

1 [Counsel listed on next page]

2
3
4
5
6
7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN FRANCISCO
10

11 MATTHEW O'DONNELL, an individual, on
12 behalf of himself and on behalf of all persons
13 similarly situated,

14 Plaintiff,

15 vs.

16 OKTA, INC., a corporation; and Does 1
17 through 50, Inclusive,

18 Defendants.
19
20
21
22
23
24
25
26
27
28

Case No. CGC-20-587665

**MEMORANDUM IN SUPPORT OF
JOINT MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT; CONDITIONAL
CERTIFICATION OF SETTLEMENT
CLASS; APPOINTMENT OF CLASS
REPRESENTATIVE, CLASS COUNSEL
AND SETTLEMENT ADMINISTRATOR;
APPROVAL OF CLASS NOTICE
PACKET; AND SETTING OF FINAL
APPROVAL HEARING**

Date: September 28, 2021
Time: 9:30 a.m.
Judge: Hon. Ethan P. Schulman
Dept.: 302

Complaint filed: October 30, 2020
FAC filed: June 16, 2021
Trial date: None set

1 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP
2 NORMAN B. BLUMENTHAL (SB# 068687)

3 Norm@bamlawca.com

4 KYLE R. NORDREHAUG (SB# 205975)

5 kyle@bamlawca.com

6 APARAJIT BHOWMIK (SB# 248066)

7 AJ@bamlawca.com

8 NICHOLAS J. DE BLOUW (SB# 280922)

9 nick@bamlawca.com

10 2255 Calle Clara

11 La Jolla, CA 92037

12 Telephone: 1(858) 551-1223

13 Facsimile: 1(858) 551-1232

14 Attorneys for Plaintiff Matthew O'Donnell

15 PAUL HASTINGS LLP

16 ZACHARY P. HUTTON (SB# 234737)

17 zachhutton@paulhastings.com

18 ANNA M. SKAGGS (SB# 319179)

19 annaskaggs@paulhastings.com

20 101 California Street

21 Forty-Eighth Floor

22 San Francisco, California 94111

23 Telephone: 1(415) 856-7000

24 Facsimile: 1(415) 856-7100

25 Attorneys for Defendant Okta, Inc.

TABLE OF CONTENTS

PAGE

I. INTRODUCTION/SUMMARY OF ARGUMENT	1
II. BACKGROUND	1
A. Procedural History and the Parties' Contentions.....	1
B. Discovery and Mediation.	3
III. SUMMARY OF THE PROPOSED SETTLEMENT	3
A. Procedural Terms.....	3
B. Principal Terms.	4
C. Additional Terms.....	5
IV. THE SETTLEMENT SHOULD BE GIVEN PRELIMINARY APPROVAL	7
A. Class Action Settlements Are Subject to Court Review and Approval Under the California Rules of Court.	7
B. The Settlement Is Fair, Adequate and Reasonable.....	7
1. The Settlement Is the Result of Serious, Informed, Non-Collusive Negotiations.	8
2. The Extent of Discovery and the Early Stage of the Proceedings Support Settlement.....	9
3. Counsel Are Experienced in Similar Litigation.	9
4. The Settlement is Fair and Reasonable Based on the Risks and Costs of Further Litigation.	10
5. The Settlement Is a Reasonable Compromise of Claims.	12
a. Plaintiff's Claims for Unpaid Minimum and Overtime Wages.	12
b. Plaintiff's Meal- and Rest-Period Claims.	12
c. Plaintiff's Derivative Claims for Failure to Provide Accurate Itemized Wage Statements, Failure to Pay All Wages Due Upon Termination, Unfair Business Practices, and Claims Under PAGA.	13
d. Plaintiff's Derivative Claims.	13
V. CONDITIONAL CERTIFICATION FOR SETTLEMENT PURPOSES.....	14
VI. PROPOSED SETTLEMENT TIMELINE.....	15
VII. CONCLUSION	16

TABLE OF AUTHORITIES

PAGE(S)

Cases

<i>Adoma v. Univ. of Phoenix, Inc.</i> , 913 F. Supp. 2d 964, 977 (E.D. Cal. 2012)	10
<i>Amchen Prods., Inc. v. Windsor</i> 521 U.S. 591, 620 (1977)	14
<i>Daar v. Yellow Cab Co.</i> , 67 Cal. 2d 695, 704 (1967)	14
<i>Dunk v. Ford Motor Co.</i> , 48 Cal. App. 4th 1794, 1801 (1996)	8, 10
<i>Ellis v. Naval Air Rework Facility</i> , 87 F.R.D. 15, 18 (N.D. Cal. 1980), aff'd, 661 F.2d 939 (9th Cir. 1981)	10
<i>Flores v. Southcoast Auto. Liquidators, Inc.</i> , 17 Cal. App. 5th 841 (2017)	7
<i>Green v. Obledo</i> , 29 Cal. 3d 126, 145-46 (1981)	7
<i>Hernandez v. Restoration Hardware, Inc.</i> , 4 Cal. 5th 260 (2018)	11
<i>In re Beef Industry Antitrust Litigation</i> , 607 F.2d 167, 179-80 (5th Cir. 1979), cert. denied sub nom. <i>Iowa Beef Processors, Inc. v. Meat Price Investigators</i> Ass'n, 452 U.S. 905 (1981)	7
<i>In re Warner Commc'ns Sec. Litig.</i> , 618 F. Supp. 735, 745 (S.D.N.Y. 1985)	9
<i>Morgan v. United Retail Inc.</i> , 186 Cal. App. 4th 1136, 1149 (2010)	13
<i>Officers for Justice v. Civil Serv. Comm'n</i> , 688 F.2d 615, 625 (9th Cir. 1982)), cert. denied, 459 U.S. 1217 (1983)	8, 11
<i>Rebney v. Wells Fargo Bank</i> , 220 Cal. App. 3d 1117, 1139 (1990)	11
<i>Sav-On Drug Stores, Inc. v. Superior Court</i> , 34 Cal. 4th 319 (2004)	11
<i>Vasquez v. Superior Court</i> , 4 Cal. 3d 800, 821 (1971)	7
<i>Wershba v. Apple Computer, Inc.</i> , 91 Cal. App. 4th 224, 246, 250 (2001)	11

Statutes

California Business & Professions Code section 17200 <i>et seq.</i>	16
California Code of Civil Procedure section 382	10
California Labor Code	
§ 203	16
§ 203(a)	16
§ 226	16
§ 226(a)(2)	16
§ 226(e)	16
§ 1174.5	16
§ 2698 <i>et seq.</i>	5

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES
(Cont'd)

PAGE(S)

Rules

California Rules of Court
Rule 3.769 10
Rule 3.769(g) 10

Federal Rule of Civil Procedure
Rule 23 10

I. INTRODUCTION/SUMMARY OF ARGUMENT

Plaintiff Matthew O'Donnell ("Plaintiff") and Defendant Okta, Inc. ("Okta" or "Defendant") (collectively, "the parties"), seek preliminary approval of their proposed class action settlement (the "Settlement").¹ Subject to Court approval, Plaintiff has settled the class and representative claims alleged in this Action against Okta for \$2,800,000. The Settlement resolves all of the claims of plaintiff, the proposed class and representative group members, and class counsel against Okta.

The Settlement satisfies all of the criteria for preliminary settlement approval and falls well within the range of possible approval. Accordingly, the parties request that the Court grant preliminary approval of the Settlement; conditionally certify the proposed class for settlement purposes only; appoint the class representative, class counsel, and settlement administrator; approve and direct distribution of the Class Notice Packet; and schedule a final approval hearing.

II. BACKGROUND

A. Procedural History and the Parties' Contentions.

Plaintiff was employed by Okta as a non-exempt Sales Development Representative in California from June 2019 until July 2020.

On October 30, 2020, Plaintiff commenced this action (the "*O'Donnell I* Action"). In the original complaint in this action, Plaintiff asserted putative class claims against Okta for alleged failure to pay all wages due, including minimum wages and overtime wages, provide meal and rest periods, furnish accurate itemized wage statements, and pay all wages due to discharged and quitting employees.² Plaintiff also asserted individual claims for disability discrimination and

¹ A copy of the fully executed Settlement Agreement, including its exhibits, is attached as Exhibit 1 to the Declaration of Kyle Nordrehaug in Support of Joint Motion for Preliminary Approval of Settlement; Conditional Certification of Settlement Class; Appointment of Class Representative, Class Counsel, and Settlement Administrator; Approval of Class Notice Packet; and Setting of Final Approval Hearing ("*Nordrehaug Decl.*"). The exhibits to the Settlement Agreement are the form of notice to the class (Exh. A), the form of the notice to class members of estimated settlement awards (Exh. B), the proposed form of order granting this motion (Exh. C) and the proposed form of order granting the parties' motion for final approval of the Settlement (Exh. D).

² Plaintiff also asserted individual claims for disability discrimination and retaliation; failure to prevent disability discrimination, harassment, and retaliation; and wrongful termination in violation of public policy. The parties negotiated the separate settlement of those claims after they negotiated this class-wide resolution. *Nordrehaug Decl.*, ¶ 14.

1 retaliation; failure to prevent disability discrimination, harassment, and retaliation; and wrongful
2 termination in violation of public policy.

3 On July 31, 2020, Plaintiff gave notice to the California Labor and Workforce
4 Development Agency (the “LWDA”) of allegations against Okta similar to those raised in the
5 *O’Donnell I* Action pursuant to the Labor Code Private Attorneys General Act of 2004, Cal. Lab.
6 Code § 2698 *et seq.* (“PAGA”). The LWDA did not indicate within 60 days after receiving the
7 notice that it intended to investigate the allegations. (Nordrehaug Decl., ¶ 15.) On October 30,
8 2020, Plaintiff commenced an action in this Court entitled “*Matthew O’Donnell, on behalf of the*
9 *State of California, as a private attorney general, Plaintiff, vs. Okta, Inc., a Corporation; and*
10 *Does 1 through 50, Inclusive, Defendants*” (the “*O’Donnell II* Action”), No. CGC-20-587742.³
11 The complaint in the *O’Donnell II* Action asserted a claim under PAGA for alleged failure to pay
12 all minimum and overtime wages due, provide meal and rest periods, reimburse necessary
13 business expenses, furnish accurate itemized wage statements, and pay all wages due to
14 discharged and quitting employees.

15 On June 16, 2021, pursuant to the terms of the Settlement, Plaintiff filed a First Amended
16 Complaint (“FAC”) in this action that encompasses all claims asserted in the *O’Donnell II*
17 Action. On August 24, 2021, also pursuant to the terms of the Settlement, Plaintiff dismissed the
18 *O’Donnell II* Action in its entirety, without prejudice. (Nordrehaug Decl., ¶ 16.)

19 Okta denies all of Plaintiff’s material allegations in the FAC. Specifically, Okta contends,
20 among other things, that Plaintiff was paid all wages to which he was entitled, including
21 minimum wages and overtime wages; provided all meal and rest periods; reimbursed for all
22 necessary business expenses; furnished accurate itemized wage statements; and timely paid all
23 wages due upon separation. Okta further contends that that there is no basis to award penalties;
24 that a class could not properly be certified and that Plaintiff’s claims could not properly proceed
25 on a class or representative basis; and that if a class were certified or Plaintiff’s claims proceeded
26 on a representative basis, Okta’s defenses to Plaintiff’s claims would be applicable to the claims
27 of the class or representative group.

28 ³ The *O’Donnell I* Action and *O’Donnell II* Action are referred to collectively as the “Actions.”

1 **B. Discovery and Mediation.**

2 In connection with the parties' agreement to participate in an early private mediation of
3 the Actions, the parties engaged in extensive informal discovery, including Okta's production of
4 documents and data. (Nordrehaug Decl., ¶ 17.) Okta's data production contained, among other
5 things, information regarding the number of current and former non-exempt employees who
6 worked for Okta in California during the time period relevant to the Actions, their average rate of
7 pay, shift duration, and meal and rest period premium payments they received; data reflecting
8 incentive pay they received and the corresponding number of hours worked during the applicable
9 earnings periods; and their timekeeping and payroll data. (*Id.*) In addition, Okta produced its
10 relevant wage and hour policies. (*Id.*) This discovery provided the parties with a substantial
11 basis to assess the strengths and weaknesses of their respective positions prior to the mediation.
12 (*Id.*)

13 On March 9, 2021, the parties participated in a private mediation with David A. Rotman
14 of Mediated Negotiations, a preeminent wage-and-hour mediator with considerable experience
15 mediating in California. (Nordrehaug Decl., ¶ 18.) During the mediation, each side, represented
16 by its respective counsel, recognized the substantial risk of an adverse result in the Actions. (*Id.*)
17 Following the full-day mediation, during which the parties engaged in good-faith arm's-length
18 bargaining and realistically assessed the strengths and weakness of their positions, the parties
19 reached the Settlement of the Actions. (*Id.*)

20 **III. SUMMARY OF THE PROPOSED SETTLEMENT**

21 **A. Procedural Terms.**

22 The parties agreed to seek the Court's approval of the Settlement through the *O'Donnell I*
23 Action. (Nordrehaug Decl., ¶ 4.) Accordingly, on April 28, 2021, the parties requested leave
24 from this Court for Plaintiff to file the FAC in the *O'Donnell I* Action to encompass all claims
25 asserted in the *O'Donnell II* Action. (*Id.*) On June 10, 2021, the Court granted the parties'
26 request, and on June 16, 2021 the FAC was filed. (*Id.*) Then, on August 24, 2021, Plaintiff
27 dismissed the *O'Donnell II* Action in its entirety, without prejudice. (*Id.*)

28 ///

1 **B. Principal Terms.**

2 Okta will pay a total of \$2,800,000 (the “Total Settlement Amount”) to settle the Actions
3 on a classwide basis. (Nordrehaug Decl., ¶ 5.) The class to be conditionally certified is defined
4 as:

5 All current and former employees who worked for Okta in a non-exempt position
6 in California at any time from October 30, 2016 through June 7, 2021.

7 (*Id.*, ¶ 5.) It is estimated that there are approximately 510 Class Members.⁴ (*Id.*, ¶ 5.)

8 From the Total Settlement Amount will be paid (i) a PAGA Civil Penalties payment of
9 \$50,000 consisting of a payment of \$37,500 to the LWDA for its share of the settlement of civil
10 penalties under PAGA and the PAGA Amount of \$12,500 to be distributed to the PAGA
11 Settlement Group Members; (ii) all Settlement Shares paid to Class Members pursuant to the
12 Settlement; (iii) a Class Representative Payment to Plaintiff in the amount of \$10,000 (as
13 approved by the Court) to compensate him for his services to the Class in pursuing the Actions;
14 (iv) a Class Counsel Fees and Expenses Payment not to exceed \$960,333.33 (of which
15 \$933,333.33, or one-third of the Total Settlement Amount, represents attorneys’ fees, and
16 \$27,000 represents expenses) (as approved by the Court) to Class Counsel to compensate them
17 for their services to the Class in prosecuting the Actions and securing the Settlement; and (v) a
18 payment to the Settlement Administrator for its reasonable fees and expenses incurred in
19 administering the Settlement, which are estimated not to exceed \$15,000. (Nordrehaug Decl.,
20 ¶ 6.) None of the Total Settlement Amount will revert to Okta, and Okta will separately pay its
21 share of payroll taxes applicable to Class Members’ Settlement Shares. (*Id.*, ¶ 6.)

22 The Settlement Shares paid to Class Members will include (i) Class Payments, which will
23 be distributed to all Class Members who do not opt out of the Settlement based on the number of
24 workweeks worked for Okta in a position covered by the Settlement during the Class Period; and
25 (ii) PAGA Amount Payments, which will be distributed to all PAGA Settlement Group Members
26 based on the number of pay periods worked for Okta in a position covered by the Settlement

27 _____
28 ⁴ This estimate is based on data collected in or around December 2020 and provided to Plaintiff
for purposes of mediation.

1 during the PAGA Period. (Nordrehaug Decl., ¶ 7.) In the event of a dispute over a Class
2 Member's Settlement Share, the Settlement Administrator will resolve the dispute based on
3 information provided by Okta and the Class Member and after consultation with Class Counsel,
4 the Class Member and Okta. (*Id.*, ¶ 7.) The average Class Payment is estimated at approximately
5 \$3,460 per Class Member. (*Id.*, ¶ 7.)

6 Class Members who do not opt out of the Settlement will release any and all known and
7 unknown claims against Okta and the Released Parties that were pled or could have been pled
8 based on the factual allegations contained in the operative complaint in this action or any
9 amendments thereto or notices submitted by Plaintiff to the LWDA pursuant to PAGA, including
10 claims that occurred during the Class Period and arise out of the allegations that Okta failed to
11 pay all wages due, including minimum wages and overtime wages; provide meal and rest periods;
12 furnish accurate itemized wage statements; or pay all wages due to discharged and quitting
13 employees. (Nordrehaug Decl., ¶ 8.) In addition, all PAGA Settlement Group Members will
14 release the PAGA claims described above, and will receive a PAGA Amount Payment regardless
15 of whether they opt out of the Settlement because allegedly aggrieved employees are bound by a
16 judgment resolving PAGA claims, regardless of whether they opt out. *See Arias v. Superior*
17 *Court*, 46 Cal. 4th 969, 986 (2009) ("Because an aggrieved employee's action under [PAGA]
18 functions as a substitute for an action brought by the government itself, a judgment in that action
19 binds all those, including nonparty aggrieved employees . . .").

20 In connection with their motion for final approval of the Settlement, the parties will
21 present a proposed Judgment to the Court for its approval and entry in this action, in substantially
22 the form evidenced by Exhibit D to the Settlement. (Nordrehaug Decl., ¶ 9)

23 **C. Additional Terms.**

24 Within 30 days after preliminary approval of the Settlement is granted by the Court, Okta
25 will provide the Settlement Administrator with the Class Members' Data, which includes the
26 names of the Class Members, their last-known mailing addresses and telephone numbers, their
27 Social Security numbers, the number of workweeks they worked for Okta in a position covered
28 by the Settlement during the Class Period, and the number of pay periods they worked for Okta in

1 a position covered by the Settlement during the PAGA Period. (Nordrehaug Decl., ¶ 10.) Within
2 15 days of receiving the Class Members' Data, the Settlement Administrator will send to all Class
3 Members a Class Notice Packet, which will include a Class Notice and a Notice of Estimated
4 Settlement Award, which will show each Class Member his or her reported number of workweeks
5 covered by the Settlement, reported number of pay periods covered by the Settlement, and an
6 estimate of his or her Settlement Share. (*Id.*, ¶ 10.)

7 The Class Notice Packet will be sent to Class Members by first-class U.S. Mail based
8 upon the last-known mailing addresses provided by Okta, unless modified by any updated address
9 information that the Settlement Administrator obtains in the course of administration of the
10 Settlement. (Nordrehaug Decl., ¶ 11.) For any notices returned, the Settlement Administrator
11 will make reasonable efforts to find corrected addresses. (*Id.*)

12 Class Members will have 45 days after the Class Notice Packets are mailed to object to the
13 Settlement. (Nordrehaug Decl., ¶ 11.) Likewise, Class Members who do not wish to participate
14 in the Settlement will have 45 days after the Class Notice Packets are mailed to opt out of the
15 Settlement by submitting a "Request for Exclusion." (*Id.*) Any Class Member who does not
16 timely submit a valid Request for Exclusion will be bound by the Settlement and be paid his or
17 her Settlement Share. (*Id.*) Any Class Member who timely submits a valid Request for
18 Exclusion will release the PAGA claims described above and receive the PAGA Payment
19 Amount portion of his or her Settlement Share, but will not otherwise be bound by the Settlement
20 and will not receive the Class Payment Portion of his or her Settlement Share. (*Id.*) If by the
21 deadline 10% or more of Class Members, or a number of Class Members whose Settlement
22 Shares would be worth 10% or more of the Net Settlement Amount, opt out of the Settlement,
23 then Okta will have the right to rescind the Settlement, which it must do within 10 days after the
24 Settlement Administrator notifies the parties of the final number of timely and valid Requests for
25 Exclusion. (*Id.*, ¶ 11.)

26 Assuming that Okta does not rescind the Settlement, the parties will jointly move this
27 Court for final approval of the Settlement, payment to the LWDA, and payment of the Settlement
28 Administrator's reasonable fees and expenses. (Nordrehaug Decl., ¶ 12.) Plaintiff and Class

Counsel will move the Court for awards of the Class Representative Payment and the Class Counsel Fees and Expenses Payment. (*Id.*, ¶ 12.)

IV. THE SETTLEMENT SHOULD BE GIVEN PRELIMINARY APPROVAL

A. Class Action Settlements Are Subject to Court Review and Approval Under the California Rules of Court.

California Rule of Court 3.769 requires court approval for class action settlements.⁵ “Before final approval, the court must conduct an inquiry into the fairness of the proposed settlement.” Cal. R. Ct. 3.769(g). Rule 3.769 further requires a noticed motion for preliminary approval of class settlements:

- (a) A settlement or compromise of an entire class action, or a cause of action in a class action, or as to a party, requires the approval of the court after hearing. . . .
- (c) Any party to a settlement agreement may serve and file a written notice of motion for preliminary approval of the settlement. The settlement agreement and proposed notice to class members must be filed with the motion, and the proposed order must be lodged with the motion.

Courts act within their discretion in approving settlements that are fair, not collusive, and take into account “all the normal perils of litigation as well as the additional uncertainties inherent in complex class action[s].” *In re Beef Industry Antitrust Litigation*, 607 F.2d 167, 179-80 (5th Cir. 1979), *cert. denied sub nom. Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n*, 452 U.S. 905 (1981).

B. The Settlement Is Fair, Adequate and Reasonable.

In deciding whether to approve a proposed class action settlement under Code of Civil Procedure section 382, a court must find that a proposed settlement is “fair, adequate and reasonable.” *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996) (citing *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 625 (9th Cir. 1982)), *cert. denied*, 459 U.S. 1217

⁵ The California Supreme Court has authorized California’s trial courts to use Federal Rule of Civil Procedure 23 and cases applying it for guidance in considering class issues. See *Vasquez v. Superior Court*, 4 Cal. 3d 800, 821 (1971), *superseded on other grounds as stated in Flores v. Southcoast Auto. Liquidators, Inc.*, 17 Cal. App. 5th 841 (2017); *Green v. Obledo*, 29 Cal. 3d 126, 145-46 (1981). Where appropriate, therefore, the parties cite Federal Rule 23 and federal case law in addition to California law.

1 (1983). The court must consider all relevant factors, such as the following:

2 the strength of plaintiffs' case, the risk, expense, complexity and likely duration
3 of further litigation, the risk of maintaining class action status through trial, the
4 amount offered in settlement, the extent of discovery completed and the stage of
5 the proceedings, the experience and views of counsel, the presence of a
6 governmental participant, and the reaction of the class members to the proposed
7 settlement.

8 *Id.* The court's primary function is to determine that the settlement is not the product of fraud,
9 overreaching, or collusion, and taken as a whole, is fair, reasonable and adequate to all concerned.

10 *Id.*

11 A proposed class action settlement is *presumed* fair under the following circumstances:

12 (i) the parties reached settlement after arm's-length negotiations; (ii) investigation and discovery
13 were sufficient to allow counsel and the court to act intelligently; (iii) counsel is experienced in
14 similar litigation; and (iv) the percentage of objectors is small. *Dunk*, 48 Cal. App. 4th at 1802
15 (citation omitted). The Nordrehaug Declaration filed with this motion demonstrates that (i) the
16 Settlement was the product of serious, informed, and non-collusive negotiations conducted at
17 arm's length and facilitated by a respected and experienced neutral mediator; (ii) the parties have
18 exchanged a significant amount of information such that Plaintiff and his counsel are able to
19 make an informed recommendation about the Settlement; and (iii) the putative class is
20 represented by counsel experienced in wage-and-hour class actions.⁶

21 Thus, the Settlement, at this time, is entitled to the presumption that it is fair and in all
22 other respects proper, and should be preliminarily approved.

23 **1. The Settlement Is the Result of Serious, Informed, Non-Collusive**
24 **Negotiations.**

25 The Settlement was reached as a result of the extensive arm's-length negotiations
26 facilitated by David A. Rotman, a well-respected and experienced wage-and-hour class action
27 mediator. (Nordrehaug Decl., ¶ 19.) Though cordial and professional, the settlement negotiations
28 have been adversarial and non-collusive in nature, and the Settlement reached is the product of

⁶ The fourth factor—the number of objectors—cannot be known until after the notice of the Settlement has been disseminated to Class Members and they have had an opportunity to react to it and respond.

1 substantial effort by the parties and their counsel. (*Id.*, ¶ 19.) While Plaintiff believes in the
2 chance of success of certifying his claims, he also recognizes the inherent risks of litigation and
3 understands the benefit of the Class Members receiving Settlement Shares immediately rather
4 than risking unfavorable decisions on class certification, summary judgment, at trial and/or on the
5 damages awarded, and/or on an appeal that could take several more years to litigate. (*Id.*, ¶ 20.)
6 Further, litigating Plaintiff's claims, which involve approximately 510 Class Members during the
7 relevant period, would have required substantial additional preparation and discovery and
8 ultimately would involve the deposition and presentation of numerous witnesses (including expert
9 witnesses), as well as the consideration, preparation and analysis of expert reports. (*Id.*)
10 Therefore, should litigation have progressed any further, each side would have incurred
11 significant expense. (*Id.*)

12 **2. The Extent of Discovery and the Early Stage of the Proceedings**
13 **Support Settlement.**

14 The parties thoroughly investigated and evaluated the factual strengths and weaknesses of
15 this case before reaching the Settlement and engaged in sufficient investigation and informal
16 exchange of discovery, as described above, to support the Settlement. (Nordrehaug Decl., ¶ 21.)
17 The Settlement was reached after extensive factual and legal investigation and research; review
18 and analysis of documents and information, including payroll and timekeeping data pertaining to
19 all Class Members; numerous discussions and exchanges between counsel; and extensive review
20 of case law, pleadings and rulings in similar actions. (Nordrehaug Decl., ¶ 21.) The settlement
21 amount is, of course, a compromise figure. It took into account risks related to liability, damages,
22 and all of the defenses asserted by Okta. (Nordrehaug Decl., ¶ 21.) Thus, the Settlement came
23 only after the case was investigated by counsel, as set forth above. This litigation, therefore, has
24 reached the stage where the parties "certainly have a clear view of the strengths and weaknesses
25 of their cases" sufficient to support the Settlement. *In re Warner Commc'ns Sec. Litig.*, 618 F.
26 Supp. 735, 745 (S.D.N.Y. 1985).

27 **3. Counsel Are Experienced in Similar Litigation.**

28 Both Plaintiff's counsel and Okta's counsel, Paul Hastings LLP, have significant

1 experience litigating wage-and-hour class actions. (Nordrehaug Decl., ¶¶ 22-23.) Having
2 prosecuted numerous cases on behalf of employees for California Labor Code violations,
3 Plaintiff's counsel represent that they are qualified to evaluate the class and representative claims
4 and the viability of the defenses asserted herein by experienced defense counsel and to evaluate
5 settlement versus trial on a fully informed basis. (*Id.*)

6 Counsel on both sides share the view that this is a fair and reasonable settlement in light of
7 the complexities of the actions, the state of the law, and uncertainties of class certification and
8 litigation. (Nordrehaug Decl., ¶ 23.) Given the risks inherent in litigation and the defenses
9 asserted, this Settlement is fair, adequate, and reasonable and in the best interests of the Class,
10 and should be preliminarily approved. (Nordrehaug Decl., ¶ 23.)

11 Experienced counsel, have weighed the strengths and weaknesses of the case, fully
12 examined the issues and risks of litigation, and endorse the proposed Settlement. The view of the
13 attorneys conducting the litigation is entitled to significant weight in deciding whether to approve
14 a settlement. *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980), *aff'd*, 661
15 F.2d 939 (9th Cir. 1981); *Adoma v. Univ. of Phoenix, Inc.*, 913 F. Supp. 2d 964, 977 (E.D. Cal.
16 2012).

17 Accordingly, the parties submit the Settlement, having satisfied the three requirements of
18 *Dunk* at this stage, sufficient for the Court to grant preliminary approval.

19 **4. The Settlement is Fair and Reasonable Based on the Risks and Costs of**
20 **Further Litigation.**

21 Plaintiff and his counsel have concluded it was reasonable to enter into the Settlement.
22 (Nordrehaug Decl., ¶ 24.) Okta has vigorously contested and continues to contest any liability for
23 the claims asserted in the Actions. (*Id.*, ¶ 24.) Although Okta believes that class certification
24 would be unlikely, it nevertheless agreed to attempt resolution of the Actions to avoid the
25 expense, distraction and uncertainty of protracted litigation. (*Id.*, ¶ 24.)

26 There are significant legal uncertainties associated with cases such as the Actions, as they
27 can be factually complex and require protracted litigation to resolve. On the one hand, Plaintiff
28 contends his claims are suitable for class certification and representative treatment because Okta's

1 relevant policies are applied uniformly to all Class Members. Plaintiff further contends that his
2 claims involve common questions of law and fact and common proof. On the other hand, Okta
3 maintains that its policies and practices are lawful and, in any event, resolution of each claim
4 would require highly individualized analysis of the facts and circumstances of each Class
5 Member's employment. Okta maintains that because individualized issues would predominate
6 over common facts, class certification and representative treatment likely would be deemed
7 inappropriate. Accordingly, while Plaintiff continues to believe this is a strong case for
8 certification, there is always risk and significant expense associated with class certification
9 proceedings.

10 Legal uncertainties also abound. As the California Supreme Court held in *Sav-On Drug*
11 *Stores, Inc. v. Superior Court*, 34 Cal. 4th 319 (2004), class certification always is a matter of the
12 trial court's sound discretion. Decertification motions and reversals after trial also are legitimate
13 risks.

14 These uncertainties bore heavily on the negotiations leading to the Settlement, and in the
15 face of these legal uncertainties, the parties agreed to a compromise settlement of \$2,800,000. A
16 settlement is not judged solely against what might have been recovered had a plaintiff prevailed at
17 trial, nor does a settlement have to provide 100% of the damages sought to be fair and reasonable.
18 *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 246, 250 (2001), *disapproved on other*
19 *grounds, Hernandez v. Restoration Hardware, Inc.*, 4 Cal. 5th 260 (2018); *Rebney v. Wells Fargo*
20 *Bank*, 220 Cal. App. 3d 1117, 1139 (1990). "Compromise is inherent and necessary in the
21 settlement process . . . [E]ven if the relief afforded by the proposed settlement is substantially
22 narrower than it would be if the suits were to be successfully litigated, this is no bar to a class
23 settlement because the public interest may indeed be served by a voluntary settlement in which
24 each side gives ground in the interest of avoiding litigation." *Wershba*, 91 Cal. App. 4th at 250
25 (citations and internal quotation marks omitted); *Officers for Justice*, 688 F.2d at 628 ("It is well-
26 settled law that a cash settlement amounting to only a fraction of the potential recovery will
27 not . . . render the settlement inadequate or unfair").

28 ///

1 **5. The Settlement Is a Reasonable Compromise of Claims.**

2 **a. Plaintiff's Claims for Unpaid Minimum and Overtime Wages.**

3 Plaintiff and his counsel have determined that it is prudent to compromise and settle the
4 Class Members' unpaid wage claims. (Nordrehaug Decl., ¶ 25.) Plaintiff alleged that Class
5 Members were not paid all wages owed because they performed off-the-clock work and because
6 Okta failed to include certain forms of pay in the regular rate of pay. (*Id.*) However, Okta
7 contended that it maintains lawful policies, including policies strictly prohibiting off-the-clock
8 work, and that it properly excluded certain forms of pay, including discretionary bonuses, from
9 the regular rate of pay. (*Id.*) Moreover, Okta contended that the number of Class Members who
10 received the disputed forms of pay, and the amounts of overtime wages allegedly owed, were
11 insubstantial. (*Id.*)

12 **b. Plaintiff's Meal- and Rest-Period Claims.**

13 Plaintiff's meal- and rest-period claims also were in dispute. Okta contended that its
14 handbooks, policies, trainings, and timekeeping and payroll data demonstrated that Okta observed
15 compliant meal- and rest-period policies and practices, including payment of premiums.
16 (Nordrehaug Decl., ¶ 26.) Plaintiff contended that Class Member timekeeping records, which
17 often reflected meal periods of exactly 30 minutes, created a presumption of noncompliant meal
18 periods. Okta vigorously disputed that contention, because throughout the Class Period Class
19 Members have manually entered their hours worked and meal period start and end times, and
20 Okta has maintained policies informing Class Members of their entitlement to take duty-free meal
21 periods of at least 30 minutes. (*Id.*) Plaintiff also contended that Okta unlawfully required Class
22 Members to remain on Okta premises during rest periods. (*Id.*, ¶ 26.) Okta, in turn, contended
23 that it has always permitted Class Members to spend rest periods wherever they choose and, in
24 any event, several courts have held that on-premises requirements do not render rest periods
25 noncompliant. (*Id.*)

26 ///

27 ///

28 ///

1 **c. Plaintiff's Derivative Claims for Failure to Provide Accurate**
2 **Itemized Wage Statements, Failure to Pay All Wages Due Upon**
3 **Termination, Unfair Business Practices, and Claims Under**
 PAGA.

4 Plaintiff's "direct" wage statement claim also was in dispute. Plaintiff contended that
5 Class Members' wage statements violated Labor Code section 226(a)(2) because they failed to
6 separately list the total hours worked during the pay period. (Nordrehaug Decl., ¶ 29.) Okta
7 vigorously disputed that contention on the ground that employees could simply add together the
8 hours listed on each line of their wage statements to arrive at the sum of their hours worked. (*Id.*)
9 *See Morgan v. United Retail Inc.*, 186 Cal. App. 4th 1136, 1149 (2010) (wage statements
10 complied with section 226(a)(2) where they did not separately list total hours worked, but
11 employees could determine total hours by summing regular and overtime hours shown on wage
12 statements).

13 **d. Plaintiff's Derivative Claims.**

14 Plaintiff's claims for failure to provide accurate itemized wage statements pursuant to
15 Labor Code section 226 (except as described above); failure to pay all wages due upon
16 termination under Labor Code section 203; unfair business practices in violation of California
17 Business & Professions Code section 17200 *et seq.*; and for civil penalties pursuant to PAGA are
18 derivative of his other claims. (Nordrehaug Decl., ¶ 29.) Because the claims are derivative, they
19 entail the same risks as the claims outlined above. Furthermore, even if one of those claims were
20 to survive or be certified as a class, the wage statement and waiting-time claims would fail if Okta
21 prevailed on its defenses that, even if some wages were owed, it did not "knowingly and
22 intentionally" issue inaccurate wage statements or "willfully" fail to pay all wages due upon
23 termination or fail to maintain required records. *See* Cal. Lab. Code §§ 226(e); 203(a); 1174.5.

24 * * *

25 All of the claims were highly disputed, and the settlement amount reflects a compromise
26 by both parties. Plaintiff has calculated the Class's maximum potential damages, exclusive of
27 interest and derivative penalties, to be approximately \$9,649,290.50. (Nordrehaug Decl., ¶ 28.)
28 Taking into account the risks and uncertainties of further litigation, including the risk that the

1 Court may not certify all or some of Plaintiff's claims and the risk of an adverse judgment, the
2 \$2,800,000 Settlement is a reasonable compromise. (*Id.*, ¶ 28.) Plaintiff's counsel are convinced
3 that the Settlement is in the best interest of the Class based on the negotiations and a detailed
4 knowledge of the issues present in the actions. The length and risks of trial and other normal
5 perils of litigation were all weighed in reaching the Settlement. In addition, the affirmative
6 defenses asserted by Okta, the prospect of potential adverse summary judgment rulings, the
7 uncertainty of class certification, the difficulties of complex litigation, the lengthy process of
8 establishing specific damages and various possible delays and appeals, were also carefully
9 considered by Class Counsel in agreeing to the Settlement. (*Id.*, ¶ 30.) In light of the above, the
10 Settlement is well within the "ballpark" of reasonableness and should be granted preliminary
11 approval. (*Id.*, ¶ 30.)

12 V. CONDITIONAL CERTIFICATION FOR SETTLEMENT PURPOSES

13 In California, there are two certification prerequisites: (i) the existence of an
14 "ascertainable class," and (ii) "a well defined community of interest in the questions of law and
15 fact involved affecting the parties to be represented." *Daar v. Yellow Cab Co.*, 67 Cal. 2d 695,
16 704 (1967) (citations omitted).

17 A lesser standard of scrutiny applies when evaluating these criteria for settlement
18 purposes, and courts should take settlement into account in evaluating class certification. *Amchen*
19 *Prods., Inc. v. Windsor* 521 U.S. 591, 620 (1977). Because the parties are asking the Court to
20 certify this action for settlement purposes only, the Court need not determine whether the class
21 would be manageable. Plaintiff asserts that the Class here would meet the requirements of
22 numerosity, commonality, typicality, adequacy of representation, and superiority of the class
23 action device over individual litigation. (Nordrehaug Decl., ¶¶ 31.) Okta maintains that a class
24 cannot properly be certified, but will not oppose conditional certification of the Class for
25 settlement purposes only, acknowledging the low threshold required under such circumstances.
26 (*Id.*, ¶ 31.)

27 ///

28 ///

VI. PROPOSED SETTLEMENT TIMELINE

Should the Court grant preliminary approval of the Settlement at the September 28, 2021, hearing, the parties propose the following settlement timeline:

Date	Event
October 28, 2021	Last day for Okta to provide Settlement Administrator with Class Members' information (30 days after preliminary approval order)
November 12, 2021	Last day for Settlement Administrator to mail Class Notice Packets (15 days after Okta provides Class Members' information)
December 27, 2021	Last day for Class Members to submit Request for Exclusion, dispute information on Notice of Estimated Settlement Award, and file objections to Settlement (45 days after Class Notice Packets are mailed)
January 6, 2022	Last day for Settlement Administrator to provide the parties with a complete and accurate list of all Class Members who submitted timely and valid Requests for Exclusion and objections (10 days after the deadline for submission of same)
January 21, 2022	Last day for Okta to exercise right to rescind Settlement, if applicable (15 days after Settlement administrator provides report of Class Members who timely submitted valid Requests for Exclusion)
16 court days before hearing on motion for final approval	Last day for parties to jointly file with the Court a motion for a final approval of the Settlement, the LWDA payment, and payment of the Settlement Administrator's fees and expenses, and for plaintiff and Class Counsel to serve on Okta and file with the Court a motion for awards of the Class Representative Payment and the Class Counsel Fees and Expenses Payment
Within 3 days after Settlement becomes Final as defined in Settlement	Last day for Settlement Administrator to provide Okta with wire transfer information
Within 20 days after Settlement Administrator provides Okta with wire transfer information	Last day for Okta to transfer to Settlement Administrator the Total Settlement Amount and Okta's share of payroll taxes on Wage Portions of Settlement Shares paid to Class Members
Within 10 days after Okta transfers to Settlement Administrator the Total Settlement Amount	Settlement Administrator to pay to Class Members the Settlement Shares; to plaintiff, the Class Representative Payment; to Class Counsel, the Class Counsel Fees and Expenses Payment; to the LWDA, the LWDA Payment; and to the Settlement Administrator, its reasonable fees and expenses

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2
3
4
5
6
7
8

9
10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28