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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

DAMON COFFEY, in a Representative capacity
only and on behalf of other members of the public
similarly situated,

Plaintiff,

v.

SOUTHERN CALIFORNIA PERMANENTE
MEDICAL GROUP, INC. a California partnership
and DOES 1-10, inclusive,

Defendant.

Case No. 37-2020-00029409-CU-OE-CTL

**AMENDED MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF PLAINTIFF'S
UNOPPOSED MOTION FOR
CONDITIONAL CERTIFICATION OF
SETTLEMENT CLASS AND
PRELIMINARY APPROVAL OF GOOD
FAITH DETERMINATION OF CLASS
ACTION SETTLEMENT**

Date: January 26, 2024
Time: 8:30 a.m.
Judge: Hon. Keri G. Katz
Dept.: C-74

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I. SUMMARY OF MOTION

This matter is a “Wage and Hour” representative (*i.e.*, “PAGA”) and *proposed* class action. DAMON COFFEY and BRANDY LUKOFNAK, (collectively “Plaintiffs”) bring Labor Code claims against Defendant SOUTHERN CALIFORNIA PERMANENTE MEDICAL GROUP (“SCPMG”).

After approximately 3 years of extensive litigation, exchanges on at least 12 sets of formal discovery devices, multiple depositions, a full day Mediation, and extensive negotiations, the parties have agreed to the terms of a proposed class action settlement. **Please Note:** As discussed at the January 3, 2024 *Ex Parte* hearing, this filing serves to supplement the original moving papers. All of the *final* terms of settlement are outlined herein. The parties are also including the fully executed Joint Stipulation of Class and PAGA Action Settlement (the “Agreement”). (Kuhn decl. ¶13). The key terms of the settlement are as follows:

Approximate size of “Class ¹ ”:	48,432 individuals
Gross settlement amount (“GSA”):	\$9,970,000.00
Claims administration:	\$123,000.00 (or less)
Costs/expenses of litigation:	\$65,000.00 (or less)
Claims Period:	30 days from Mailing of Notice
Class representative incentive:	\$20,000 (\$10,000 for each representative)
LWDA payment:	\$281,250.00 (75% Share of \$375,000 allocation)
Sub-Class Allocation:	\$657,000 (Estimated at \$15 per participating employee)
FLSA Subclass Allocation:	\$100,000.00
Attorney’s fees:	1/3 of GSA (\$3,323,333.33)

Estimated average payment (before taxes) to each Class Member based on the above figures will be **\$121.05**. These estimates are an “average” only, and do not account for the fact that class members will

¹ As explained *infra*, there is also a separate settlement Sub-Class, containing an estimated 43,840 employees (many individuals are in both the class and sub-class). The release for the Sub-Class Members is limited as this subclass includes people who were class members in a prior class action settlement, *Leyva v SCPMG*. The limited sub-class release is related to paid sick leave under the Healthy Workplaces, Healthy Families Act and claims for reimbursement for business expenses.

1 receive more or less than an “average” share, as the amounts owed are calculated based on the number of
2 workweeks each individual worked for Defendants during the class period.

3 **Please Note:** This is a **non reversionary** settlement, in that the entire net settlement amount, after
4 the awarded costs, taxes and fees are deducted, will be automatically disbursed to all class members who
5 do not file a request to “opt-out” of participation in the lawsuit.

6 The parties now move for an order: (1) provisionally certifying the proposed class and sub-class
7 for settlement purposes; (2) preliminarily approving the proposed class action settlement; (3) directing
8 that Notice (defined below) of the proposed settlement be provided to Class Members; and (4) scheduling
9 a hearing for final approval of the settlement and entry of the parties’ proposed Final Order Re: Class
10 Action Settlement

11 **II. FACTUAL AND PROCEDURAL HISTORY**

12 The relevant procedural history is set forth below.

13 **1. The Operative Claims, Investigation and Informal Discovery Conducted**

14 On August 21, 2020, Plaintiff Coffey filed the Complaint in this matter. The original Complaint
15 alleged representative California Private Attorney General Act (“PAGA”) claims, under the California
16 Labor code involving, *inter alia*, (1) Meal and Rest Period violations; (2) Minimum wage violations; (3)
17 Overtime violations; (4) Wage statement violations; (5) Failure to reimburse business expenses; and (6)
18 Failure to pay wages upon separation. (Kuhn Decl. ¶ 3; ROA # 1).

19 On August 27, 2020, Plaintiff filed a First Amended Complaint, clarifying issues related to
20 Defendant’s entity status. (Kuhn Decl. ¶4; ROA #8).

21 On April 22, 2021, Plaintiff filed a Second Amended Complaint, which added class action claims
22 based on same Labor Code violations in the original Complaint. (Kuhn Decl. ¶5; ROA #22).

23 The parties have agreed to the filing of a Third Amended Complaint, which has “merged” the
24 related *Lukofnak* matter into this matter. The Third Amended Complaint is the operative pleading for
25 purposes of this proposed settlement. (Kuhn Decl. ¶6). The TAC will be filed by separate stipulation.

26 Plaintiff propounded discovery requests on Defendant, including requests for admission, special
27 interrogatories, requests for production of documents, and general and employment form interrogatories.

(Kuhn decl. ¶7). Through these requests, Plaintiff sought, among other information and documents, the identities of putative class members, Defendants’ compensation policies, meal and rest period policies, employee handbooks, wage statements, payroll records, time records, job descriptions, and reimbursement policies. (*Id.*)

Defendants provided discovery responses, documents, and objections to Plaintiff’s requests. After a lengthy meet and confer process, Defendant produced, *inter alia*, Plaintiff’s time and wage records, copies of the relevant CBA, copies of all other relevant employee policies, and the contents of Plaintiff’s employee file. (Kuhn decl. ¶8). After the dissemination of Belaire-West Notice, Defendant produced a sampling of non-exempt employee Time Records and Wage Statements.

Defendant also propounded several sets of written discovery on Plaintiff. In total it appears there were at least 12 sets of written discovery exchanged between the parties. (Kuhn decl. ¶9). Additionally, Plaintiff Coffey appeared for two full days of deposition. SCPMG also produced its “Persons Most Knowledgeable” for a full day of deposition. (*Id.*)

On October 28, 2021, Plaintiff Brandie Lukofnak filed her Class Action Complaint against SCPMG in San Diego Superior Court. On December 27, 2021, Plaintiff Lukofnak filed a PAGA representative action against SCPMG in Los Angeles Superior Court. Both of Plaintiff Lukofnak’s Complaints substantially overlap with Plaintiff Coffey’s Complaint. (Kuhn Decl. ¶10).

2. Settlement Discussions

On January 27, 2023, the Parties attended a full day mediation before experienced “Wage and Hour” mediator, David Rotman. (Kuhn decl. ¶11). Prior to mediation, counsel for Parties agreed to the informal exchange of information pertinent to a class-wide settlement. The parties were unable to reach an agreement at the time. (*Id.*)

Subsequent to the January 27, 2023 Mediation, the Parties continued to litigate the case. To wit, the Parties fully briefed the Motion for Class Certification. (Kuhn Decl. ¶12). However, the Parties also continued settlement discussions between counsel, and through the Mediator. (*Id.*) Through these discussions, the Parties agreed on key terms of a settlement that would globally resolve all class and representative “Wage and Hour” claims asserted in the operative Complaint in this Action. (*Id.*)

On January 3, 2023, the parties agreed on all key terms of the settlement via a “Memorandum of Understanding.” On January 19, 2024, the parties executed a Joint Stipulation of Class and PAGA Action Settlement. (*Id.*) The parties seek preliminary approval of the Agreement.

III. SETTLEMENT TERMS

The Agreement includes the following key terms:

1. Contingent Nature of the Settlement

The parties entered into the Agreement exclusively for the purpose of resolving the action and facilitating the negotiated settlement. Should the Court, for any reason, not preliminarily and/or finally approve the Agreement, or if the Agreement is terminated for any reason, then the parties have agreed that the Agreement will be null and void and this action will revert to its status with respect to any and all matters as they existed prior to the parties signing the Agreement.

2. Description of the Settlement Classes

Solely for the purposes of the Agreement, the parties have agreed that the term “Class Member” is defined as:

All non-exempt persons who were employed by Defendant in the state of California at any time during the Class Period (defined as July 8, 2020, through the earlier of preliminary approval or February 13, 2024.) (**Ex. B** at 1.5).

Solely for the purposes of the Agreement, the parties have agreed that the term “Sub-Class Member” is defined as:

All non-exempt persons who were employed by Defendant in the state of California at any time during the Sub-Class Period (defined as August 21, 2016, through July 7, 2020). (**Ex. B** at 1.5).

Solely for the purposes of the Agreement, the parties have agreed that the term “PAGA Group Member” is defined as:

All non-exempt persons who were employed by Defendant in the state of California at any time during the PAGA Period (defined as July 8, 2020, through the earlier of preliminary approval or February 13, 2024.) (**Ex. B** at 1.4).

Solely for the purposes of this Agreement, the parties have agreed that the term “PAGA Subclass Member” is defined as”

1 All non-exempt persons who were employed by Defendant in the state of California at any time
2 from June 23, 2019, through July 7, 2020. (**Ex. B** at 1.4).

3 Solely for the purposes of the Agreement, the parties have agreed that the term “FLSA Subclass
4 Members” is defined as:

5 all non-exempt persons who were employed by SCPMG in the State of California at any time from
6 August 21, 2017 through the date of preliminary approval. (**Ex. B** at 1.24).

7 The FLSA claims are an alternate theory of recovery based on the same underlying violations
8 alleged by the Class Members.

9 The Settlement Class consists of approximately forty eight thousand four hundred and thirty two
10 (48,432) individuals, as determined by Defendant’s employment records.

11 **3. Appointment of Settlement Administrator**

12 The parties agreed to use Rust Consulting, as the “Settlement Administrator” for purposes of
13 providing the Notice to Settlement Class Members, issuing payments pursuant to the Agreement, and to
14 administer the claims. (**Ex. B** at 1.2). Rust’s sole business has been the administration of class action
15 settlements and class action notices, and has extensive experience. (Kuhn decl.¶ 13).

16 **4. Scope of the Release**

17 The Class Member, Subclass Member, PAGA Group Member, PAGA Subclass Member, and
18 FLSA Subclass Member releases are set forth in Section 5 of the Settlement Agreement. In summary,
19 Class Members and PAGA Group Members release any and all claims that occurred during the Class
20 Period based on the facts that are or could have been alleged in the Operative Complaint, relating in any
21 way to violations of the wage and hour provisions of the California Labor Code or the California Wage
22 Orders, or any other wage and hour provisions of California law. The Subclass Members and PAGA
23 Subclass Members will only be releasing claims based on the facts that are or could have been alleged in
24 the Operative Complaint that occurred during the Subclass Period related to paid sick leave under the
25 Healthy Workplaces, Healthy Families Act, and claims for reimbursement for business expenses. The
26 release for the Sub-Class Members is limited as this subclass includes people who were class members in
27 a prior class action settlement, *Leyva v SCPMG*. The FLSA Subclass Members will be releasing claims

the Class Members may have under the FLSA arising under or related to the alleged claims during the FLSA Subclass Period.

5. Cash Payment and Allocation

Section 4 of the Agreement provides for an automatic cash payment to Class Members. No claims need be submitted. Class Members will be entitled to an average share of approximately \$121.05. (Kuhn Decl. ¶14). The actual share will depend on the number of workweeks they worked for SCPMG during the limitations period as a percentage of the total workweeks (and for the PAGA allocations, the number of pay periods they worked for SCPMG as a percentage of the total pay periods in the applicable PAGA period). Subclass members will receive an additional \$15 payment. The Cash Payment will be allocated as follows: (1) for the Class, FLSA Subclass, and Subclass Payments, one-third (1/3) constitutes wages (subject to withholdings and deductions and reported as wage income on a Form W-2) and two-thirds (2/3) constitutes non-wage penalties, and interest; and (2) for the Individual PAGA Payments, the entire payment will be allocated to non-wage penalties.

6. Proposed Settlement and Notice Program

Subject to Court approval, the Parties agree that, following any Order granting preliminary approval, Defendant will provide to the Settlement Administrator the following information for each Settlement Class Member in a reasonable format requested by the Settlement Administrator: class member names, last known home addresses, social security numbers, the number of Class Period Workweeks and, if a Class Member is an Aggrieved Employee, PAGA Pay Periods and PAGA Subclass Pay Periods. (**Ex. B** at 7).

The Settlement Administrator will perform address updates and verifications prior to the first mailing. The Settlement Administrator will mail the Class Notice (“Notice”) to each Class Member, by first class mail.

The proposed Notice is attached to the declaration of Ryan T. Kuhn as **Exhibit C**. The Notice is designed to provide Class Members with detailed information about the lawsuit, the Agreement, their rights and the settlement benefits, and how to participate, exclude themselves, or object. (*See* Kuhn Decl., ¶15, **Exhibit C**).

1 The Class Members will be given notice of the releases and information about their expected
2 settlement amount based on the formulas described in the Notice. Class members will have the
3 opportunity to dispute the workweek calculation by submitting written documentation to the Claims
4 Administrator. (**Exhibit C** at § IV(D)). If they wish to receive a share of the Settlement, Class Members
5 need not take any additional action. Class Members are also given instructions on how to exclude
6 themselves, file objections, or appear at the final approval hearing to state objections. (*Id.*)

7 The Notice program has additional safeguards. For instance, for Notices returned as
8 nondeliverable, the Class Administrator bid includes performing a skip-trace and mail or re-mail Notice
9 to an updated address (if any), upon receipt of the returned mail. It is the intent of the parties that all
10 reasonable means be used to locate Class Members PAGA Members and PAGA Subclass Members do
11 **not** require notice prior to a settlement nor may they opt out of the PAGA penalty portion of the settlement.
12 *Robinson v. S. Ctys. Oil Co.*, (2020) 53 Cal. App. 5th 476, 482–83, review denied (Nov. 24, 2020).
13 However, all PAGA members are also Class Members and can opt-out to retain their individual claims.
14 This is explained in the Class Notice. (**Exhibit C** at § IV(F)).

15 With respect to the FLSA Subclass, FLSA Subclass Members who timely cash or otherwise
16 negotiate their Settlement Payment Check will be deemed to have opted into the Action for purposes of
17 the FLSA and, as to those Class Members, the Released Claims include any and all claims the Class
18 Members may have under the FLSA arising under or related to the alleged claims during the FLSA
19 Subclass Period. Only those FLSA Subclass Members who timely cash or otherwise negotiate their
20 Settlement Payment Check will be deemed to have opted into the Action for purposes of the FLSA and
21 thereby release and waive any of their claims under the FLSA arising under or relating to the alleged
22 claims.

23 **7. Contingent Costs**

24 The Settlement Agreement provides that Class Counsel may request an attorney's fee award of up
25 to \$3,323,333.33 from the Gross Settlement Amount, or thirty-three and one-third (33 1/3%) of the total
26 settlement, and up to Sixty Five Thousand and Dollars (\$65,000.00) in litigation costs. (Kuhn Decl. ¶52).
27 For settlement administration costs, SCPMG will pay The actual cost of settlement administration,
28

1 estimated at One Hundred and Twenty Three Thousand Dollars (\$123,000.00), will also be paid from the
2 Gross Settlement Amount. (Kuhn Decl. ¶53).

3 The proposed settlement also provides for allocation of Three Hundred Seventy-Five Thousand
4 Dollars (\$375,000.00) to Plaintiffs' PAGA claims (\$300,000) and PAGA Subclass Claims (\$75,000) with
5 75% of the amount, or \$281,250.00, being paid to the LWDA, and 25%, or \$93,750.00, being distributed
6 amongst the PAGA Group and PAGA Subclass members. (Kuhn Decl. ¶54).

7 The proposed settlement also provides for Enhancement Awards to Plaintiffs Coffey and Lukofnak
8 in the amount of Ten Thousand Dollars (\$10,000.00) each, in consideration for their services as Class
9 Representatives. The enhancement awards were decided pursuant to good faith negotiations and is
10 intended to recognize that it was the class representatives who initiated the lawsuit, initiated the PAGA
11 claims, provided critical documents and witnesses to their attorneys, and worked with their attorneys to
12 propound and prepare written discovery, all in an effort to obtain moneys allegedly owed not only to
13 themselves, but to thousands of other employees. (Kuhn Decl. ¶16).

14 FLSA Subclass Allocation in the amount of \$100,000.00, to be paid from the Gross Settlement
15 Amount. Each Individual FLSA Subclass Payment shall be calculated by (a) dividing the FLSA Subclass
16 Allocation by the total number of FLSA Subclass Period Workweeks worked by all FLSA Subclass
17 Members during the FLSA Subclass Period and (b) multiplying the result by each FLSA Subclass
18 Member's FLSA Subclass Period Workweeks.

19 **IV. SUMMARY OF CLAIMS AND ESTIMATES OF POTENTIAL DAMAGES**

20 Counsel hereby submits estimates and calculations for the total potential value of all claims so this
21 Court may evaluate if the amount to be paid to the class ultimately could be determined to be fair and
22 reasonable when balanced against the probable outcome of the future litigation. *Kullar v. Foot Locker*
23 *Retail, Inc.*, (2008) 168 Cal. App. 4th 116, 133.

24 Concerning the strength of the plaintiff's case, the California Court of Appeal has said that the
25 "merits of the underlying class claims are not a basis for upsetting the settlement of a class action; the
26 operative word is 'settlement.'" *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.
27 App. 4th 1135, 1150 [citing, *inter alia*, *City of Detroit v. Grinnell Corp.* (2d Cir. 1974) 495 F.2d 448,455
28

1 (“The fact that a proposed settlement may only amount to a fraction the potential recovery does not, in
2 and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved”); *see*
3 *also Linney v. Cellular Alaska P’ship.* (9th Cir. 1998) 151 F.3d 1234, 1242 (“This court has aptly held
4 that ‘it is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation
5 that induce consensual settlements’”)

6 Each of the primary claims also had risks to obtaining both class certification and a finding of
7 liability. If Defendants’ asserted defenses were successful, the class would not receive anything. As is set
8 forth below, Plaintiffs submit that the most realistic scenario would be an average recovery per class
9 member of approximately \$1,235.44 and a worst case scenario would be a recovery of \$0, by way of
10 denial of class certification or defense verdict. (Kuhn Decl. ¶17-19).

11 **A. THE “FAILURE TO PAY ALL COMPENSATION DUE” CLAIMS**

12 Plaintiffs’ unpaid wages claims were based on the allegation that employees were performing
13 unpaid work due to the SCPMG standard timekeeping system, which “rounded” employee time entries
14 and caused other losses due to (1) the “grace period” policy, and (2) certain alleged “transitional math
15 errors” caused by the payroll system. Plaintiffs alleged this resulted in regular time and overtime pay being
16 owed where Defendants were on notice of work being performed without pay.

17 Defendants argued that the shift tolerance feature of its timekeeping system is a non-worked grace
18 period, and not rounding, and that even if it was rounding, rounding of hours worked has been recognized
19 under California law. Defendants also denied that any unpaid work occurred, and even if some did occur,
20 SCPMG claimed it was not on notice of these alleged Labor Code violations and had a strict written
21 prohibition against off-the-clock work and a mandate that all time worked must be recorded accurately.
22 SCPMG asserted proof of these alleged violations would require individualized inquiries, which could
23 preclude class certification and make any PAGA claims unmanageable. (Kuhn decl. ¶30).

24 Based on Class Counsels’ analysis, this claim was worth as little as \$0 (a defense verdict or denial
25 of class certification) or a “maximum valuation” of \$55,999,462.40. (Kuhn decl. ¶20). Taking into account
26 SCPMG’s defenses (both to Class Certification, and its “substantive” defenses) this claim is valued at
27 approximately \$11,176,900.00. (*Id.*)

B. THE “MEAL AND REST PERIOD” CLAIMS

Plaintiffs were able to identify thousands of examples of missing or late meal periods without the provision of a meal period penalty payment. However, SCPMG argued that these records do not conclusively show whether (1) SCPMG actually failed to provide the meal period, (2) there was a voluntary waiver, (3) employees forgot to clock out, or (4) employees voluntarily chose to skip or take them late even though they were provided. Additionally, in light of SCPMG's written meal period policy and the wide variations in alleged violations and departments at the hospital, Defendants contended there was no uniform policy or practice, requiring individualized inquiries that would preclude class certification and make any PAGA claims unmanageable. (Kuhn decl. ¶ 31).

Plaintiffs also alleged the SCPMG written policies improperly restricted class members from leaving the premises during their rest breaks. Defendants argued that the policy contained no such restriction, and that witness testimony would demonstrate that in practice, there was no such “leave the premises” restriction. SCPMG also contended individualized inquiries abound as to why individual employees may have failed to take appropriate meal periods or rest breaks. (Kuhn decl. ¶32).

While there are time records to support the existence of meal period violations, there are no corresponding rest period records, making this aspect of the claim much harder to prove. Some Courts have been disinclined to accept survey evidence that may have been needed to help establish rest period violations. *See e.g. Duran v. U.S. Bank National Assn.* (2018) 19 Cal.App.5th 630.

Based on counsels’ analysis, this claim was worth as little as \$0 (a defense verdict or denial of class certification) or as much as \$69,999,328.00. (Kuhn decl. ¶20). Taking into account SCPMG’s defenses (both to Class Certification, and its “substantive” defenses) this claim is valued at approximately \$13,971,125.00. (*Id.*).

C. THE “ITEMIZED WAGE STATEMENT” CLAIMS

Plaintiffs acknowledge that these claims are largely derivative, in that both the gross and net wages could be found to be inaccurate, due to the above-referenced claims. SCPMG argued that the failure to list gross and net wages are derivative of other claims that may ultimately fail and as a result there is no

1 “knowing and intentional failure” to list information, which triggers liability under Labor Code §226(e).
2 (Kuhn decl. ¶33).

3 The California Supreme Court has recently held that the failure to pay Meal and Rest Period
4 premiums *may* give rise to a claim for Inaccurate Wage Statements (or waiting time penalties). However,
5 such derivative liability is not automatic and the Plaintiff still must show a “knowing and intentional” or
6 “willful” failure to comply with the Labor Code. *See Naranjo v. Spectrum Security Services, Inc.* (2022)
7 13 Cal.5th 93,109.

8 Defendants (as with the underlying Meal and Rest Period claims) maintained individualized
9 inquiries would abound as to why breaks were missed and whether Meal Period premiums should have
10 been paid in the first place, requiring individualized inquiries that would preclude class certification and
11 make any PAGA claims unmanageable. (Kuhn decl. ¶ 33).

12 As is broken down further in the declaration of Ryan T. Kuhn, this claim was valued at as little as
13 \$0.00 and as much as \$31,564,800.00. (Kuhn decl. ¶20). Taking into account SCPMG’s defenses (both to
14 Class Certification, and its “substantive” defenses) this claim is valued at approximately \$6,300,000.00.
15 (*Id.*).

16 **D. THE “REIMBURSEMENT” CLAIMS**

17 Plaintiffs contend that SCPMG violated Labor Code section 2802 by failing to reimburse its
18 employees for certain costs, including cellular phone costs, work supplies and mileage.

19 SCPMG countered that it has a comprehensive written policy for expense reimbursements. The
20 majority of SCPMG employees were not able to do remote work due the nature of the work involving
21 direct patient care. SCPMG further contended that Plaintiffs’ (and others’) positions did not require the
22 use of a cell phone. (Kuhn decl. ¶34).

23 As is broken down further in the declaration of Ryan T. Kuhn, this claim was valued at as little as
24 \$0.00 and as much as \$438,400. (Kuhn decl. ¶20).

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The remaining claims are derivative, in that PAGA and Labor Code § 203 penalties would only be permissible if the above claims are proven. The Fair Labor Standards Act (“FLSA”) claims are duplicative, in that they are just an alternative legal theory of recovery for the same alleged violation. If unpaid wages are owed under the California Labor Code, they would also be owed pursuant to the FLSA. These claims are not separately factored into the analysis of the maximum scope of liability. However, the Settlement provides for a specific allocation for the release of these claims. (Kuhn decl. ¶20).

The parties agreed to allocate \$300,000 to the PAGA claims, which is 3.01% of the total settlement. This PAGA allocation is in the range routinely approved by California Courts. *See Garcia v. Gordon Trucking, Inc.* (E.D. Cal., Oct. 31, 2012, No. 1:10-CV-0324 AWI SKO) 2012 WL 5364575, at *7 (approving \$10,000 PAGA penalty for a California class with a \$3.7 million gross settlement payment); *Syed v. M-I, L.L.C.* (E.D. Cal., Feb. 22, 2017, No. 112CV01718DADMJS) 2017 WL 714367, at *13 (approving 2.53% of the estimated \$3.95 million gross settlement amount allocated to the California class); *Viceral v. Mistras Group, Inc.* (N.D. Cal., Oct. 11, 2016, No. 15-CV-02198-EMC) 2016 WL 5907869 (approving allocation of \$20,000 to the PAGA claim (0.15% of its total value of \$12,952,000) as reasonable in the context of the settlement as a whole); *In re Uber FCRA Litigation* (N.D. Cal., June 29, 2017, No. 14-CV-05200-EMC) 2017 WL 2806698 (approving a settlement agreement of \$7.5 million, where the amount allocated to the PAGA claims was only \$7,500 – .01% of the total settlement amount).

Based on Class Counsel’s analysis, the PAGA and Labor Code § 203 claims were worth as little as \$0 (a PAGA defense verdict or denial of certification of the § 203 claim) or as much as \$118,368,000.00 and \$8,296,453.20 respectively. (Kuhn decl. ¶21). Taking into account SCPMG’s defenses (both to Class Certification and/or a manageability challenge as to PAGA claims, and its “substantive” defenses) this total claim is valued at approximately \$35,824,113.30. (Kuhn decl. ¶21).

F. THE “SUB-CLASS” CLAIMS

The release for the Sub-Class and PAGA Sub-Class Members is limited, as these subclasses include individuals who were class members in a prior class action settlement, *Leyva v. SCPMG*. The

1 limited sub-class release is related to paid sick leave, under the Healthy Workplaces Healthy Families Act,
2 and claims for reimbursement for business expenses. All other claims alleged by the Class were already
3 released via the *Leyva* Settlement. Given the limited nature of these claims, the parties negotiated a
4 separate “per-person” payment in the amount of \$15 a person will be made to the Sub-Class members.
5 Based on the “Sub-Class Size,” this results in a total estimated amount of \$657,600.00. (Kuhn Decl. ¶21).
6 In addition, the PAGA Sub-Class claims are allocated \$75,000 of the Gross Settlement Amount, and
7 PAGA Sub-Class members will be allocated a share of the \$18,750 employee allocation (with the \$56,250
8 remainder distributed to the LWDA).

9 The “FLSA Subclass Members” consist of all non-exempt persons who were employed by
10 Defendant in the State of California at any time from August 21, 2017 through the date of preliminary
11 approval. FLSA Subclass Allocation in the amount of \$100,000.00, to be paid from the Gross Settlement
12 Amount. Each Individual FLSA Subclass Payment shall be calculated by (a) dividing the FLSA Subclass
13 Allocation by the total number of FLSA Subclass Period Workweeks worked by all FLSA Subclass
14 Members during the FLSA Subclass Period and (b) multiplying the result by each FLSA Subclass
15 Member’s FLSA Subclass Period Workweeks.

16 **G. CASE LAW SUPPORTS A FURTHER REDUCTION ON ANY RECOVERY**

17 Plaintiff concedes he would be highly unlikely to ever be awarded an amount approaching the
18 maximum damages set forth above. To wit, the majority of the recovery would be “derivative” penalties
19 under PAGA, Labor Code § 203 and Labor Code § 226. The FLSA claims are duplicative and any “double
20 recovery” is unlikely to be awarded. The Court would have great discretion to mitigate any penalties
21 awarded. *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1135
22 (disapproved on other grounds).

23 In a recent trial involving Class Counsel, the Court found liability, but then significantly reduced
24 the PAGA penalties, down to \$5 a violation. *See Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th
25 504; *See accord Fleming v. Covidien, Inc.*, No. ED-CV-10-1487-RGK(OPx), 2011 WL 7563047 at *4
26 (C.D. Cal. Aug. 12, 2011) (reducing PAGA penalties by over 82%, in part because employer was “not
27 aware” of violations). And in *Carrington*, the Court also noted that other trial courts have declined to
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1 “stack” (impose multiple) penalties based on the same underlying Labor Code violation. *See Ruelas v.*
2 *Costco Wholesale Corporation* (N.D. Cal. 2014) 67 F.Supp.3d 1137.

3 Class Counsel believes a mitigation of the damages and potential PAGA penalties would be
4 warranted here. As in the *Carrington* case, there was evidence that SCPMG attempted to provide meal
5 and rest periods in practice, and the written policies contained no facially non-compliant terms. Given
6 this, it is likely that some of the violations by SCPMG were not “willful.” Finally, given the defenses
7 raised by Defendants, there was a significant risk that many of the claims would not have been certified
8 or, if they were, certification could not have been maintained through trial and appeal.

9 The Parties agree the failure to pay “ex-employees” under § 203 is derivative of the other claims.
10 As SCPMG asserts a “good faith dispute” for withholding any unpaid wages, it would be difficult to
11 establish any liability for a “willful” failure to pay wages owed. (Kuhn decl. ¶¶22-25).

12 Based on the above, it would be likely that PAGA penalties would be reduced to approximately
13 \$5 per violation and the Court would find no basis for imposing Labor Code §§ 203 or 226 penalties, or
14 separate FLSA damages. (Kuhn decl. ¶¶26). If this occurred, the average class member’s pre-tax share of
15 a realistic best case recovery would be **\$345.38**. (Kuhn decl. ¶ 27).

16 Accordingly, Class Counsel submits the **\$121.05** average recovery secured via this Settlement, is
17 a reasonable compromise and is in the best interests of the Class given all the risks of continued litigation.
18 (Kuhn decl. ¶¶ 29-35).

19 **V. PROVISIONAL CERTIFICATION OF THE CLASS IS APPROPRIATE**

20 Under California law, a class action is appropriate when the class is ascertainable and there is “a
21 well defined community of interest in the questions of law and fact involved affecting the parties to be
22 represented.” Cal. Code Civ. Proc. § 382; *Sav-on Drug Stores, Inc. v. Superior Court* (2004) 34 Cal. 4th
23 319, 341. State law requirements under California Code of Civil Procedure § 382 for class certification
24 mirror those of federal law under Rule 23 of the Federal Rules of Civil Procedure: numerosity, typicality
25 of the class representatives’ claims, adequacy of representation, predominance of common issues, and
26 superiority. *See* Fed. R. Civ. P. 23(a); *see also Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011,
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1 1019. Thus, for settlement purposes, each of these elements must be present. *Wershba v. Apple Computer,*
2 *Inc.* (2001) 91 Cal. App. 4th 224, 237-38.

3 **A. THE PROPOSED SETTLEMENT CLASS IS ASCERTAINABLE**

4 The proposed class is ascertainable because all Class Members currently or formerly worked for
5 Defendant as a nonexempt employee and will be identified through Defendant's employment records. *See*
6 *Rose v. City of Hayward*, 126 Cal.App.3d 926 (1981) (finding that "Class Members are 'ascertainable'
7 where they may be readily identified without unreasonable expense or time by reference to official
8 records"). Thus, the ascertainability requirement is met.

9 **B. THE PROPOSED SETTLEMENT CLASS IS SUFFICIENTLY NUMEROUS**

10 The numerosity requirement is met if the class is so large that joinder of all members would be
11 impracticable. *In re Tobacco II Cases* (2009) 46 Cal. 4th 298, 318. Here, Defendant's records show that
12 approximately **48,432 class members** worked for the company during the limitations period. (Kuhn decl.
13 ¶ 36). Thus, joinder of all members of the class would be impracticable.

14 **C. THE COMMONALITY REQUIREMENT WAS MET**

15 The commonality requirement is met if there are questions of law and fact common to the class.
16 *See Hanlon, supra*, 150 F.3d at 1019. Here, for purposes of the Settlement, the parties agree the claims of
17 Class Members all involve the same questions of law and fact. Namely, all class members were subject to
18 the same employment policies and practices of Defendant. (Kuhn decl. ¶ 37). The common question exists
19 as to whether the policies and practices Class Members were subjected to are illegal. Therefore, the
20 commonality requirement is satisfied. *See Hanlon, supra*, 150 F.3d at 1019-20.

21 **D. THE TYPICALITY REQUIREMENT IS MET**

22 The typicality requirement is met if the class representatives and class counsel have no interests
23 adverse to the interests of the proposed Class Members and are committed to vigorously prosecuting the
24 case on behalf of the class. *See Wehner v. Syntex Corp.*, 117 F.R.D. 641, 644 (N.D. Cal. 1987).

25 Here, there are no such adverse interests. Plaintiffs have claims substantially the same as all the
26 other Class Members. (Kuhn decl. ¶ 38). Factual differences may exist between the class representatives
27 and the Class Members so long as the claims arise from the same events or course of conduct and are
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1 based on the same legal theories. *See Hanlon*, 150 F.3d at 1020; *see also* 1 *Newberg* § 53.13 at 3-76-77
2 (“When it is alleged that the same unlawful conduct was directed at or affected both the named plaintiff
3 and the class sought to be represented, the typicality requirement is usually met irrespective of varying
4 fact patterns which under lie individual claims.”) Thus, the typicality requirement is also satisfied.

5 **E. THE ADEQUACY REQUIREMENT IS MET**

6 The adequacy of representation component of the community of interest requirement for class
7 certification “comes into play when the party opposing certification brings forth evidence indicating
8 widespread antagonism to the class suit.” *Capitol People First v. Dep’t of Develop. Servs.* (2007) 155 Cal.
9 App. 4th 676, 696-97. The adequacy inquiry “serves to uncover conflicts of interest between named parties
10 and the class they seek to represent.” *Id.* To assure “adequate” representation, the “class representative’s
11 [...] claim must not be inconsistent with the claims of other members of the class.” *Id.* Here, no such
12 “inconsistencies” exist. Each Plaintiff will be compensated based on the same “pay period” formula as all
13 other members of the Class. (Kuhn decl. ¶ 38; Nordrehaug Declaration ¶ 12.)

14 Additionally, any Class Member who wishes to “opt out” of the Settlement may do so and retain
15 all of their individual rights. (Kuhn decl. ¶ 39). There is therefore no conflict of interest between the Class
16 Representatives and the Class Members. (*Id.*) Thus, at least for settlement purposes, the adequacy prong
17 is met. (*Id.*)

18 **F. COMMON ISSUES PREDOMINATE AND CLASS-WIDE SETTLEMENT IS** 19 **SUPERIOR TO OTHER AVAILABLE METHODS OF RESOLUTION**

20 Class certification is authorized where common questions of law and fact predominate over
21 individual questions, and where class-wide treatment of a dispute is superior to individual litigation. *See*
22 *Richmond v. Dart Indus., Inc.*, 29 Cal.3d 462, 469 (1981).

23 The proposed class in this case is sufficiently cohesive because, for purposes of the Settlement
24 only, the parties have stipulated that all class certification elements are met. (Kuhn Decl. 36). All members
25 of the Class worked under the same conditions and experienced the same policies and practices of
26 Defendant. (See section IV, *supra*). Thus, the class is sufficiently cohesive.

Further, it is preferable to resolve all of the Class Members' claims by means of a classwide settlement than to require each Class Member to litigate individual claims. (Kuhn decl. ¶ 40).

VI. PRELIMINARY APPROVAL OF THE CLASS ACTION SETTLEMENT IS PROPER

The trial court has broad discretion to determine whether a class action settlement is fair and reasonable. *In re Microsoft I-V Cases* (2006) 135 Cal.App.4th 706, 723. Fairness is presumed where (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. *Chaves v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 52; *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802. But, even where it appears the settlement is fair, the court must still determine on the record before it whether the settlement should be approved after considering "the strengths and weaknesses of the claims and risks of the particular litigation." *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129. The courts will consider: (i) the strength of the plaintiff's case; (ii) the risks, expense, complexity and likely duration of further litigation; (iii) the risk of maintaining class action status throughout the trial; (iv) the amount offered in settlement; (v) the extent of discovery completed; (vi) the stage of the proceedings; (vii) the experience and views of counsel; (viii) the presence of a governmental participant; and (ix) any reaction of putative class members to the proposed settlement. *Dunk*, 48 Cal.App.4th, at 1800-1801; *In re Microsoft I-V Cases*, 135 Cal.App.4th, at 723.

When evaluating these factors, the court "must stop short of the detailed and thorough investigation that it would undertake if it were actually trying the case," but nonetheless it "must eschew any rubber stamp approval in favor of an independent evaluation." *Kullar*, 168 Cal.App.4th, at 130. Ultimately, the court approves the proposed class action settlement when the settlement is fair and falls "within the range of reasonableness." *Hernandez v. Vitamin Shoppe* (2009) 174 Cal.App.4th 1441, 1446.

A. FAIRNESS OF THE SETTLEMENT

For preliminary approval purposes, a proposed class action settlement is presumed to be fair where, as here, (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; and (3) counsel is experienced in similar litigation. *Chaves, supra*, 162 Cal.App.4th at 52.

1 The proposed settlement here meets these criteria, and merits preliminary approval. As discussed
2 above, the parties only entered into the Agreement after engaging in a full day of mediation with an
3 experienced mediator who routinely handles “Wage and Hour” class action litigation. (Kuhn Decl. ¶¶11-
4 12). The mediation was preceded by extensive discovery, investigation of claims at issue, interviews of
5 Class Members, disclosure and review of documents detailing company-wide policies and practices,
6 informal information exchanges for mediation purposes, and ongoing discussions about the merits
7 between the parties’ counsel during the span of the litigation. (Kuhn Decl. ¶¶7-9).

8 When negotiating the Settlement, both sides took into account the strengths and weaknesses of
9 their opponent’s positions as pointed out by mediator David Rotman, the data available to evaluate liability
10 and damages, the lack of data or evidence on certain issues, and the substantial and evolving law applicable
11 to the merits of the claims. The Agreement was only agreed to after extensive arms-length negotiations
12 resulting in a unique compromise that permits all parties to move forward and bring this action to close.
13 Despite a mutual desire to resolve this action, the negotiations remained at all times adversarial. (Kuhn
14 Decl. ¶41).

15 As set forth below in section H, *infra.*, counsel for both parties have extensive experience in
16 litigating wage and hour class action lawsuits. Based on this experience, Class Counsel has determined
17 that the settlement is fair, adequate, and reasonable. (Kuhn decl. ¶35).

18 **B. STRENGTH OF PLAINTIFFS’ CASE**

19 The most important factor courts consider when evaluating the fairness of the class action
20 settlement is the strength of the plaintiffs’ case balanced against the amount offered in settlement. *Kullar*,
21 168 Cal.App.4th, at 130.

22 All of Plaintiff’s claims - individual, PAGA, and class claims - presented hurdles including a
23 substantial risk of a defense verdict by way of summary judgment or at trial. (Kuhn Decl. ¶¶ 29-35).

24 The exchange of mediation briefs, the assistance of an experienced “Wage and Hour” mediator,
25 and the parties’ ongoing negotiations all helped the parties realize the strengths and weaknesses of their
26 case, as well as the risks and expenses of continuing litigation.

1 Additionally, as trial approaches, each party's monetary risk increases significantly as substantial
2 additional attorney hours and expert witness hours would have to be devoted to this case by each party.
3 Each party bears a real risk at trial, and considering the balance of the strengths of Plaintiff's claims versus
4 the risks inherent in trial and the consideration given to settle now, the settlement reflects a fair and
5 adequate resolution to this action.

6 **C. THE RISK, EXPENSE, COMPLEXITY, AND LIKELY DURATION OF**
7 **FURTHER LITIGATION**

8 Plaintiffs' Counsel's effectiveness in prosecuting this case has translated into tangible monetary
9 and non-monetary benefits for the Settlement Class Members in the following respects: (1) a guaranteed
10 favorable result; (2) guaranteed monetary recovery over a reasonably short period of time, as opposed to
11 possibly waiting additional years for a potentially worse result; and (3) significant savings in attorneys'
12 fees and costs, which would have increased had the case progressed through trial and possible appeals.
13 (Kuhn decl. ¶42).

14 Without entering into the Agreement, there existed a significant chance that Defendants would
15 prevail on the merits of some or all claims and that Class Members would receive nothing. Through the
16 Agreement, participating Class Members receive guaranteed cash, and this action has also been the
17 catalyst for programmatic relief. (Kuhn decl. ¶43).

18 If the litigation were to proceed in lieu of settlement, additional and substantial attorneys fees and
19 costs, expert witnesses fees would quickly accumulate. Given the numerous claims being litigated, the
20 parties may be required to hire multiple experts each (as many as 8 total). This would result in not only
21 the production of eight expert reports, but eight depositions as well. And, based on previous discussions
22 between counsel regarding the remaining claims (including the PAGA claims), Plaintiff anticipated at
23 least one motion to compel, and two dueling motions for summary judgment / adjudication (one from each
24 side). (Kuhn decl. ¶44).

25 Importantly, even after engaging in all of the potential continued and protracted litigation set forth
26 above, the putative class would continue to have no guarantee of success on any of the claims advanced
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1 in this case. Thus, the parties and their counsel believe in good faith that the proposed resolution is a fair,
2 reasonable, and adequate compromise. (Kuhn decl. ¶45).

3 **D. THE RISK OF MAINTAINING CLASS ACTION STATUS THROUGH TRIAL**

4 Plaintiffs filed a Motion for Class Certification at the time of settlement. (Kuhn decl. ¶46).
5 However, Defendant presented multiple different defenses to certification not only during mediation, but
6 also through its opposition to the Motion for Class Certification. Even if Plaintiff did obtain class
7 certification of the claims, each claim is subject to substantial risk of a Defense verdict at trial. (*Id.*)

8 Regarding the representative (PAGA) claims, there is also a substantial risk that, at trial, Plaintiffs
9 will either fail to obtain a favorable judgment on one or more of these claims, or that a favorable award
10 on one or more PAGA claims may be reduced. *See Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203
11 Cal.App.4th 1112, 1135 (reversed on other grounds).

12 **E. THE AMOUNT OFFERED IN THE SETTLEMENT**

13 After deduction from the total “Settlement Amount” of the projected costs of administration,
14 proposed class representative service awards, potential attorney fees and costs, the “Net Settlement
15 Amount (“NSA”) will be distributed to all Class Members who do not file a request for exclusion.
16 Participating Class Members will receive their share of the NSA based on the total amount of time they
17 worked during the Class and PAGA Period. (Kuhn Decl. ¶55). Additionally, the “Sub-Class” Members
18 (an extremely limited claim) will receive a separate “per person” payment of \$15.00.(Kuhn Decl. ¶56).
19 Based on the current proposed figures, each Class Member will receive an average of \$109.63, although
20 the actual amount will vary based on the amount of pay periods s employed. The Class Notice will list
21 that individual class member’s actual share. (*See Ex. B*). Plaintiff’s counsel maintains this recovery was
22 significant in light of the circumstances of the case. (Kuhn Decl. ¶49).

23 **F. THE EXTENT OF DISCOVERY COMPLETED BY THE PARTIES**

24 Plaintiffs propounded 12 sets of separate written discovery devices on Defendant, including
25 requests for admission, special interrogatories, requests for production of documents, and general and
26 employment form interrogatories. (Kuhn Decl. ¶9). Through these requests, Plaintiffs sought, among other
27 information and documents, the identities of putative class members, Defendants’ compensation policies,
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Meal and Rest Period policies, employee handbooks, wage statements, time records, job descriptions, and reimbursement policies. *Id.*

After significant meet and confer efforts, Defendants provided detailed substantive responses detailing all relevant employment policies, in addition to producing thousands of pages of documents. The production also included a large sampling of other putative class members time and wage records. (Kuhn Decl. ¶¶7-8). In total it appears there were at least 12 set of written discovery exchanged between the parties. (Kuhn Decl. ¶9). Plaintiff's counsel has also interviewed several Class Members in the course of investigating and litigating this matter. (Kuhn decl. ¶ 47). Counsel has also reviewed thousands of pages of documents produced by Defendants, Plaintiffs, and Class Members. (*Id.*)

This information, along with documents and information obtained through formal discovery and from Class Members, allowed Plaintiff's counsel to prepare a detailed Mediation Brief. (*Id.*) The Brief was provided to opposing counsel and contained a breakdown of potential damages based on all of the information obtained from all Parties. (*Id.*) SCPMG also provided a detailed mediation brief, outlining its defenses to both class certification and liability. (*Id.*)

G. THE STAGE OF THE PROCEEDINGS

Plaintiff had already obtained the majority of written discovery, and taken depositions at the time of settlement. Additionally, the Parties had fully briefed the Motion for Class Certification (including an Opposition, Reply, and multiple "Sur-Replies"). The Court did not issue a ruling on the motion. However, the parties were familiar with Plaintiff's central allegations and Defendant's defenses thereto. The next phase of this litigation would have been to hear the Class Certification Motion, and prepare for Trial.

H. THE EXPERIENCE AND VIEWS OF COUNSEL

Class Counsel has considerable experience in wage and hour and class action litigation. William Sullivan has over 30 years of experience, 29 years of which has been devoted to both prosecuting and defending class action litigation. Mr. Yaeckel has over 13 years of experience in "class litigation." Mr. Kuhn has over 5 years of experience in class action litigation. (Kuhn Decl. ¶48). Co-counsel also has extensive class action experience. (Nordrehaug Decl. ¶¶3-5).

1 Plaintiff's counsel considers the Agreement to represent a fair, adequate and reasonable settlement
2 that is well within the accepted range of recoveries for similar cases. Counsel further believes the
3 Agreement is in the best interests of the Settlement Class Members. (Kuhn Decl. ¶49).

4 **I. PRESENCE OF A GOVERNMENTAL ACTOR**

5 Although the State is not directly involved in this action, Plaintiff "stands in the shoes" of the
6 Labor and Workforce Development Agency ("LWDA") by bringing his PAGA action. Consideration has
7 been made to compensate to Labor Workforce Development Agency ("LWDA") in the amount of
8 \$281,250.00, even though the LWDA declined to prosecute the claims itself. To confirm, 75% of the total
9 \$375,000 PAGA allocation, or **\$281,250.00**, is being paid to the LWDA, and 25%, or \$93,750.00, being
10 distributed amongst the PAGA Group and PAGA Subclass members. (*Id.*) Counsel for the parties believe
11 this is a fair, reasonable, and adequate allocation. (Kuhn Decl. ¶50).

12 **J. CLASS MEMBERS REACTION TO THE PROPOSED SETTLEMENT**

13 Prior to preliminary approval, what can be said of the reaction the class members is limited.
14 However, Plaintiff's counsel has spoken to some Class Members since the parties reached a proposed
15 settlement agreement, and all were in favor of the Settlement. (Kuhn Decl.¶ 51).

16 The Settlement Claims Administrator will send a Notice to the Settlement Class Members. The
17 proposed negotiated Class Notice form is attached to the declaration of Ryan T. Kuhn as **Exhibit C**.

18 The proposed Notice advises the Settlement Class Members of their anticipated recovery under
19 the Agreement, how to object, how to exclude themselves, the amount of fees and costs sought by Class
20 Counsel, the amount of enhancement payment sought on behalf of the Class Representative, and the date
21 of the final approval hearing. (*See* Exhibit "C"). Thus, the proposed Notice complies with the notice
22 requirements set forth in CRC Rule 3.766(d) and Rule 3.769(f).

23 **VII. PROPOSED TIMELINE OF EVENTS AND FINAL APPROVAL**

24 Plaintiff also requests that the Court set a Final Approval Hearing in accordance with the proposed
25 chronology of events:

- Within 10 calendar Days of Preliminary Approval: SCPMG will provide to the Claims Administrator Class Members' names, last known addresses, social security numbers, and the and the total number of workweeks each Class Member was employed during the class period;
- Within 15 days of receipt of the Class member data from Defendants, the Claims Administrator will mail the Notice Packet to Class Members;
- 45 Calendar Days After Claims Administrator Has Mailed the Notice Packets to Class Members: Deadline for Class Members to postmark and submit all Requests for Exclusions, or to file written objections to the settlement with the Court;
- Approximately 7 days after the conclusion of the Notice and Claims Period, and at least 16 Court days before the hearing, Plaintiff will file an *Unopposed* Motion for Final Approval; and
- Consistent with the above, Plaintiff requests a final approval hearing that is approximately 100 days after the date the Court enters an Order granting preliminary approval of the Settlement.
- Within the Final Approval Motion Plaintiff will also request approval of (1) Plaintiff's Requested Attorneys Fees, and (2) Class Representative Awards, to be heard concurrently with the Final Approval Motion.

VIII. CONCLUSION

Plaintiff respectfully requests that the Court issue an Order: (1) Certifying the Proposed Settlement Class; (2) Preliminarily approving the settlement as set forth in the Agreement; (3) Approving the proposed Class Notice; and (4) Providing the parties with a Final Approval Hearing.

Dated: January 19, 2024

By: /s/ Ryan T. Kuhn
Eric K. Yaeckel
Ryan T. Kuhn
Attorneys for Plaintiff Damon Coffey