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 FRANK SICA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FRANK SICA, on behalf of himself, and all
 others similarly situated, and all aggrieved
 employees,

Plaintiff,

v.

MADISON INDUSTRIAL SERVICES TEAM,
 LIMITED PARTNERSHIP; and DOES 1
 through 50, inclusive,

Defendant.

Case No: 4:20-cv-08347-KAW

CLASS ACTION

**PLAINTIFF'S NOTICE OF MOTION AND
 MOTION FOR PRELIMINARY
 APPROVAL OF CLASS ACTION AND
 PAGA SETTLEMENT; MEMORANDUM
 OF POINTS AND AUTHORITIES IN
 SUPPORT THEREOF**

Date: February 3, 2022
 Time: 1:30 p.m.
 Ctrm: TBD
 Judge: Kandis A. Westmore

Complaint Filed: September 30, 2020
 FAC filed: November 19, 2020
 Removal Date: November 25, 2020

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PLEASE TAKE NOTICE THAT on February 3, 2022 at 1:30 p.m., or as soon thereafter as the matter may be heard by the Honorable Kandis A. Westmore, Plaintiff FRANK SICA will and hereby does move for an Order: (1) preliminarily approving the settlement set forth in the Joint Stipulation of Class Action and PAGA Settlement and Release of Claims; (2) conditionally certifying the proposed Settlement Class; (3) appointing Plaintiff as the settlement Class Representative; (4) appointing Plaintiff's Counsel as settlement Class Counsel; (5) approving the designation of Simpluris, Inc. as the Settlement Administrator; (6) approving the mailing of the proposed Notice of Class and PAGA Action Settlement; and (7) scheduling a fairness hearing for final approval of the settlement.

This Motion is made pursuant to Federal Rule of Civil Procedure 23, which requires court approval of the settlement of a class action. The basis for this Motion is that the proposed settlement is fair, adequate, and reasonable and in the best interests of the proposed Settlement Class as a whole, and that the procedures proposed are adequate to ensure the opportunity of the proposed settlement Class Members to participate in, opt out of, or object to the settlement.

This Motion will be based on this notice of motion and motion, the accompanying summary of argument and memorandum of points and authorities set forth herein, the parties' Joint Stipulation of Class Action and PAGA Settlement and Release of Claims, the Declarations of Eric A. Grover and Scot D. Bernstein, the pleadings and papers filed in this case, and such evidence or oral argument as may be presented at the hearing.

Dated: December 29, 2021

KELLER GROVER LLP

By: 

ERIC A. GROVER
 ROBERT SPENCER
Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Frank Sica (“Plaintiff” or “Class Representative”) brought this putative class action on behalf of current and former hourly on-site California employees of Madison Industrial Services Team, Limited Partnership (“Defendant” or “Madison”). Plaintiff alleges class claims based on allegations that Defendant’s wage and meal period policies and practices violated California Labor Code §§ 201-203, 226, 226.7, 510, 512, 1194, 1194.2, 1197, 1197.1 and Business and Professions Code §§ 17200, *et seq.*¹ Plaintiff also alleges related California Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.* (“PAGA”) claims on behalf of all aggrieved employees² and the California Labor & Workforce Development Agency (“LWDA”).³

Plaintiff now seeks the Court’s preliminary approval of proposed non-reversionary class action and PAGA action settlement (the “Settlement”).⁴ Plaintiff and Defendant (the “Parties”) agreed to mediation and participated in two mediation sessions with Steve Pearl, Esq., who has wage and hour class action experience.⁵ As a result of the parties’ negotiations, including the two mediations, the Parties reached an agreement to resolve this action.⁶ All of the terms of the Settlement are set forth in the Settlement Agreement.⁷

The Settlement satisfies all of the criteria for preliminary approval under Federal Rule of Civil Procedure 23 and controlling Ninth Circuit case law.⁸ The Settlement is the product of

¹ Docket (“Dkt.”) 1-7 (the operative First Amended Complaint (“FAC”).

² Labor Code § 2699(c) defines “aggrieved employees” as “any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.”

³ Dkt. 1-7 (FAC).

⁴ Declaration of Eric A. Grover submitted herewith (“Grover Decl.”), Ex. A (the Joint Stipulation of Class Action Settlement and PAGA Settlement and Release of Claims (“Settlement Agreement”). All “Ex.” references are to Grover Declaration exhibits unless otherwise noted.

⁵ Ex. A at § II.C.

⁶ Ex. A at § II.C; Grover Decl. at ¶ 13.

⁷ Ex. A; Grover Decl. at ¶ 13.

⁸ See *Briseño v. Henderson*, 998 F.3d 1014, 1022-25 (9th Cir. 2021) (“*Briseño*”), citing Rule 23(e) and *Jones v. GN Netcom, Inc. (In re Bluetooth Headset Prods. Liab. Litig.)*, 654 F.3d 935, 946 (9th Cir. 2011) (“*Bluetooth*”).

serious, non-collusive negotiations by highly experienced counsel who, after substantive informal discovery, were well-informed about the case's key legal and factual issues sufficient to assess the value of the claims and settlement terms.⁹

The Settlement provides an excellent result for the Settlement Class on fair, reasonable and adequate terms.¹⁰ Defendant must pay \$650,000 plus the employer's share of the payroll taxes, referred to as the Maximum Settlement Amount ("MSA"), and has no reversionary interest in that amount.¹¹ The estimated Net Settlement Amount of \$403,000 will be paid in full to the Class Members who do not opt-out, *i.e.*, Settlement Class Members ("SCMs"), without requiring claim forms.¹² If no SCM opts out, each will receive an Individual Settlement Payment, averaging \$1,033.33 and \$27.79 per shift, based on the number of Qualified Shifts he or she worked.¹³ Balancing the strength of Plaintiff's case with the risks of continued litigation, the Settlement is well within the range of approval.¹⁴

The Settlement also provides that Plaintiff's representative PAGA claims will be settled for \$20,000, referred to as the PAGA Payment.¹⁵ As Labor Code § 2699(i) requires, the PAGA Payment will be distributed 75% (\$15,000) to the LWDA and 25% (\$5,000) to Aggrieved Employees.¹⁶ From the \$5,000 allocated to Aggrieved Employees, each Aggrieved Employee will receive an Individual PAGA Payment based the number of Qualified Pay Periods he or she worked during the PAGA Period.¹⁷ All Aggrieved Employee are SCMs and will receive an Individual PAGA Payment in addition to the Individual Settlement Payment.¹⁸

⁹ Grover Decl. at ¶¶ 10-14, 17-39; Declaration of Scot D. Bernstein submitted in support of the preliminary approval motion ("Bernstein Decl.") at ¶ 2, Ex. 1.

¹⁰ Ex. A at § III.DD; *see also, generally*, Ex. A; Grover Decl. at ¶¶ 17-39.

¹¹ *See* Grover Decl., Ex. A at §§ I.V, III.M.

¹² Ex. A at §§ I.H, I.W, I.QQ, III.M.2.a; Grover Decl. at ¶¶ 24-25.

¹³ Ex. A at §§ I.S, I.KK, III.M.2.a; Grover Decl. at ¶¶ 26-27 (\$403,000/390 Class Members = \$1,033.33 and \$403,000/14,500 = \$27.79).

¹⁴ Grover Decl. at ¶¶ 17-39.

¹⁵ Ex. A at §§ I.Z, III.M.5. *See* Lab. Code § 2699(l)(2).

¹⁶ Ex. A at § III.M.5.

¹⁷ Ex. A at §§ III.M.2.b, III.M.5, *see also*, §§ I.R, I.GG, I.II.

¹⁸ Ex. A at §§ III.M.2.a, III.M.2.b; *see also*, §§ I.R, I.S.

The Settlement has no obvious deficiencies and does not grant preferential treatment to any segment of the Class. The key Settlement terms are discussed in detail below and support that the Settlement is fair, adequate and reasonable.

Plaintiff requests that the Court: (a) grant preliminary approval of the Settlement, (b) conditionally grant certification of the proposed Settlement Class, (c) approve the appointment of Simpluris, Inc. (“Simpluris”) as the Settlement Administrator, (d) authorize notice pursuant to the proposed notice plan, (e) schedule a final fairness and approval hearing, (f) appoint Plaintiff Frank Sica as the settlement Class Representative, and (g) appoint Plaintiff’s counsel Eric A. Grover and Robert Spencer of Keller Grover LLP and Scot D. Bernstein of Law Offices of Scot D. Bernstein, A Professional Corporation as settlement Class Counsel.

II. BACKGROUND

A. Factual Background and Procedural History

Madison employs hourly workers who work on-site at its clients’ power plants and other industrial plants in California and other states.¹⁹ Plaintiff Sica worked for Madison as an hourly-paid as a pipefitter on a project that took place in October 2019 at the Conoco Phillips refinery in Rodeo, California.²⁰

Plaintiff sent a letter to the Labor and Workforce Development Agency (“LWDA”) on September 14, 2020, providing notice of alleged Labor Code violations.²¹ Plaintiff initially filed this action on September 30, 2020 in Alameda County Superior Court and filed the FAC on November 19, 2020.²² Defendant removed to the United States District Court for Northern District of California on November 25, 2020.²³ In the FAC, Plaintiff asserts that Madison failed to pay at least the minimum wage for all pre-shift and post-shift time worked, failed to provide timely, off-duty 30-minute meal periods, failed to provide accurate, itemized wage statements,

¹⁹ Dkt. 1-7 (the operative First Amended Complaint (“FAC”)) at ¶¶ 5, 9.

²⁰ Dkt. 1-7 at ¶¶ 4, 10.

²¹ Ex. A at § II.B; Grover Decl. at ¶ 7.

²² Dkt. 1-1 (initial Complaint) and 1-7 (FAC); Grover Decl. at ¶ 7.

²³ Dkt. 1, 1-1, 1-7.

and failed to pay all wages due upon termination. Based on that alleged conduct, Plaintiff asserts class claims based on allegations that Defendant violated California Business & Professions Code §§ 17200, *et seq.*, California Labor Code §§ 201-203, 226, 226.7, 510, 512, 1194, 1194.2, 1197 and 1197.1, and Wage Order 16. Plaintiff also alleges related representative PAGA claims.²⁴

Defendant has denied all of the allegations in their entirety.²⁵ To date, no court has found any wrongdoing on the part of Defendant or that it otherwise acted improperly or in violation of any state law, rule or regulation, with respect to the issues in the litigation.²⁶

In an effort to avoid the risk and expense of lengthy litigation, the Parties agreed to attend two private mediation sessions relatively early in the course of this action.²⁷

B. The Settlement Process

Prior to bringing the action, proposed Class Counsel investigated Plaintiff's legal claims and factual circumstances. The investigation and informal discovery provided Class Counsel with relevant information regarding the legal and factual issues affecting the class and PAGA claims in this case.²⁸

In preparation for each mediation, the Parties exchanged additional information necessary to provide each other with a thorough understanding of their respective legal theories and defenses and to engage in productive settlement negotiations.²⁹ The Parties participated in two lengthy mediation sessions on May 26, 2021 and September 1, 2021 with the highly experienced and skilled mediator, Steve Pearl, Esq.³⁰ Through the mediations, the Parties agreed to settle the entire action, subject to the Court's approval.³¹ All terms of the Parties' settlement are set forth in the Settlement Agreement.³²

²⁴ Dkt. 1-7 at ¶¶ 9-103.

²⁵ Grover Decl. at ¶ 8; Ex. A at § II.E.

²⁶ Grover Decl. at ¶ 8.

²⁷ Grover Decl. at ¶ 9; Ex. A at § II.C.

²⁸ Grover Decl. at ¶ 10.

²⁹ Ex. A at § II.C; Grover Decl. at ¶¶ 11-12.

³⁰ Ex. A at § II.C; Grover Decl. at ¶ 13.

³¹ Ex. A at § II.C; Grover Decl. at ¶ 13.

³² *See generally*, Ex. A; Grover Decl. at ¶ 13.

III. THE SETTLEMENT AGREEMENT

A. The Settlement Class Definition

The Parties have agreed that Settlement Class Members (“SCMs”) are “all Class Members who do not submit a valid Request for Exclusion,”³³ and have defined “Class Members” as:

all current and former hourly on-site employees who worked for Defendant in California during the Class Period. An individual Class Member also may be an Aggrieved Employee if he or she falls within the “Aggrieved Employee” definition.³⁴

The Class Period is September 30, 2016 through September 30, 2021, inclusive.³⁵ Based on Defendant’s records, there are an estimated 390 Class Members.³⁶

For the PAGA settlement, the Parties have agreed to define “Aggrieved Employees” as “all current and former hourly on-site employees who worked for Defendant in California at any time during the PAGA Period. All individual Aggrieved Employee are also Class Members.”³⁷

B. The Settlement Benefits

The Settlement provides that Defendant will fund the MSA in the amount of \$650,000 plus Defendant’s share of payroll taxes to resolve the claims covered by the Settlement.³⁸ After subtracting out the amounts allocated to Class Counsel’s award of fees (no more than \$195,000) and actual, out-of-pocket expenses and costs (estimated not to exceed \$17,500), Class Representative Incentive Award/General Release Payment (not to exceed \$7,500), the settlement administration costs (not to exceed \$7,000) and the PAGA Payment (\$20,000), the remaining funds, referred to as the Net Settlement Amount, will be distributed in full to the SCMs, defined as Class Members who do not submit a valid, timely request for exclusion.³⁹ The Net Settlement

³³ Ex. A at § I.QQ.

³⁴ Ex. A at § I.H.

³⁵ Ex. A at § I.I.

³⁶ Grover Decl. at ¶¶ 12, 42; *see* Ex. A at § III.M.2.a.3.

³⁷ Ex. A at § I.C; *see also*, §§ I.AA, III.M.5.

³⁸ Ex. A at §§ I.V, III.A, III.M.

³⁹ Ex. A at §§ I.W and III.M.2; *see*, §§ I.H and I.QQ; Grover Decl. at ¶ 24.

Amount is estimated to be \$403,000.⁴⁰ Defendant has no revisionary interest in the MSA.⁴¹

C. Payments to Settlement Class Members

The Settlement provides that SCMs will receive Individual Settlement Payments without the need to submit a claim form.⁴² Each SCM's Individual Settlement Payment will be calculated in the manner set forth in Section M.2.1.a of the Settlement Agreement, which provides that the Settlement Administrator will calculate the total number of Qualified Shifts for all SCMs and then will divide the number of Qualified Shifts for each SCM by that total.⁴³ The resulting "Payment Ratio" for each SCM then will be multiplied by the Net Settlement Amount to calculate that SCM's share of the Net Settlement Amount, except that no gross Individual Settlement Payment will be less than \$25.⁴⁴ If no Class Member opts out, the average settlement payment would be approximately \$1,033.33 (\$403,000/390) per Class Member and \$27.79 per shift (\$403,000/14,500).⁴⁵

D. Payments to the Aggrieved Employees and the State

The Parties have agreed to allocate \$20,000 of the MSA to settle the PAGA claims, referred to as the PAGA Payment.⁴⁶ Labor Code § 2699(i) requires that the LWDA receive 75% (\$15,000) of the PAGA settlement amount and Aggrieved Employees receive 25% (5,000).⁴⁷

To distribute the 25% allocated to the Aggrieved Employees, the Settlement Administrator will distribute Individual PAGA Payments according to the formula set forth in the Settlement Agreement.⁴⁸ The Settlement Administrator will divide the respective Qualified Pay Periods for each Aggrieved Employees by the total Qualified Pay Periods for all Aggrieved Employees, resulting in the Payment Ratio – Aggrieved Employees for each Aggrieved

⁴⁰ Grover Decl. at ¶ 24; Ex. A at § I.W.

⁴¹ Ex. A at § III.M.

⁴² Ex. A at § III.M.2.a.

⁴³ Ex. A at § III.M.2.a.1; *see*, §§ I.S, I.KK.

⁴⁴ Ex. A at § III.M.2.a.1; *see*, §§ I.S, I.W, I.HH.

⁴⁵ Grover Decl. at ¶ 27.

⁴⁶ Lab. Code § 2699(f); Ex. A at §§ I.Z, III.M.5.

⁴⁷ Ex. A at §§ I.U, I.Z, III.M.5; Lab. Code § 2699(i).

⁴⁸ Ex. A at § III.M.2.b; *see also*, § I.R.

Employee.⁴⁹ Each Aggrieved Employee's Payment Ratio then will be multiplied by the \$5,000 portion of the PAGA Payment allocated to the Aggrieved Employees to calculate each Individual PAGA Payment.⁵⁰

All Class Members are Aggrieved Employees, thus 25% of the PAGA payment will be divided amongst the estimated 390 Aggrieved Employees in addition to their individual payments for the class claims.⁵¹ Each Aggrieved Employees will receive individual PAGA payments in the amount of approximately \$12.82 (\$5,000/390).⁵²

E. Cy Pres Distribution

The *cy pres* doctrine allows for unclaimed portions of a class action settlement fund to be distributed in a manner that still indirectly benefits the class.⁵³ Unclaimed settlement funds should be put to their "next best use" in light of "the purposes of the underlying lawsuit or the class of plaintiffs involved."⁵⁴ Here, the Parties have agreed that, subject to the Court's approval, any unclaimed funds will be distributed to their selected *cy pres* recipient, Legal Aid at Work, which is a 501(c)(3) organization that provides low-wage workers with legal representation, education and policy advocacy to enforce and strengthen workers' rights. (<https://legalaidatwork.org>).⁵⁵ None of the Parties' counsel has any relationship to Legal Aid at Work.⁵⁶ Legal Aid at Work is the "next best use" to giving the funds to class members as it is related to the lawsuit's subject matter and the class.⁵⁷

⁴⁹ Ex. A at § III.M.2.b; *see also*, §§ I.R, I.II, I.AA Qualified Pay Periods are defined as any and all pay periods (as reflected in Defendant's records) during which one or more Aggrieved Employees performed work for Defendant in California during the PAGA Period. Ex. A at § I.II.

⁵⁰ Ex. A at § III.M.2.b.

⁵¹ Grover Decl. at ¶ 31.

⁵² Grover Decl. at ¶ 31.

⁵³ *Romero v. Perryman (In re Easysaver Rewards Litig.)*, 906 F.3d 747, 761 (9th Cir. 2018).

⁵⁴ *Id.* (internal quotations and citation omitted).

⁵⁵ Ex. A at § III.M.2.e; Grover Decl. at ¶ 51.

⁵⁶ Grover Decl. at ¶ 55.

⁵⁷ *See In re Easysaver Rewards Litig.*, 906 F.3d at 761. *Morrison v. Am. Nat'l Red Cross*, No. 19-cv-02855-HSG, 2020 U.S. Dist. LEXIS 132712, at *22-23 (N.D. Cal. July 27, 2020).

F. Limited Release applicable to Settlement Class Members

The Settlement Agreement provides a Limited Release applicable to the SCMs, through which SCMs, including Plaintiff, will release only the claims in the operative FAC.⁵⁸ Specifically, the Released Claims are defined as:

all claims against the Released Parties arising between September 30, 2016 and September 30, 2021, inclusive, under state, federal, or local law, whether statutory, arising out of the claims expressly pleaded in the operative First Amended Complaint on file in the Action (i.e., Labor Code §§ 201, 202, 203, 204b, 226, 226.3, 226.7, 510, 512, 1194, 1194.2, 1197.1, 1198, and 1199, and Business & Professions Code §§ 17200, *et seq.* claims based on alleged violations of these Labor Code provisions) and all other claims, such as those under the California Labor Code, Wage Orders, regulations, and/or other provisions of law, that could have been pleaded based on the facts pleaded in the First Amended Complaint, together with interest, fees, and costs related to those claims.⁵⁹

The Release Period for the Released Claims shall be the same as the Class Period, *i.e.*, from September 30, 2016 through September 30, 2021, inclusive.⁶⁰

G. The PAGA Release

The Settlement provides a separate PAGA Release through which Plaintiff Sica, individually and as representative acting as a proxy or agent of the LWDA, a State of California Executive Branch Agency, releases the Released Parties of and from any and all claims for civil penalties, attorneys' fees, and litigations costs under PAGA (the "PAGA Released Claims").⁶¹ No individual Class Members or Aggrieved Employees are providing a PAGA Release.

H. The General Release by Plaintiff Sica

Plaintiff Sica will provide a General Release of his individual claims against the Released Parties.⁶² The named Plaintiff will provide his General Release in exchange for a General Release Payment, which is included in the Plaintiff's Class Representative Incentive Award.⁶³

⁵⁸ Ex. A at § III.B, *see also*, §§ I.LL, I.MM (defining the Released Claims and Released Parties).

⁵⁹ Ex. A at § I.LL.

⁶⁰ Ex. A at § I.LL.

⁶¹ Ex. A at § III.D, *see also*, § I.BB.

⁶² Ex. A at § III.C.

⁶³ Ex. A at §§ III.C., III.M.3; *see also*, § I.J; Grover Decl. at ¶ 50.

The Class Representative Incentive Award/General Release Payment is in addition to the named Plaintiff's Individual Settlement Payment. Plaintiff will apply for the Court's approval of the combined Class Representative Incentive Award/General Release Payment with the motion for attorneys' fees and costs.⁶⁴

I. Class Notice

The proposed Notice of Class and PAGA Action Settlement (the "Notice") explains the terms of the Settlement, how Class Members can opt out or object to the Settlement and the deadlines for doing so.⁶⁵ The Notice will be individualized to state each Class Member's number of Qualified Shifts and calculation of the estimated Individual Settlement Payment.⁶⁶ The Notice also sets forth the Limited Release that the SCMs will provide in exchange for the Individual Settlement Payment.⁶⁷

The Notice informs Class Members that Class Counsel will file a motion seeking an award of attorneys' fees and reimbursement of actual litigation costs and expenses and requesting approval of the Class Representative Incentive Award/General Release Payment.⁶⁸ The Notice states the deadline by which that motion must be filed.⁶⁹

J. Opt Out, Objection and Dispute Procedures

The Settlement provides Class Members with 45 calendar days from the date the Notices are mailed to request exclusion from or object to the Settlement.⁷⁰ The Notice will provide a specific date informing the Class Members of the exact deadline and instructions as to how to opt out of and how to object to the Settlement.⁷¹ The postmark date of a Class Member's Request for

⁶⁴ Ex. A at § III.M.3; *see* Grover Decl. at ¶¶ 48-50.

⁶⁵ Ex. A at §§ I.X, III.L.2, Settlement Agreement Exhibits 1 (the proposed Notice) and 2 (the proposed mailing envelope).

⁶⁶ Ex. A at § III.L.2.b, Settlement Agreement Exhibit 1.

⁶⁷ Ex. A at § III.L.2.a, Settlement Agreement Exhibit 1.

⁶⁸ *See* Ex. A, Settlement Agreement Exhibit 1.

⁶⁹ *See* Ex. A, Settlement Agreement Exhibit 1.

⁷⁰ Ex. A at §§ III.L.7 and III.L.8; *see also*, § I.NN; Ex. A, Settlement Agreement Ex. 1.

⁷¹ Ex. A, Settlement Agreement Ex. 1.

Exclusion or Objection will determine whether it is timely.⁷²

Class Members also have the opportunity to dispute the number of Qualified Shifts stated on their individualized Notice by providing documentation or an explanation to support that he or she worked a different number of shifts during the Class Period.⁷³ If there is a dispute, the Settlement Administrator will consult with the Parties to decide if an adjustment is warranted.⁷⁴

K. Class Representative Incentive Award/ General Release Payment

The Settlement provides that the Class Representative may seek a reasonable Incentive Award to compensate him for the risks he incurred and the time and effort he expended in bringing and prosecuting the employment-related claims alleged in this action on behalf of the Class.⁷⁵ The Settlement provides a reasonable award of not more than \$7,500 for Plaintiff Sica, which includes the payment for the General Release, mentioned above.⁷⁶

In the event that the Court reduces the Incentive Award/General Release Payment, Plaintiff shall not have the right to modify or revoke the Settlement, the Settlement will remain binding, and Plaintiff may not seek an increase in the MSA on that basis.⁷⁷ Any unawarded amount becomes part of the Net Settlement Amount to be distributed to SCMs.⁷⁸

L. Attorneys' Fees and Costs

The Settlement provides that Class Counsel may seek an award of attorneys' fees of no more than \$195,000 which is 30% of the MSA, and actual out-of-pocket litigation expenses and costs, which are estimated not to exceed \$17,500.⁷⁹ The fee amount, supported by Class Counsels' lodestar, is intended to compensate for their efforts and risk in prosecuting this action, including the work still to be performed documenting and securing approval of the Settlement,

⁷² Ex. A at §§ I.NN, III.L.7 and III.L.8.

⁷³ Ex. A at § III.L.5.

⁷⁴ Ex. A at § III.L.5.

⁷⁵ Ex. A at § III.M.3.a; *see also*, § I.J; Grover Decl. at ¶¶ 33, 48-49.

⁷⁶ Ex. A at § III.M.3.a; *see*, § I.J; Grover Decl. at ¶¶ 33, 48-50.

⁷⁷ Ex. A at §§ III.M.3.d.

⁷⁸ Ex. A at §§ III.M.3.b.

⁷⁹ Ex. A at § III.M.4.a; *see also*, § I.V; Grover Decl. at ¶¶ 55-65.

ensuring that the Settlement is administered and implemented fairly, and obtaining dismissal of the action.⁸⁰

Class Counsel will file a separate motion requesting an award of attorneys' fees and costs and the Class Representative Incentive Award/General Release Payment no later than 14 days before the Response Deadline.⁸¹ Class Counsel has provided initial lodestar calculations and litigation costs for preliminary approval purposes but will provide updated, detailed information with the motion for fees and costs.⁸²

In the event that the Court reduces the requested Class Counsel Award, Plaintiff and Class Counsel shall not have the right to modify or revoke the Settlement, the Settlement will remain binding, and neither Plaintiff nor Class Counsel may seek an increase in the MSA on that basis.⁸³ Any unawarded portion of the requested Class Counsel Award shall be part of the Net Settlement Amount and shall be distributed to SCMs as provided in this Agreement.⁸⁴

M. Settlement Administration

Subject to the Court's approval, the Parties have selected Simpluris, Inc. as the proposed third-party Settlement Administrator.⁸⁵ Simpluris is an experienced settlement administration firm and provided a capped price not to exceed \$7,000.⁸⁶ Class Counsel has worked with Simpluris on several other class settlements in the past two years.⁸⁷

The Settlement Agreement allocates up to \$7,000 of the MSA for the administration costs.⁸⁸ The anticipated cost of notice and administration thus represents only around 1% of the Maximum Settlement Amount.

Because the Class Members are Madison's former and current employees whose identities

⁸⁰ Ex. A at § III.M.4.a; see Grover Decl. at ¶¶ 55-62; Bernstein Decl. at ¶ 2, Ex.1.

⁸¹ Grover Decl. at ¶ 55; Ex. A at §§ III.M.3, III.M.4, III.Q; see § I.NN.

⁸² Grover Decl. at ¶¶ 57-62; Bernstein Decl. at ¶ 3.

⁸³ Ex. A at §§ III.M.4.f.

⁸⁴ Ex. A at § III.M.4.c.

⁸⁵ Ex. A at § I.PP; Grover Decl. at ¶ 52.

⁸⁶ Grover Decl. at ¶ 52.

⁸⁷ Grover Decl. at ¶ 53.

⁸⁸ Ex. A at § III.M.6.

and contact information are readily available, the Parties agreed that mail notice provides the best practicable notice under the circumstances.⁸⁹ The administration costs are reasonable given the number of Class Members, the number of Individual Settlement and PAGA Payments to be calculated, and the notice procedures involved.⁹⁰

IV. THE SETTLEMENT MERITS PRELIMINARY APPROVAL

A. The legal standard for approving proposed class action settlements

Rule 23(e) requires district courts to approve any proposed class settlement to ensure that it “is ‘fair, reasonable, and adequate,’” to protect absent class members’ interests “while also accounting ‘for the strong judicial policy that favors settlements, particularly where complex class action litigation is concerned.’”⁹¹ Rule 23(e)(2) sets forth factors that courts must consider when assessing a settlement, including whether:

(A) the class representatives and class counsel have adequately represented the class; (B) the proposal was negotiated at arm’s length; (C) the relief provided for the class is adequate, taking into account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney’s fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3); and (D) the proposal treats class members equitably relative to each other.⁹²

The Rule 23(e) factors are “not intended to displace any factors currently considered by courts, ‘but rather to focus the court and the lawyers on the core concerns of procedure and substance that should guide the decision whether to approve the proposal.’”⁹³

Although the relevant factors “will naturally vary from case to case,” courts generally

⁸⁹ Grover Decl. at ¶¶ 35-36.

⁹⁰ Grover Decl. at ¶ 53.

⁹¹ *Campbell v. Facebook, Inc.*, 951 F.3d 1106, 1120-21 (9th Cir. 2020), quoting Rule 23(e)(2) and *In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 556, 568 (9th Cir. 2019) (en banc) (“Hyundai”).

⁹² Rule 23(e)(2); see *Briseño*, 998 F.3d at 1022-25 (citing Rule 23(e)(2)).

⁹³ *Miguel-Sanchez v. Mesa Packing, LLC*, No. 20-cv-00823-VKD, 2021 U.S. Dist. LEXIS 84437, at *22 (N.D. Cal. May 3, 2021), quoting Rule 23(e) Advisory Comm. Note to 2018 amendment. See also, e.g., *Campbell*, 951 F.3d at 1121, n.10, similar, quoting same.

1 consider:

2 (1) the strength of the plaintiff's case; (2) the risk, expense, complexity,
3 and likely duration of further litigation; (3) the risk of maintaining class
4 action status throughout the trial; (4) the amount offered in settlement; (5)
5 the extent of discovery completed and the stage of the proceedings; (6) the
experience and views of counsel; ... and (8) the reaction of the class
members of the proposed settlement.⁹⁴

6 At the preliminary approval stage, courts routinely grant approval when the class settlement: “(1)
7 appears to be the product of serious, informed, non-collusive negotiations; (2) does not grant
8 improper preferential treatment to class representatives or other segments of the class; (3) falls
9 within the range of possible approval; and (4) has no obvious deficiencies.”⁹⁵ With collusion
10 being a key concern, courts look for three red flag indicators outlined in *Bluetooth*: whether (1)
11 class counsel will receive “a disproportionate distribution of the settlement,” (2) the defendant
12 agreed to a “clear sailing arrangement” by which it will not challenge the agreed-upon attorneys’
13 fees, and (3) there is a “‘kicker’ or ‘reverter’ clause[,]” by which funds allocated for class
14 counsel’s fees that the court does not approve are returned to the defendant.⁹⁶

15 **B. The proposed class action settlement is fair, adequate and reasonable**

16 1. The Settlement is the result of serious, informed, non-collusive negotiations.

17 At the preliminary approval stage, courts routinely find that a settlement is fair where it is
18 reached through arm’s-length bargaining by well-qualified, highly experienced counsel who are
19 familiar with the strengths and weakness of the action.⁹⁷ When the parties have conducted
20 informal discovery and participated in formal mediation with a skilled, experienced mediator
21

22 _____
23 ⁹⁴ *Bluetooth*, 654 F.3d at 946 (internal quotations and citation omitted); *Briseño*, 998 F.3d at 1023
(listing same factors).

24 ⁹⁵ See e.g., *Morrison*, 2020 U.S. Dist. LEXIS 132712, at *19-20; *Toolajian v. Air Methods Corp.*,
No. 18-cv-06722-AGT, 2020 U.S. Dist. LEXIS 250904, at *22 (N.D. Cal. Apr. 24, 2020).

25 ⁹⁶ *Briseño*, 998 F.3d at 1022-23, citing *Bluetooth*, 654 F.3d at 947-49, among other cases.

26 ⁹⁷ See e.g., *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998) (affirming approval of
27 class action settlement where parties reached agreement after several months of negotiation and
28 the record contained no evidence of collusion); *In re Lenovo Adware Litig.*, 2018 U.S. Dist.
LEXIS 198909, at *28 (N.D. Cal. Nov. 21, 2018) (class counsel’s recommendation of the
settlement after arms’-length negotiations weighed in favor of fairness).

prior to reaching a settlement, the settlement process supports preliminary approval.⁹⁸

Here, the Settlement was a product of non-collusive, arm's-length negotiations during which the Parties were represented by skilled and experienced counsel.⁹⁹ Class Counsel are highly experienced in litigating and settling similar wage and hour class actions.¹⁰⁰ They have investigated the factual and legal issues in this action and diligently litigated the Class Members' claims.¹⁰¹ The Parties engaged in informal discovery prior to participating in two formal mediation sessions.¹⁰² Through their independent investigation, informal discovery, and information exchanged at the mediation, Class Counsel "obtained sufficient information to make an informed decision about the Settlement and about the legal and factual risks of the case."¹⁰³

The Parties participated in a mediation session on May 26, 2021 and September 1, 2021 with Steve Pearl, Esq., an experienced mediator in wage and hour cases.¹⁰⁴ With the mediator's assistance, the Parties reached a settlement.¹⁰⁵ Class Counsel believe that the Settlement that the Parties reached is fair, reasonable and adequate, weighing in favor of preliminary approval.¹⁰⁶

Further, the Settlement has none of the *Bluetooth* signs of collusion.¹⁰⁷ The Settlement permits Class Counsel to seek attorneys' fees amounting to 30% of the MSA, and actual litigation

⁹⁸ See e.g., *Moreno v. Capital Bldg. Maint. & Cleaning Servs.*, No. 19-cv-07087-DMR, 2021 U.S. Dist. LEXIS 87268, at *27 (N.D. Cal. May 5, 2021) (informal discovery and mediation supported parties "had sufficient information to make an informed decision about the settlement."); *Perks v. ActiveHours, Inc.*, No. 5:19-cv-05543-BLF, 2021 U.S. Dist. LEXIS 57272, at *13-14 (N.D. Cal. Mar. 25, 2021) (similar, discussing the court's previous findings at preliminary approval).

⁹⁹ See Grover Decl. at ¶¶ 9-13, 17-24, 37-39, see also, ¶¶ 2-4; see, Ex. A at § II.C.

¹⁰⁰ Grover Decl. at ¶¶ 2-4, 10, 17, 45; Bernstein Decl. at ¶ 2, Ex. 1.

¹⁰¹ Grover Decl. at ¶¶ 10-13, 17-24, 37-39.

¹⁰² Grover Decl. at ¶¶ 11-13, 37.

¹⁰³ *Perks*, 2021 U.S. Dist. LEXIS 57272, at *13-14 (approving class settlement at relatively early stage of the litigation); see also, e.g., *Taafua v. Quantum Glob. Techs., LLC*, No. 18-cv-06602-VKD, 2021 U.S. Dist. LEXIS 28754, at *19 (N.D. Cal. Feb. 16, 2021) (similar, finding that class counsel "had sufficient information to properly evaluate the merits of the claims and to make an informed decision about settlement."); Grover Decl. at ¶¶ 10-13, 17-39.

¹⁰⁴ Ex. A at § II.C; Grover Decl. at ¶ 13.

¹⁰⁵ Ex. A at § II.C; Grover Decl. at ¶ 13.

¹⁰⁶ Grover Decl. at ¶¶ 17-39.

¹⁰⁷ *Briseño*, 998 F.3d at 1023-25, citing *Bluetooth*, 654 F.3d at 947-49.

costs and expenses.¹⁰⁸ Courts have found that, when a settlement allows a fee request within the Ninth Circuit’s range, there is not a disproportionate distribution to Class Counsel.¹⁰⁹ The Net Settlement Amount is estimated to be \$403,000 and will be paid out in full to the SCMs, who are not required to submit claims.¹¹⁰ Thus, the Settlement ensures that SCMs will receive a substantial share of the MSA and Class Counsel will not receive a disproportionate share.¹¹¹

The Settlement does not provide that any unused or unawarded funds will revert to Defendant.¹¹² If the Court does not award the full amounts requested for attorneys’ fee and costs or Class Representative Incentive Award/General Release Payment, the unawarded funds become part of the Net Settlement Amount.¹¹³ If the Court does not award the full amounts requested, the Settlement provides that Plaintiff and Class Counsel “shall not have the right to modify or revoke [the] Settlement Agreement, and it will remain binding,” and neither Plaintiff or Class Counsel may “seek, request, or demand an increase” in the MSA “on that basis.”¹¹⁴ Further, any funds from Individual Settlement Payment checks that remain uncashed 180 days after the issuance date will be distributed to the selected *cy pres* beneficiary.¹¹⁵

Further, the Settlement does not include a clear sailing arrangement.¹¹⁶ Defendant has not agreed to refrain from challenging Class Counsel’s fee motion.

2. The Settlement falls within the range of possible approval.

To evaluate whether the settlement is within the range of possible approval, “courts

¹⁰⁸ Ex. A. at § III.M.4.a.

¹⁰⁹ *E.g.*, *Perez v. CVS Health Corp.*, No. 1:19-cv-00449-DAD-BAM, 2021 U.S. Dist. LEXIS 110216, at *25 (E.D. Cal. June 11, 2021) (finding no disproportionate distribution as the 33.33% fee request was within the Ninth Circuit’s accepted range); *Garcia v. Lift*, 2020 U.S. Dist. LEXIS 220762, at *36 (E.D. Cal. Nov. 23, 2020) (finding no disproportionate distribution where fee award was one-third of the settlement fund, citing cases).

¹¹⁰ Grover Decl. at ¶¶ 24-25; Ex. A at §§ I.W, III.M.2.a.

¹¹¹ Contrast *Briseño*, 998 F.3d at 1018, in which class counsel received more than seven times what the class members receive in the claims-made settlement.

¹¹² See Ex. A at §§ III.M and I.W. See, *e.g.*, *Briseño*, 998 F.3d at 1023.

¹¹³ Ex. A at §§ III.M.3.b. and III.M.4.c.

¹¹⁴ Ex. A at §§ III.M.3.d and III.M.4.f.

¹¹⁵ Ex. A at § III.M.2.e.

¹¹⁶ See generally, Ex. A.

primarily consider plaintiffs’ expected recovery balanced against the value of the settlement offer,” while also considering the risks of continued litigation and of maintaining class status.¹¹⁷

The Settlement represents a strong result for the SCMs. The Net Settlement Amount is estimated to be \$403,000 and will be distributed to SCMs in full.¹¹⁸ If no SCMs opt out, each Individual Settlement Payment is estimated to be, on average, \$1,033.33.¹¹⁹ Class Counsel has calculated the maximum value of the strongest class claim at \$83,375.¹²⁰ The estimated \$403,000 Net Settlement Amount represents more than four times the maximum damage calculation of the strongest claim. Although the maximum theoretical damages of the remaining claims exceed the Net Settlement Amount by a substantial amount, the defenses to those claims discussed in the Grover declaration warrant a substantial discount.¹²¹

Although Plaintiff is confident that the class claims are strong, he also recognizes that, if litigation continued and proceeded to trial, they would have encountered legal and factual hurdles that could have prevented the Class from obtaining any recovery.¹²² Defendant has argued, for example, that Section 301 of the federal Labor Management Relations Act (“LMRA”) preempts Plaintiff’s meal break and PAGA claims due to an allegedly valid collective bargaining agreement (“CBA”).¹²³ Defendant argues that meal period claims are statutorily barred under Labor Code § 512(e) due to the alleged CBA.¹²⁴ Defendant also argues that Plaintiff will be

¹¹⁷ *Morrison*, 2020 U.S. Dist. LEXIS 132712, at *25-26; *see also, e.g., Toolajian*, 2020 U.S. Dist. LEXIS 250904, at *26 *28 and *Betorina v. Randstad US, L.P.*, No. 15-cv-03646-EMC, 2017 U.S. Dist. LEXIS 53317, at *22 (N.D. Cal. Apr. 6, 2017).

¹¹⁸ Ex. A at §§ I.W, III.M.2.a; Grover Decl. at ¶ 24.

¹¹⁹ Grover Decl. at ¶ 27.

¹²⁰ Grover Decl. at ¶ 18.

¹²¹ Grover Decl. at ¶¶ 17-24, 37-39.

¹²² *See* discussion at Grover Decl. at ¶¶ 17-24, 38-39.

¹²³ Grover Decl. at ¶ 21. *See e.g., Marquez v. Toll Glob. Forwarding*, 804 F. App’x 679, 680-81 (9th Cir. 2020) (finding that § 301 of the LMRA preempted the plaintiff’s meal period claims, citing *Curtis v. Irwin Industries, Inc.*, 913 F.3d 1146, 1155 (9th Cir. 2019) among other cases; *Radcliff v. San Diego Gas & Elec. Co.*, 519 F. Supp. 3d 743, 748 (S.D. Cal. 2021) (finding § 301 of the LMRA preempted PAGA claims related to alleged overtime and meal period violations), citing *Curtis*, 913 F.3d at 1150, n.3.

¹²⁴ Grover Decl. at ¶ 21. *See e.g., Marquez*, 804 F. App’x at 680-81, citing Lab. Code § 512(e).

unable to obtain class certification for the claims alleged.¹²⁵

With regard to the PAGA penalties, Plaintiff acknowledges the risk the Court could exercise its broad discretion under PAGA to award lesser penalties than might otherwise be owed.¹²⁶ Those risks could result in Aggrieved Employees receiving significantly less than \$100 per pay period if this action proceeds to trial, instead of settling now.¹²⁷

Considering the strength of Plaintiff's case, the risks of continued litigation and of not succeeding at class certification, and the settlement amount achieved, the proposed Settlement is adequate, fair and well within the range of reasonableness.

3. The Settlement has no obvious deficiencies.

The Settlement has no obvious deficiencies. The Settlement does not grant preferential treatment to Plaintiff or any segment of the Class. SCMs will receive payments based on their pro-rata share of the total Qualified Shifts, making the distribution fair.¹²⁸

The Settlement allows Plaintiff Sica to seek an Incentive Award/General Release Payment of up to \$7,500.¹²⁹ Incentive awards are "fairly typical in class action cases" and "are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action."¹³⁰ Supporting approval is the fact that "the parties agree that the settlement shall remain in force regardless of any incentive award."¹³¹ Plaintiff has spent time and effort prosecuting this action against his former employer on the

¹²⁵ Grover Decl. at ¶¶ 17, 21, 39.

¹²⁶ Grover Decl. at ¶ 23; Lab. Code § 2699(e)(2). *See e.g., Magadia v. Wal-Mart Assocs.*, 384 F. Supp. 3d 1058, 1100, 1104 (N.D. Cal. 2019) (finding that, under Labor Code § 2699(e)(2), "the Court has broad discretion to award PAGA penalties as the Court sees fit" and reducing the PAGA penalty award significantly from the maximum penalties possible).

¹²⁷ *See e.g., Magadia*, 384 F. Supp. 3d at 1100, 1104. *See also*, Grover Decl. at ¶ 23 for list of additional exemplar cases where courts awarded substantially reduced PAGA penalties.

¹²⁸ Ex. A at § III.M.2. *See e.g., Toolajian*, 2020 U.S. Dist. LEXIS 250904, at *26.

¹²⁹ *See* Ex. A at § III.M.3.

¹³⁰ *Rodriguez v. West Publ'g Corp.*, 563 F.3d 948, 958-59 (9th Cir. 2009); *see e.g., Morrison*, 2020 U.S. Dist. LEXIS 132712, at *24-25.

¹³¹ *Ahmed v. HSBC Bank USA*, No. ED CV 15-2057 FMO (SPx), 2019 U.S. Dist. LEXIS 104401, at *34-35 (C.D. Cal. June 21, 2019), citing *Dyer v. Wells Fargo Bank, N.A.*, 303 F.R.D. 326, 335 (N.D. Cal. 2014). *See* Ex. A at § III.M.3.d.

Class' behalf.¹³² Plaintiff will provide detailed declaration of his work and time spent in this action with the motion for approval of the Incentive Award.¹³³ At this stage, the fact that the proposed Incentive Award is not per se unreasonable is sufficient.¹³⁴

The Settlement also provides that the named Plaintiff will enter into a General Release in exchange for payment that is included with the Incentive Award amount.¹³⁵ The General Release does not apply to the SCMs.¹³⁶ The Incentive Award/General Release Payment is not preferential treatment because the SCMs will not be subject to or affected by the General Release.

C. The proposed attorneys' fees and costs awards are reasonable.

The Settlement permits Class Counsel to request fees of \$195,000, which is 30% of the MSA, and their actual litigation costs and expenses.¹³⁷ The proposed fee request is reasonable. District "courts have consistently approved of attorney fee awards over the 25% benchmark, specifically at a rate of 30% or higher."¹³⁸ Here, the proposed fee award is line with that practice.

The proposed fee award also is supported by Class Counsel's lodestar.¹³⁹ Class Counsel preliminarily calculates Class Counsel's current lodestar to be \$173,155 and expect it to increase

¹³² Grover Decl. at ¶¶ 48-49.

¹³³ Grover Decl. at ¶ 49.

¹³⁴ See e.g., *Morrison*, 2020 U.S. Dist. LEXIS 132712, at *25.

¹³⁵ See Ex. A at §§ III.C, III.M.3; Grover Decl. at ¶ 50.

¹³⁶ See Ex. A at §§ III.C, III.M.3; Grover Decl. at ¶ 50.

¹³⁷ Ex. A. at § III.M.4.a.

¹³⁸ *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 260 (N.D. Cal. 2015) (internal quotations and original alternations omitted); see also, e.g., *Rabin v. PricewaterhouseCoopers LLP*, No. 16-cv-02276-JST, 2021 U.S. Dist. LEXIS 41285, at *24 (N.D. Cal. Feb. 3, 2021) (approving 35% fee award); *Bennett v. SimplexGrinnell LP*, No. 11-cv-01854-JST, 2015 U.S. Dist. LEXIS 192870, at *19 (N.D. Cal. Sept. 3, 2015) (awarding 38.8% of common fund with a 0.6x multiplier); *Rivas v. BG Retail, LLC*, No. 16-cv-06458-BLF, 2020 U.S. Dist. LEXIS 8712, at *23 (N.D. Cal. Jan. 16, 2020) ("California district courts usually award attorneys' fees in the range of 30-40% in wage and hour class actions" when the common fund is under \$10 million," (internal quotation and citation omitted); *Alvarez v. Farmers Ins. Exch.*, No. 3:14-cv-00574-WHO, 2017 U.S. Dist. LEXIS 119128, at *9-10 (N.D. Cal. Jan. 18, 2017) ("Fee award percentages generally are higher in cases where the common fund is below \$10 million."). See, *Bluetooth*, 654 F.3d at 942 (noting the 25% benchmark).

¹³⁹ "Where a settlement produces a common fund for the benefit of the entire class, courts have discretion to employ either the lodestar method or the percentage-of-recovery method." *Bluetooth*, 654 F.3d at 942.

to at least \$193,155 in total.¹⁴⁰ The proposed \$195,000 fee award is thus essentially Class Counsel’s projected final lodestar.¹⁴¹ Class Counsel will provide detailed information regarding their lodestar, expenses and work performed with the motion for award of attorneys’ fees and costs.¹⁴²

The Settlement also provides that Class Counsel may seek reimbursement of their out-of-pocket expenses and costs incurred litigating this action.¹⁴³ Class Counsel’s actual costs and expenses to date are approximately \$11,842.03 and are not expected to exceed \$12,342.03.¹⁴⁴ Class Counsel will provide detailed expense and cost information with the fee motion.¹⁴⁵

D. The proposed notice procedure should be approved.

Rule 23(c)(2)(B) provides that “the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.”¹⁴⁶ Rule 23(c)(2)(B) requires that the notice “clearly and concisely” states in “plain,” easy-to-understand language:

(i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members.¹⁴⁷

The proposed Notice (Settlement Agreement Exhibit 1) fully complies with Rule 23 and due process.¹⁴⁸ The Notice informs Class Members about the Settlement terms, the date, time

¹⁴⁰ Grover Decl. at ¶¶ 57-62; Bernstein Decl. at ¶ 3.

¹⁴¹ See Grover Decl. at ¶ 62.

¹⁴² Grover Decl. at ¶¶ 56, 59.

¹⁴³ Ex. A at §§ III.M.4.a and I.F.

¹⁴⁴ Grover Decl. at ¶¶ 63-65; Bernstein Decl. at ¶ 3.

¹⁴⁵ Grover Decl. at ¶ 63.

¹⁴⁶ See also, e.g., *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811-12 (1985); *Low v. Trump Univ., Ltd. Liab. Co.*, 881 F.3d 1111, 1117 (9th Cir. 2018).

¹⁴⁷ Rule 23(c)(2)(B). See Ex. A at § III.L.2, Settlement Agreement Ex. 1.

¹⁴⁸ *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) (due process requires that notice be reasonably calculated “to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.”); *Hyundai*, 926 F.3d at 567 (similar).

and location of the final approval hearing, and how to enter an appearance.¹⁴⁹ The Notice explains how to object to the Settlement and the deadline to do so. The Notice informs Class Members of their right to opt out of the Settlement, how to do so and the deadline.¹⁵⁰ The Notice also states how individual recoveries will be determined and provides an estimated settlement amount for each Class Member.¹⁵¹ Thus, the Notice complies with the standards of fairness, completeness, and neutrality required of a settlement notice disseminated under authority of the Court.

In addition, the procedures to disseminate the Notice ensure it will be sent to Class Members in the manner best calculated to ensure that they are alerted to the terms of the Settlement.¹⁵² Defendant will provide the Settlement Administrator with each Class Member's contact information and Qualified Shifts for each Class Member during the Class Period.¹⁵³ The Settlement Administrator will perform address updates and verifications as necessary and send the Notice via first-class U.S. mail.¹⁵⁴ If a Notice is returned, the Settlement Administrator will conduct address follow-up and will re-mail the Notice to any updated address.¹⁵⁵

Because the Class Members are Defendant's current and former employees, notice in this action is simpler than in other types of class actions. The proposed notice plan meets constitutional standards and should be approved.¹⁵⁶

E. The proposed Class satisfies Rule 23's certification criteria for settlement purposes.¹⁵⁷

¹⁴⁹ Ex. A at § III.L.2.a, Settlement Agreement Ex. 1.

¹⁵⁰ Ex. A, Settlement Agreement Ex. 1.

¹⁵¹ Ex. A at § III.L.2.b, Settlement Agreement Ex. 1.

¹⁵² Ex. A at § III.L; Settlement Agreement Exs. 1 and 2.

¹⁵³ Ex. A at §§ I.KK, III.L.1 and III.L.2.

¹⁵⁴ Ex. A at § III.L.3.

¹⁵⁵ Ex. A at § III.L.4.

¹⁵⁶ See e.g., *Taafua*, 2021 U.S. Dist. LEXIS 28754, at *10-12 (approving notice by mail); *Morrison*, 2020 U.S. Dist. LEXIS 132712, at *26-27 (same).

¹⁵⁷ Defendant has agreed to the certification of the proposed Class for purposes of settlement approval only. Ex. A at §§ II.A, III.G.

Rule 23(a) sets out four prerequisites for class certification: numerosity, commonality, typicality, and adequacy of representation.¹⁵⁸ Rule 23(b)(3) further requires that common questions of law or fact predominate over any individualized questions, and that the class action must be the “superior method for fairly and efficiently adjudicating the controversy.”¹⁵⁹ “The criteria for class certification are applied differently in litigation classes and settlement classes.”¹⁶⁰ In the settlement context, the analysis focuses “on whether a proposed class has sufficient unity so that absent members can fairly be bound by decisions of class representatives,” with “heightened attention” placed on “protect[ing] absentees ... from overbroad class definitions,” whereas manageability at trial is not relevant.¹⁶¹

1. The Rule 23(a) prerequisites are satisfied.

a. The proposed Class is so numerous that joinder is impracticable.

Rule 23(a)(1) requires that the proposed class is so numerous that joinder is impracticable, with courts in this Circuit agreeing that 40 or more members satisfies numerosity.¹⁶² The proposed Class here is sufficiently numerous as Defendant estimates that approximately 390 former and current hourly paid, on-site employees work or have worked for Madison in California during the Class Period.¹⁶³

Also, the proposed class definition is tailored to include only those former and current employees who were or are subject to Defendant’s conduct, policies and practices that are at issue in this case and their identities are easily ascertainable from Defendant’s records.¹⁶⁴

b. Common questions of law and fact exist in this action.

¹⁵⁸ Rule 23(a)(1)-(4).

¹⁵⁹ Rule 23(b)(3).

¹⁶⁰ *Hyundai*, 926 F.3d at 556.

¹⁶¹ *Id.* at 557-58, quoting *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620-21, 117 S. Ct. 2231, 138 L. Ed. 2d 689 (1997); *Jabbari v. Farmer*, 965 F.3d 1001, 1005-07 (9th Cir. 2020) (same).

¹⁶² See e.g., *Fleming v. Matco Tools Corp.*, No. 19-cv-00463-WHO, 2021 U.S. Dist. LEXIS 33513, at *8 (N.D. Cal. Feb. 21, 2021), citing cases.

¹⁶³ Grover Decl. at ¶ 42.

¹⁶⁴ Grover Decl. at ¶ 42. See *Hyundai*, 926 F.3d at 557-58 (in the settlement context, protecting absentee class members from overbroad class definitions is a key concern).

Rule 23(a)(1) is met when there is even a single question of law or fact common to the class.¹⁶⁵ Here, the proposed Class Members' claims all stem from a common set of circumstances. All of the proposed Class Members worked for Madison on-site at locations in California and were paid on an hourly basis during the Class Period.¹⁶⁶ Plaintiff alleges that all Class Members were subject to Defendant's uniform practices and policies regarding pay for pre-shift and post-shift work, meal periods, wage statements and termination pay.¹⁶⁷ Those uniform policies and practices are at the core of Plaintiff's allegations that Defendant violated the Labor Code and Business & Profession Code.¹⁶⁸ All Class Members seek the same legal remedies under the same state laws.¹⁶⁹ Those circumstances raise questions of law and fact that are common to all proposed Class Members.

c. The proposed Class Representative's claims are typical of the Class' claims.

Typicality is satisfied if the named plaintiff's claims "are reasonably co-extensive with those of absent class members; they need not be substantially identical."¹⁷⁰ Here, Plaintiff Sica, the proposed Class Representative, like all proposed Class Members, worked on-site for Defendant in California, was paid hourly, and was subject to Defendant's alleged uniform pay, meal period, and wage statement policies and practices during the Class Period.¹⁷¹ Thus, Plaintiff's claims arise from the same course of conduct from which the proposed Class Members' claims arise.¹⁷²

d. The proposed Class Representative will adequately represent the Class.

¹⁶⁵ Rule 23(a)(1); *Ruiz Torres v. Mercer Canyons Inc.*, 835 F.3d 1125, 1133 (9th Cir. 2016), quoting *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 359, 131 S. Ct. 2541, 180 L. Ed. 2d 374 (2011) (internal alterations and some quotations omitted)).

¹⁶⁶ See Dkt. 1-7 at ¶¶ 7-8, 16.

¹⁶⁷ See Dkt. 1-7 at ¶¶ 7-16, 23, 39-103.

¹⁶⁸ See Dkt. 1-7 at ¶¶ 9-15, 39-103; Grover Decl. at ¶ 43.

¹⁶⁹ See Dkt. 1-7 at ¶¶ 39-103 and Prayer for Relief; Grover Decl. at ¶ 43.

¹⁷⁰ *Hanlon*, 150 F.3d at 1020; Rule 23(a)(3).

¹⁷¹ See Dkt. 1-7 at ¶¶ 4, 24; Grover Decl. at ¶ 44.

¹⁷² Grover Decl. at ¶ 44.

Rule 23(a)(4) requires that “the representative parties will fairly and adequately protect the interests of the class,” which means that the proposed class representatives and their counsel have no conflicts of interest with the class members and must vigorously prosecute the action on their behalf.¹⁷³ Neither Plaintiff nor his Counsel have conflicts with any proposed Class Member.¹⁷⁴ Plaintiff has demonstrated that he will aggressively and competently assert the interests of the proposed Class and have retained competent counsel who are highly experienced in litigating employment-based class action claims under California law.¹⁷⁵

2. Rule 23(b)(3)’s requirements are satisfied.

a. Common questions will predominate over individual questions.

Rule 23(b)(3) requires that the common questions “predominate over any questions affecting only individual members.”¹⁷⁶ “If a common question will drive the resolution” of the action, “even if there are important questions affecting only individual members, then the class is ‘sufficiently cohesive to warrant adjudication by representation.’”¹⁷⁷

Here, the common questions regarding Defendant’s alleged uniform policies and practices pertaining to pre-shift and post-shift pay, meal periods and termination pay will drive the determination of its alleged liability to the proposed Class.¹⁷⁸ The key fact questions, *i.e.*, what were Defendant’s policies and practices regarding pre-shift and post-shift pay, meal periods and termination pay, and the key legal questions, *i.e.*, whether its conduct under the policies and practices violated Labor Code §§ 201-203, 226.7, 512 or 1194 are common and will drive the resolution of Defendant’s alleged liability to the proposed Class. Predominance thus is satisfied for purposes of certifying the Class for settlement.

b. A class action is the superior method for adjudicating this action.

¹⁷³ Rule 23(a)(4); *see Hanlon*, 150 F.3d at 1020.

¹⁷⁴ Grover Decl. at ¶ 45.

¹⁷⁵ *See* Grover Decl. at ¶¶ 2-4, 10, 17, 45; Bernstein Decl. at ¶ 2, Ex. 1; Dkt. 1-7 at ¶ 25.

¹⁷⁶ Rule 23(b)(3). *See, Jabbari*, 965 F.3d at 1006-07 (noting “the general rule that predominance is easier to satisfy in the settlement context,” reviewing Supreme Court and Ninth Circuit case law).

¹⁷⁷ *Jabbari*, 965 F.3d at 1005, quoting *Amchem*, 521 U.S. at 623-24.

¹⁷⁸ Grover Decl. at ¶ 46; Dkt. 1-7 at ¶ 23.

A class action must be superior to “other available methods for fairly and efficiently adjudicating the controversy.”¹⁷⁹ In this case, Class Members do not have a strong interest in controlling their individual claims. Indeed, the individual prosecution of the claims, if it were to occur, would be identical to and duplicative of the class action litigation. A class action also will resolve many identical claims efficiently at one time, avoiding a waste of judicial resources and eliminating the possibility of conflicting decisions.¹⁸⁰ Also, when the proposed class includes the defendant’s current employees, as here, “class actions are preferred in wage-and-hour actions when individual employees may forgo pursuing their claims due to fear of retaliation.”¹⁸¹

F. The PAGA Payment is reasonable and warrants approval.

Labor Code § 2699(l)(2) requires court approval of any PAGA settlement. Class action requirements do not apply to PAGA actions.¹⁸² “PAGA has no notice requirements for unnamed aggrieved employees, nor may such employees opt out of a PAGA action.”¹⁸³ The circumstances of the settlement, rather than the amount allocated to PAGA claims, determine whether a PAGA settlement is appropriate.¹⁸⁴

As part of the final approval process, Plaintiff will seek the Court’s approval of the PAGA portion of the Settlement, including the \$20,000 PAGA Payment, the distribution plan for the PAGA Payment, and the PAGA Release.¹⁸⁵ The Notice will provide individualized information regarding each Aggrieved Employee’s estimated Individual PAGA Payment.¹⁸⁶

V. CONCLUSION

Based on the foregoing, Plaintiff requests that this Court grant preliminary approval of the Settlement consistent with the terms of the Settlement Agreement, and enter an order

¹⁷⁹ Rule 23(b)(3)(A)-(D) (listing factors).

¹⁸⁰ Grover Decl. at ¶ 47; Dkt. 1-7 at ¶¶ 26-27.

¹⁸¹ *Toolajian*, 2020 U.S. Dist. LEXIS 250904, at *18 (internal quotations and citations omitted).

¹⁸² *Arias v. Superior Court*, 46 Cal. 4th 969, 974 (2009).

¹⁸³ *Baumann v. Chase Inv. Servs. Corp.*, 747 F.3d 1117, 1122 (9th Cir. 2014).

¹⁸⁴ *Nordstrom Com’n Cases*, 186 Cal.App.4th 576, 589 (2010).

¹⁸⁵ Ex. A at §§ III.D, III.M.2.b, III.M.5; *see also*, §§ I.R, I.Z, I.AA, I.BB, I.GG.

¹⁸⁶ Ex. A at § III.L.2.b, Settlement Agreement, Ex. 1; *see also*, § I.R.

1 conditionally certifying the proposed Class for settlement purposes and requiring notice
2 procedures and a final approval hearing consistent with Plaintiff's proposed schedule, as provided
3 in the proposed order submitted herewith.

4 Dated: December 29,
5 2021

KELLER GROVER LLP

6 By:



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