§ 201, 203.

23 The number of former employees was multiplied by average shift length and pay, and
24 30 days for maximum exposure. (655 x 8 hrs x \$23.69 x 30 = \$3,724,068). Geraci Decl. ¶50.

25 If Plaintiff could prevail on the underlying claims, it was likely waiting time penalties
26 would be significantly reduced, or fail entirely. A court could find Saputo had a good faith
27 belief it was paying all wages, and “a good faith dispute that any wages are due will preclude
28 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). Considering all factors, waiting time penalties were discounted to 10%, for a reasonable exposure of \$372,407. Geraci Decl. ¶51.

6. Labor Code § 2802 (Expense Reimbursement)

An employer must indemnify employees for necessary expenses incurred in discharge of their duties. Labor Code § 2802. Plaintiff reported to work at one plant and drove 1.5 miles to another in his own car a handful of times, without mileage reimbursement. A survey showed this was extremely rare, and Saputo produced reimbursement policies distributed to employees. Assuming 10% of employees drove 20 miles per year, which the evidence did not support, at the aggregate IRS rate of \$0.55 per mile, maximum exposure is \$14,276, and reasonable exposure is 50% of that, \$7,138. Geraci Decl. ¶52.

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); *Mejia v. Walgreen Co.* 2020 U.S. Dist. LEXIS 220685, *26 (E.D. Cal. Mar. 24, 2021) (“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.”).

Starting May 12, 2019, penalties were calculated for the 133,802 pay periods in which one of the six violations could have occurred: Sec. 1194 (OTC) – \$13,380,200; Sec. 226.7 (meal) – \$6,109,900; Sec. 226.7 (rest) - \$13,380,200; Sec. 226 (wage statements) – \$13,380,200; Sec. 2802 (reimbursement) – \$2,058,500; Sec. 203 – \$65,500 (final pay) (655 former employees). (\$100 per pay period) Total penalties - \$48,374,500. Geraci Decl. ¶53.

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).

1 Plaintiff believed reasonable exposure was less than 5% of exposure, \$2,418,725b,
2 based on factors considered in determining exposure for class claims, extreme disparity between
3 the class damages and the much larger PAGA penalties, ability of the court to reduce penalties
4 nearly to zero, and decisions allowing courts to strike a claims cannot be rendered manageable.”
5 *Wesson v. Staples the Office Superstore, LLC*, 68 Cal. App. 5th (2021). Geraci Decl. ¶54.

6 The \$120,000 PAGA allocation is well within the range approved by California courts.
7 See *Alcala v. Meyer Logistics, Inc.* 2019 LEXIS 166879, *26 (C.D. Cal. June 17, 2019) (PAGA
8 penalties 1.25% of settlement reasonable, “falls within the zero to two percent range for PAGA
9 claims approved by courts.”); *In re M.L. Stern Overtime Litig.* 2009 LEXIS 31650, *1 (S.D.
10 Cal. Apr. 13, 2009) (PAGA settlement of 2%); *Magadia, Id.* at 1101, citing, *Ceja-Corona v.*
11 *CVS Pharm. Inc.* 2015 U.S. Dist. LEXIS 5118 (E.D. Cal. Jan. 14, 2015) (\$10,000 penalties,
12 \$900,000 settlement, recommendation adopted, 2015 U.S. Dist. LEXIS 25730 (E.D. Cal. Mar.
13 3, 2015). (The LWDA was served with this motion when filed). Geraci Decl. ¶55 - Exh. 2.

14 **D. The Settlement is Fair, Adequate, and Reasonable**

15 Plaintiff and her Counsel gave serious consideration to all facts and arguments and
16 concluded the Settlement is fair and reasonable. The Gross Settlement represents over 63% of
17 the reasonable value of Class claims. ($\$2,400,000/3,798,001.00 = 0.631$), and 11% of maximum
18 exposure ($\$2,400,000/\$21,957,540 = 0.109$). The proposed settlement is within the “ballpark”
19 of reasonableness. Geraci Decl. ¶55.

20 A settlement is not judged solely against what might have been recovered at trial, nor
21 must a settlement provide 100% of damages sought to be fair and reasonable. *Linney v. Cellular*
22 *Alaska Partnership*, 151 F.3d 1234, 1242 (9th Cir. 1998). Adequacy must be judged as “a
23 yielding of absolutes. . . Naturally, the agreement reached normally embodies a compromise; in
24 exchange for the saving of cost and elimination of risk, the parties each give up something they
25 might have won had they proceeded. . .” “It is well-settled law that a cash settlement amounting
26 to only a fraction of the potential recovery does not . . . render the settlement inadequate or
27 unfair.” *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 628, 624 (9th Cir. 1982)
28 (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 is superior to alternate means, certification is appropriate. *See Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1021.

Ascertainability is determined by examining class definition, size, and means for identifying class members. *Reyes v. Bd. of Supervisors* (1987) 196 Cal. App. 3d 1263, 1271.

The class is ascertainable from Saputo's records, and joinder is impracticable.

"Community of interest" embodies three factors: (1) predominant common questions of law or fact; (2) representatives with claims typical of the class; and, (3) representatives who can adequately represent the class. *Fireside Bank v. Superior Court* (2007) 40 Cal. 4th 1069, 1089.

Plaintiff alleges each Class Member was subject to the exact same policies which damaged him, including those which he alleged underpaid wages. Where the same alleged conduct forms the basis for Plaintiff's claims and class claims, that conduct shows commonality for settlement purposes. *Fireside Bank, supra.* at p. 1090.

Plaintiff will continue to adequately protect the interests of the Class. He accepted the risks of serving as class representative, spent significant time assisting in the prosecution of the action, and placed the Class' interest above his own. Vasquez Decl. ¶¶2-14. *Clark v. American Residential Services, LLC* (2009) 175 Cal.App.4th 785, 804-807.

Plaintiff's attorneys are qualified to conduct the litigation on behalf of the Class and neither Plaintiff's interests, nor counsels, are antagonistic to the interest of the Class Members. *McGhee v. Bank of Am.* (1976) 60 Cal.App.3d 442, 450. Geraci Decl. ¶56; Lebe Decl. ¶9; Vasquez Decl. ¶2.

IX. PROPOSED SCHEDULE OF SETTLEMENT PROCEEDINGS

1. Class Data provided to Administrator: Within 21 calendar days of Preliminary Approval
2. Mail Settlement Notice to the Class: Within 10 business days of receipt of Class Data
3. Notice Response Deadline: 45 calendar days from Mailing
4. File Motion for Final Approval: 21 days after Notice Response Date
5. Final Approval Hearing: A date convenient on the Court's calendar

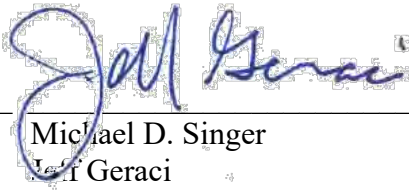
X. CONCLUSION

Plaintiff requests the Settlement be preliminarily approved, Notice approved and ordered mailed to the Class, CPT Group be appointed Settlement Administrator, Cohelan Khoury & Singer and Lebe Law, APLC be appointed Class Counsel, Don Vasquez be appointed Class Representative, and a Final Approval Hearing date be set.

LEBE LAW, APLC
COHELAN KHOURY & SINGER

Dated: November 7, 2023

By: _____


Michael D. Singer

Jeff Geraci

Attorneys for Plaintiff Don M. Vasquez,
individually and on behalf of all others similarly
situated