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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RUDY GONZALEZ,

Plaintiff,

vs.

XTREME MANUFACTURING, LLC; and
DOES 1-100, inclusive,

Defendants.

Case No.: 1:20-cv-01704-JLT-SKO

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

Date: March 10, 2023
Time: 9:00 a.m.
Dept.: Courtroom 4, Seventh Floor
Judge: United States District Judge
Jennifer L. Thurston

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1 **I. INTRODUCTION**

2 After cognizable litigation, including protracted negotiations informed by formal and inform
3 discovery and review of more than 200,000 line items of data (each consisting of multiple individual
4 data points), a full-day mediation with experienced class action mediator Louis Marlin, and the
5 provision of formal notice to 218 class members—***none of whom has voiced any objection or elected***
6 ***to opt out***—Plaintiff Rudy Gonzalez (“Gonzalez” or “Plaintiff”) now seeks final approval of the
7 Parties’ Joint Stipulation of Class and Representative Action Settlement Agreement (“Settlement” or
8 “SA”). The Settlement was negotiated on behalf of a singular Class consisting of “all current and
9 former non-exempt California employees of Xtreme Manufacturing, LLC (“Defendant” or “Xtreme”)
10 who worked at least one shift between December 4, 2016 and March 1, 2022” (the “Class”).

11 The Settlement, which was preliminarily approved by this Court on October 25, 2022, provides
12 a total of \$290,000 (“GSA”) to be shared amongst the 218 Participating Class Members and embodies
13 all of the features of a fair, reasonable, and adequate resolution that is in the collective best interest of
14 the Class. It is 1) the product of arms-length negotiations, 2) negotiated by experienced class action
15 attorneys, 3) reached after formal and informal discovery and extensive investigation in order to
16 evaluate the strengths and value of the claims, 4) reflective of a reasoned compromise between the
17 strength/value of the claims and inherent risks of litigation, and 5) consummated only after more than a
18 year of litigation and a full-day mediation. Through the Settlement, an estimated \$159,936.30 (“NSA”)
19 will be put into the pockets of Participating Class Members. The average recovery for the resolution of
20 Class Claims is \$733.65—the maximum individual distribution is a substantial 2,227.55. Declaration
21 of Evelin Reyes on Behalf of Settlement Administrator (“Admin Dec.”), February 3, 2023 at ¶ 12.

22 When the benefits of the Settlement are assessed against the risks of continued, protracted
23 litigation, the fairness, adequacy, and reasonableness of the Settlement is clear. Further underscoring
24 the propriety of the Settlement is the overwhelmingly positive response it has received from Class
25 Members, with **zero opt-outs and zero objectors**. Considering the circumstances, Gonzalez
26 respectfully requests this Court grant final approval of the Settlement.

27 ///

28 ///

1 **II. SUMMARY OF THE CASE**

2 **A. Brief Procedural History and The Class Claims**

3 On December 4, 2020, Gonzalez filed the initial Class Action Complaint in this court, asserting
4 claims on a class-wide basis for failure to pay minimum wage, failure to pay overtime, failure to
5 provide meal periods, failure to provide rest periods, failure to reimburse business expenses, failure to
6 pay wages at separation, failure to furnish accurate wage statements, and unfair business practices.
7 Dkt. 1. On February 22, 2021, Gonzalez filed a First Amended Class Action Complaint (“FAC”)
8 adding a claim to assess and collect civil penalties pursuant to the PAGA and individual claims for
9 failure to timely provide personnel and payroll records. Dkt. 9.

10 **1. The Settlement Class**

11 Plaintiff negotiated the Settlement on behalf of, and seeks to represent, one comprehensive
12 Class consisting of “all current and former non-exempt California employees of Xtreme who worked at
13 least one shift between December 4, 2016 and March 1, 2022.” SA ¶ 3. There are 218 Class Members,
14 all of whom are Participating Class Members, who worked an estimated total of 19,673 workweeks.
15 SA ¶ 8. Gonzalez and Class Counsel negotiated an escalator clause to protect Class Members, but such
16 has not been implicated—in fact, the number of Class Members and Workweeks is slightly less than
17 initially anticipated. SA ¶ 44; JDB Dec. ¶¶ 19-20.

18 **B. Defendant Vigorously Denies Plaintiff’s Allegations**

19 Defendant vigorously denies Plaintiff’s allegations in their entirety, challenges the propriety of
20 certification of the matter as a class action (other than for settlement purposes), contends it complied
21 with the law, and asserts numerous affirmative defenses. Specifically, Defendant contends they did
22 not/do not allow off-the-clock work and that all hours worked are properly recorded and compensated.
23 JDB Dec. ¶¶ 41, 47-49. Xtreme also contends they have facially lawful meal and rest period policies
24 and that any presumptively denied second meal periods were affirmatively waived by Class Members.
25 JDB Dec ¶¶ 41, 50, Exh. 5. In addition, Defendant was expected to challenge the Unfair Business
26 Practices claim in an effort to limit the Class Period to three (3) years from the date of filing. JDB Dec.
27 ¶ 45; see *Sonner v. Premier Nutrition*, 971 F.3d 834 (9th Cir. 2020). Defendant also contends Plaintiff
28 was not injured by any alleged deficiencies in the wage statements **and** that the wage statement

violations were wholly derivative and thus non-compensable. JDB Dec. ¶ 53; *Spokeo v. Robins*, 578 U.S. 330, 342-343 (requiring injury-in-fact to establish Article III standing); *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal.App.5th 1308, 1336-1337 (2d Dist. Cal. 2018). Defendant was further expected to contest class certification and seek summary adjudication which, if successful, could have eviscerated Plaintiff's claims and significantly reduced any possible recovery for the Class.

C. Identifying the Claims, Marshalling the Evidence, Creating a Damages Model, and Developing a Strategy for Mediation

Through independent inquiry, research, and informal discovery, Class Counsel thoroughly and diligently investigated and pursued the Class Claims. This process has included, but not been limited to, (1) obtaining and reviewing Plaintiff's personnel file, payroll records, and time records through formal and informal discovery; (2) researching Defendant, the scope of its operations (both within and outside of California); (3) identifying, researching, and pleading the appropriate claims, including amending the Lawsuit to assert additional claims as they ripened and/or were discovered and to address alleged deficiencies identified by defense counsel; (4) exhausting administrative remedies; (5) identifying, requesting, securing, and reviewing pertinent policies, practices, and procedures; (6) identifying, requesting, and securing the payroll and time records for all Class Members between December 5, 2016 and October 28, 2021; (7) propounding informal discovery to secure relevant policy documents and numerical information regarding the size of the classes and the scope of the claims, (8) retaining an expert to analyze the payroll and time data provided by Defendant and personally conducting spot checks to ensure the accuracy of the damages calculations; (9) creating a reliable damages model; and (10) developing and implementing a strategy for mediation and settlement. JDB Dec. ¶ 11.

D. Settlement Negotiations

Between May 2021 and the initial mediation session in December 2021, Plaintiff propounded formal written discovery that was then tabled in favor of informal pre-mediation data and information exchange. JDB Dec. ¶¶ 12-13. Through that process, Defendant provided critical numerical information, hundreds of pages of policy documents, and comprehensive time and payroll records for 205 Class Members from December 5, 2016 through October 28, 2021. JDB Dec. ¶ 14. Counsel investigated the applicable law as applied to the facts discovered regarding claims available to Plaintiff

1 and the Class, the defenses thereto, and the damages and penalties potentially available. In conjunction
2 with the mediation preparation process, the Parties spoke at length about the strengths and weaknesses
3 of each sides' claims and defenses, the certifiability of the Class, and the scope of Defendant's potential
4 liability. Plaintiff retained an expert to examine the data and determine the extent of potential damages.
5 JDB Dec. ¶¶ 15-16.

6 On December 23, 2021, the Parties participated in good faith in arms' length settlement
7 discussions at a remote mediation with Lou Marlin, Esq. The Parties scheduled a continued mediation
8 for February 22, 2022 and engaged in numerous substantive discussions—both directly and with the
9 assistance of Mr. Marlin—in the intervening two (2) months. JDB Dec. ¶ 18. Prior to February 22,
10 2022, the Parties were able to reach and agreement in principle to resolve the matter in exchange for
11 payment of the GSA. JDB Dec. ¶ 18. A Memorandum of Understanding was executed April 1 and the
12 Parties memorialized the terms of their agreement into a long-form and executed the SA in June 2022.
13 JDB Dec. ¶¶ 21-22.

14 **E. This Court Granted Preliminary Approval of the Settlement.**

15 On October 25, 2022, this Court granted preliminary approval of the Settlement. Order Granting
16 Plaintiff's Motion for Preliminary Approval of Class Settlement ("PAO"). (Dkt. 31). Having reviewed
17 Plaintiff's Motion for Preliminary Approval and the substantive terms of the Settlement, the Court (1)
18 found the Class appropriate for preliminary and conditional certification under Federal Rules of Civil
19 Procedure Rules 23(a) and 23(b), subject to further review at the final fairness hearing, (2) found the
20 notice and manner of notice proposed by Plaintiff—after specific modifications—meets the requirements
21 of Rules 23(c)(2)(B), 23(e) and due process; (3) found no evidence of collusion between the parties and
22 that the SA "appears to have been the product of serious, informed, non-collusive negotiations; (4) found
23 the proposed Settlement to preliminarily appear fair, reasonable, and adequate; (5) preliminarily approved
24 the PAGA allocation and noted the full settlement fund is sufficiently large to such that "the purposes of
25 the PAGA to address the alleged labor violations are fulfilled by the proposed agreement"; and (6) set a
26 final approval hearing for March 10, 2023. PAO (Dkt. 31) 9:4-14:18; 29:21-28; 18:18-21; 14:20-24:19;
27 26:4-8.

28 ///

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

2 **A. Monetary Relief Under the Settlement**

3 Pursuant to the SA, Xtreme will remit the GSA of \$290,000 to resolve all claims of Class
 4 Members; \$280,000 is allocated to the resolution of Class Claims and \$10,000 is allocated to the
 5 resolution of claims for PAGA civil penalties of Class Members that occurred between December 1,
 6 2019 and March 1, 2022. SA at ¶¶ 17, 25-27, 43, 45(c). The Qualified Settlement Fund does not
 7 include Employer-side Taxes, which will be separately paid by Defendant, but will also be deposited by
 8 Defendant at the same time as the GSA. SA ¶¶ 14-15, 56. After deducting the costs of administering
 9 the Settlement, the PAGA Payment, Service Payment to Plaintiff, and fees and costs of Class Counsel,
 10 \$159,936.30 is expected to be available for distribution to Participating Class Members. SA ¶ 46; JDB
 11 Dec. ¶ 44.

12 **B. Notice to Class**

13 The Class Notice was mailed to 218 Class Members on December 5, 2022. Twenty-eight
 14 notices were initially returned as undeliverable and twenty-six were remailed—only two Notice Packets
 15 were ultimately undeliverable for a successful mail rate above 99%. Admin. Dec. ¶¶ 8-9; Exh. A.

16 **C. Participation in the Settlement**

17 At this point, all 218 Class Members are Participating Class Members as ***no one*** has opted out.
 18 Each Participating Class Members is entitled to a share of the net settlement amount allocated to
 19 resolution of Class Claims based on the ratio of the number of workweeks each individual worked
 20 during the Class Period divided by the total number of workweeks worked by all Participating Class
 21 Members. SA ¶ 46(a). The average distribution to each Class Member is expected to be \$733.65—the
 22 highest distribution to any Class Member is expected to be a hefty \$2,227.55. Admin. Dec. ¶¶ 11-12.

23 **D. Scope Of Release And Final Judgment**

24 As of the Effective Date, and in exchange for the consideration provided by the SA, the
 25 Participating Class Members, and their respective heirs, beneficiaries, devisees, executors,
 26 administrators, trustees, conservators, guardians, personal representatives, successors-in-interest, and
 27 assigns, shall forever and completely release and discharge Defendant and Released Parties from the
 28

Released Claims.¹ SA ¶¶ 33, 34, 50(c)(ii); 59(a). Additionally, Gonzalez, on behalf of himself, the LWDA, and the Class, releases Defendant and Released Parties from the Released PAGA Claims.² SA ¶¶ 28, 59(b). The Released Claims and Released PAGA Claims were narrowly tailored to track the factual basis of claims advanced and do not include a Civil Code section 1542 waiver. JDB Dec. ¶ 56.

E. Settlement Administration

Plaintiff seeks approval of \$5,500 for the fees and costs of Simpluris, Inc. SA ¶¶ 45(d), 46; Admin. Dec. ¶ 19.

F. Payment To The LWDA

The Settlement contemplates a PAGA allocation of \$10,000, of which 75% (\$7,500) will be paid to the LWDA and the remaining 25% (\$2,500) will be distributed to the PAGA Members on a pro-rata per pay period basis. SA ¶ 50(c)(ii). In conjunction with moving for preliminary approval, Class Counsel provided notice of the Settlement to the LWDA. The agency has not objected to or otherwise commented on the Settlement terms, including the PAGA allocation. JDB Dec. ¶¶ 68-69, Exh. 6.

G. Service Payment To Plaintiff For His Service To The Class

Plaintiff will apply for a service payment in the amount of \$5,000, or 1.72% of the GSA, in conjunction with the separate petition for attorneys' fees, costs, and class representative service payment ordered to be filed by February 10, 2023 ("Fee Motion"). PAO; Conclusion and Order No. 10. Class

¹ Participating Class Members means causes of action and claims that were alleged in the Action, or predicate claims that reasonably could have been alleged based on the facts and legal theories asserted in the Action, which includes all claims alleged in the PAGA Letter and all causes of action alleged in the First Amended Complaint. This includes, but is not limited to, statutory, constitutional, contractual or common law claims for wages, damages, unpaid costs or expenses, penalties, liquidated damages, punitive damages, interest, attorneys' fees, litigation costs, restitution, or equitable relief, arising out of or based upon the allegations in the Action, including the California Labor Code, the Fair Labor Standards Act, the California Industrial Welfare Commission Wage Orders, and the California Business and Professions Code § 17200, et seq.; including, without limitation, the following categories of allegations, to the fullest extent such claims are releasable by law: (a) all claims for failure to pay minimum wages; (b) all claims for failure to pay overtime wages, including all claims for the alleged omission of any kind of remuneration when calculating an employee's regular rate of pay; (c) all claims for failure to provide compliant meal periods and pay related premiums at the regular rate; (d) all claims for failure to provide compliant rest periods and pay related premiums at the regular rate; (e) all claims for failure to reimburse business expenses; (f) all claims for failure to pay timely current wages and associated penalties; (g) all claims for failure to pay final wages; and (h) all claims for failure to provide accurate wages statements. The Class Members understand and agree that this release includes a good-faith compromise of disputed wage claims. The period of the Released Claims shall extend for the Class Period.

² The PAGA Release releases all causes of action and claims that were alleged in the Action, or predicate claims that reasonably could have been alleged based on the facts and legal theories asserted in the Action, that seek civil penalties and other relief available pursuant to the PAGA against the Released Parties during the PAGA Period (December 1, 2019 to March 1, 2022). SA ¶¶ 27-28.

Members have been apprised of Plaintiff's request, the ability to review moving papers on the Court's website, and the right to object—no objections have been received. Admin Dec. Ex. A; JDB Dec. ¶ 65.

H. Class Counsel's Attorneys' Fees And Costs

Class Counsel will request attorneys' fees in the amount of one-third of the GSA, or \$96,666.67, as well as declared litigation expenses not more of \$12,897.03 in conjunction with the separate Fee Motion. Class Members have been apprised of Class Counsel's request, the ability to review the moving papers on the Court's website, and the right to object to the request if they so desire—no objections or concerns have been raised. Admin Dec. Ex. A; JDB Dec. ¶ 65.

IV. FINAL CERTIFICATION OF THE CLASS IS APPROPRIATE

This Court must determine that certification of the Class is appropriate as a prerequisite to granting final approval. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998). As outlined in support of preliminary approval, and reiterated below, the Class meets the certification requirements of Rule 23(a) and Rule 23(b).

Courts have broad discretion to certify a class for purposes of settlement. *Zinser v. Accuflix Research Inst., Inc.*, 253 F.3d 1180, 1186 (9th Cir. 2001); *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1807 n. 19 (Cal. 1996). To be certified, a settlement class must satisfy all of the following: (1) the individuals are so numerous that joinder would be impractical; (2) there is a commonality of interest between plaintiff and the class members; (3) plaintiff's claims are typical of the claims of the class; and (4) plaintiff and counsel will fully and adequately represent the interests of the settlement class members. Fed. R. Civ. P. 23(a); Cal. Code. Civ. Proc. § 382; *Sav-on Drug Stores, Inc. v. Sup. Court*, 34 Cal.4th 319, 326-27 (2004). Under the federal rules, certification also requires establishment of one of more of the bases outlined in Rule 23(b). This Court already found each of these criteria satisfied when it evaluated the Class on preliminary approval. PAO at pp. 8:23-14:18. Since nothing has changed about the scope of the Class or the nature of the claims asserted, certification in the context of final approval is also proper and the arguments below will be succinct.

A. Rule 23(a)(1) - Numerosity

Numerosity is easily satisfied by the 218 Participating Class Members. Admin Dec. ¶¶ 6, 8, 10. *Rannis v. Recchia*, 380 Fed.Appx. 646, 651 (9th Cir. 2010). The identity of the individual members of

each Class is readily ascertainable because each worked for Xtreme and was identified through its employee and payroll records. SA ¶¶ 49(a); Admin Dec. ¶¶ 6; *In re NJOY Consumer Class Action Litigation*, 120 F.Supp.3d 1050, 1091 (C.D. Cal. 2015). Numerosity is met.

B. Rule 23(a)(2) – Commonality

The commonality requirement is met if there are questions of law and fact common to the class. *Hanlon*, 150 F.3d at 1019. Generally, whenever violation(s) are alleged to result from facially unlawful written policies or a system-wide practice commonality will be found. *Martin v. Sysco Corp.*, 325 F.R.D. 343, 352 (E.D. Cal. 2018); *Kamar v. Radio Shack Corp.*, 254 F.R.D. 387, 399 (C.D. Cal. 2008); *Brinker Rest. Corp. v. Sup. Ct.*, 53 Cal.4th 1004, 1032-1033 (Cal. 2012). Just such a situation exists here. The claims of Gonzalez and the Class Members all flow from a “common core of salient facts” in that they are based on Defendant’s alleged uniform practice of requiring its Selma warehouse workers to work off-the-clock without compensation because managers intentionally fail to accurately record all time worked and/or they modify employee time records (JDB Dec. ¶ 48), uniform policy of not providing meal periods (particularly second meal periods), both because the written policy misadvised employees they could waive a second meal period under all circumstances and because they effectively required employees to acknowledge being afforded all meal periods even when such was not the case (JDB Dec. ¶ 50, Exhs. 3-5), uniform policy of not giving credit to the “major fraction” thereof language with respect to rest periods and thereby denying rest periods (JDB Dec. ¶ 52, Exh. 3), resultant failure to timely pay all wages due and owing at separation or provide uniform itemized wage statements missing critical necessary information required by Labor Code section 226(a)(2), and uniform practice of requiring employees to purchase their own uniforms (JDB Dec. ¶ 36).

Each of the theories of liability asserted by Gonzalez on behalf of the Class has been recognized to satisfy the commonality requirement. *Quezada v. Schneider Logistics Transloading & Distribution, Inc.*, 2013 WL 12122694 * 3-4 (C.D. Cal. 2013) (recognizing commonality in 1) meal break claim based on requiring employees to sign blanket waivers and written policy that failed to inform employees fully of meal period rights, 2) rest break claim based on written policy that does not authorize rest periods in accordance with the timing mandated by wage orders, 3) claim based on facility-wide practice of altering employee time records, and 4) derivative 203, 226 and UCL claims);

1 *Brinker Rest. Corp.*, 53 Cal.4th 1033; *McDonald v. Airport Terminal Svcs., Inc.*, 2013 WL 12251409
 2 *4 (C.D. Cal. 2013) (recognizing commonality in uniform expense reimbursement claim). The
 3 resolution of common questions is capable of resolving the liability component of the Class claims
 4 here. More specifically, determining 1) whether managers at the Selma location routinely advised
 5 employees they would clock them out, but instead failed to accurately enter the work stop time
 6 (entering the scheduled shift time instead), 2) whether Xtreme’s meal period policy misinformed
 7 employees they could waive their second meal periods, 3) whether Xtreme’s practice of requiring a
 8 mandatory waiver of second meal periods is unlawful, 4) whether Xtreme’s written policy failed to give
 9 effect to the timing requirements for rest periods, and 5) whether Xtreme regularly did not reimburse
 10 employees for masks, boots, and uniforms will resolve the liability issues underscoring the Class
 11 Claims. The commonality requirement is met.

12 **C. Rule 23(a)(3) – Typicality**

13 Like the commonality requirement, “the typicality requirement is ‘permissive’ and requires only
 14 that the representative’s claims be ‘reasonably co-extensive with those of absent class members, they
 15 need not be substantially identical.’” *Rodriguez v. Hayes*, 591 F.3d 1105, 1124 (9th Cir. 2010), quoting
 16 *Hanlon*, 150 F.3d at 1020. Gonzalez’s claims are typical of the claims of the Class because they arise
 17 from the same factual basis and are based upon the same legal theories. *Wehner v. Syntex Corp.*, 117
 18 F.R.D. 641, 644 (N.D. Cal. 1987). This fact is further underscored by Gonzalez’s membership in the
 19 Class.

20 **D. Rule 23(a)(4) – Adequacy**

21 In order for class certification to be proper, it must be shown the class representative can and
 22 will “fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). “Resolution of
 23 two questions determines legal adequacy: (1) does the named plaintiff and his counsel have any
 24 conflicts of interest with other class members and (2) will the named plaintiff and his counsel prosecute
 25 the action vigorously on behalf of the class?” *Hanlon*, 150 F.3d at 1020; *Staton v. Boeing Co.*, 327
 26 F.3d 938, 957 (9th Cir. 2003); *Lao v. H&M Hennes & Mauritz, L.P.*, 2018 WL 3753708 * 9 (N.D. Cal.
 27 2018). Here, Gonzalez has no conflicts of interest with other class members, he is a member of the
 28 Class, and he has vigorously pursued the collective interests of the Class. JDB Dec. ¶¶ 70-72.

1 In fact, while Gonzalez raised two individual claims based on Xtreme’s failures to timely
 2 provide him personnel and payroll records, he is releasing those claims *as well as any other potential*
 3 *claims he might have* through the SA in exchange for no additional compensation (beyond a requested
 4 Class Representative Service Payment). SA ¶ 59(c)-(d); FAC ¶¶ 89-98. Adequacy does not preclude a
 5 class representative from having interests unique to those of other Class Members; only *adverse*
 6 interests are prohibited. *Dukes v. Wal-Mart Stores, Inc.*, 222 F.R.D. 137, 168 (N.D. Cal. 2004).
 7 Plainly, Gonzalez has no individual interests adverse to the Class when he is willing to provide a
 8 release broader than Class Members in exchange for no additional consideration. Throughout this case
 9 Gonzalez and Class Counsel have demonstrated their commitment to vigorously prosecuting this
 10 lawsuit on behalf of the Class. Adequacy is further underscored by Class Counsel’s experience in wage
 11 and hour cases and reflected in the benefits they have and will continue to confer upon Class Members
 12 through this litigation, including securing the GSA. JDB Dec. ¶¶ 43-44, 60-61, 73-76.

13 **E. Common Issues Predominate and Classwide Treatment is Superior**

14 “In addition to meeting the conditions imposed by Rule 23(a), the parties seeking class
 15 certification must also show that the action is maintainable under Fed. R. Civ. P. 23(b)(1), (2), or (3).”
 16 *Hanlon*, 150 F.3d at 1022. Rule 23(b)(3) outlines the propriety of class certification whenever common
 17 questions of law and fact predominate over questions affecting only individual class members and class
 18 action treatment is superior to other methods for fairly and efficiently adjudicating the controversy.
 19 Fed. R. Civ. P. 23(b)(3). “The Rule 23(b)(3) predominance inquiry tests whether proposed classes are
 20 sufficiently cohesive to warrant adjudication by representation.” *Amchem Products, Inc. v. Windsor*,
 21 521 U.S. 591, 622 (1997). Class actions, such as this, in which a defendant’s uniform policies and
 22 practices are challenged generally satisfy the predominance requirement. See *Palacios v. Penny*
 23 *Newman Grain*, 2015 WL 4078135 at *5-6 (E.D. Cal. 2015). Factually the policies and practices
 24 alleged to underscore the Class Claims apply class-wide and Defendant’s liability can be determined by
 25 facts, and applicable law, common to all Class Members—common issues undeniably predominate.

26 There is similarly no question that resolving the claims of Class Members through this single
 27 action is superior to individual litigation or any alternative resolution methods that may exist. The
 28 value of each individual claim is relatively insignificant and is likely not enough to incentivize

individual action. *Wolin v. Jaguar Land Rover N.A., LLC*, 617 F.3d 1168, 1175-1176 (9th Cir. 2010); *Zinser*, 253 F.3d 1180; JDB Dec. ¶ 37 (reflecting maximum average damages of less than \$10,000 per Class Member). Class treatment is, by far, the superior procedure in this case and provides the best, most cognizable avenue for all class members to secure fair, adequate, and reasonable recovery. The provisions of Rule 23, subdivisions (b)(1) and (b)(3) remain satisfied.

V. THE CLASS NOTICE WAS DISTRIBUTED IN ACCORDANCE WITH THE COURT'S ORDER GRANTING PRELIMINARY APPROVAL.

The Class Notice meets all of the requirements of procedural due process and Rule 23(e) by: (1) identifying the Parties and describing the Class Claims in a straightforward manner; (2) succinctly describing the essential terms of the Settlement, including the proposed Service Payment and the amount Class Counsel will request for attorneys' fees and costs; (3) clearly identifying the Released Claims and how the Class is impacted by the Release; (4) identifying the Released Parties; (5) providing Class Members with information on how to participate in, exclude themselves from and/or object to the Settlement; (6) outlining applicable deadlines; and (7) informing Class Members of the consequences if they decide to exclude themselves, object, or participate. Further, the Class Notice explains the manner in which Class Members can obtain further information. Admin Dec. Exh. A. In short, the Class Notice provided Class Members all of the information necessary to make an informed decision regarding the Settlement. E.g. *Roman Catholic Bishop of S.D. v. Readers Digest Assoc.*, 1994 WL 836334 * 1 (S.D. Cal. 1994) (function of class notice is to facilitate an informed choice).

On November 14, 2022, Xtreme provided the Administrator with the Class List. Admin. Dec. ¶ 6. On December 5, 2022, after updating the mailing addresses through the NCOA, Class Notices were mailed via First Class Mail to 218 individuals. *Id.* ¶¶ 7-8. Twenty-eight (28) were initially returned as undeliverable and 26 were remailed to updated addresses *Id.* ¶ 9. Ultimately, only two Notices were undeliverable, which equates to an impressive 99% successful mailing rate. *Ibid.*

VI. THE CLASS HAS EXPRESSED ITS APPROVAL OF THE SETTLEMENT.

The Class has shown its complete and absolute support of the Settlement. **Not one of the 218 Class Members filed an objection or opted out.** Admin Dec. ¶¶ 10, 14-16. This fact strongly supports

1 approval of the Settlement. E.g. *Chun-Hoon v. McKee Foods Corp.*, 716 F.Supp.2d 848, 852 (N.D. Cal.
2 2010).

3 **XII. FINAL APPROVAL OF THE SETTLEMENT IS WARRANTED**

4 **A. Legal Standards for Preliminary Approval of Class Action Settlements**

5 A class action may not be dismissed, compromised or settled without Court approval. Fed. R.
6 Civ. P. 23(e). The decision to approve or reject a proposed settlement is committed to the Court's sound
7 discretion. *Hanlon*, 150 F.3d at 1026-27. Approval of a class settlement will not be overturned unless
8 "the terms of the agreement contain convincing indications that the incentives favoring pursuit of self-
9 interest rather than the class's interests in fact influenced the outcome of the negotiations and that the
10 district court was wrong in concluding otherwise." *Staton*, 327 F.3d 938 960.

11 **B. The Settlement Terms are Fair, Reasonable, and Adequate**

12 Law and public policy strongly favor settlement prior to trial, particularly in class actions where
13 substantial resources can be conserved by avoiding the time, expense, and rigors of litigation. *Churchill*
14 *Village, LLC v. Gen. Electric*, 361 F.3d 566, 576 (9th Cir. 2004); *In re Pacific Enterprises Securities*
15 *Litig.*, 47 F.3d 373, 378 (9th Cir. 1995); *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir.
16 1992); *Franklin v. Kaypro Corp.*, 884 F.2d 1222, 1229 (9th Cir. 1989). Accordingly, Courts have "wide
17 discretion in assessing the weight and applicability of each factor." *Nat'l Rural Telecomms. Coop. v.*
18 *DirectTV, Inc.*, 221 F.R.D. 523, 526 (C.D. Cal. 2004). The Ninth Circuit has repeatedly ruled that courts
19 "put a good deal of stock in [class settlements that are] the product of arms-length, non-collusive,
20 negotiated resolution." *Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 965 (9th Cir. 2009); *Hanlon*,
21 150 F.3d at 1027. In fact, there is a presumption of fairness "if the settlement is recommended by class
22 counsel after arm's-length bargaining." *Wren v. RGIS Inventory Specialists*, 2011 WL 1230826 *6 (N.D.
23 Cal 2011). To that end, the court's inquiry "into what is otherwise a private consensual agreement
24 negotiated between parties to a lawsuit must be limited to the extent necessary to reach a reasoned
25 judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the
26 negotiating parties, and that the settlement, taken as a whole is fair, reasonable and adequate to all
27 concerned". *Officers for Justice v. Civil Svc. Comms'n of S.F.*, 688 F.2d 615, 626 (9th Cir. 1982).

1 Ultimately, a court's "determination is nothing more than an 'amalgam of delicate balancing, gross
2 approximations, and rough justice.'" *Nat'l Rural Telecomm. Coop.*, 221 F.R.D. 526 (citations omitted).

3 In passing on a class action settlement, a Court must determine whether it is "fair, adequate and
4 reasonable." Fed. R. Civ. P. 23(e). In doing so, a number of factors should be considered, including: (1)
5 the strength of the plaintiff's case; (2) the risk, expense, complexity and likely duration of further
6 litigation; (3) the risk of maintaining class action status through trial; (4) the amount offered; (5) the
7 extent of discovery completed and the procedural stage; (6) the experience and views of counsel; and (7)
8 the reaction of class members to the settlement. *Hanlon*, 150 F.3d at 1026; *Dunk*, 48 Cal.App.4th 1802.
9 The factors are non-exclusive, not all need be shown, and the court is free to engage in a balancing and
10 weighing of factors depending on the circumstances of each case. *Churchill Village*, 361 F.3d 576 n. 7;
11 *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 245 (2001). Indeed, "one factor alone may prove
12 determinative in finding sufficient grounds for court approval." *Nat'l Rural Telecomm. Coop.*, 221
13 F.R.D. 525; *Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1376 (9th Cir. 1993). All factors support
14 the Settlement here.

15 **1. The Class Received Adequate Notice of the Settlement.**

16 "[T]he class must be notified of a proposed settlement in a manner that does not systematically
17 leave any group without notice." *Officers for Justice*, 688 F. 2d 624. Here, the Administrator fulfilled
18 its duties in distributing the Notice via first class mail and performing address traces to re-mail initially
19 undeliverable notices. As a result of these efforts, 216 out of 218 Class Members were delivered notice.
20 Admin Dec. ¶ 9; *Dorsette v. TA Operating, LLC*, 2010 WL 11583002 *5 (C.D. Cal. 2010); *Four in One*
21 *Co., Inc. v S.K. Foods L.P.*, 2014 WL 4078232 *6 (E.D. Cal. 2014) (84% success rate acceptable). The
22 Administrator and Class Counsel took further steps to ensure the Class' access to necessary information,
23 including establishing a toll-free number and answering Class Member questions. Admin. Dec. ¶ 4.

24 **2. The Strengths and Weaknesses of Class' Claims and the Risks of Proceeding** 25 **with Litigation Strongly Support Final Approval.**

26 The Court should reaffirm its determination on preliminary approval that this Settlement is
27 fair, reasonable, and adequate in light of the relative strengths and weaknesses of the Class Claims
28 and the risks posed by continued litigation. Approval of a class settlement is proper when "there are

1 significant barriers plaintiffs must overcome in making their case.” *Chun-Hoon*, 716 F.Supp.2d 851
2 (possibility of decertification supports approval); see also *Rodriguez*, 563 F.3d 966 (difficulties and
3 risks of litigating weigh in favor of class settlement approval).

4 While Class Counsel believes evidence exists from which the trier of fact could conclude
5 Xtreme engaged in a pattern and practice of failing to compensate for all work performed, denying
6 meal and rest breaks, and failing to reimburse expenses, and that such derelictions resulted in derivative
7 failures to pay wages on separation and provision of inaccurate wage statements, pursuit of the claims
8 was not without risk. Defendant asserts and would have continued to assert numerous legal and factual
9 grounds to defend against each of the Class Claims and/or certification of such claims, including, but not
10 limited to, 1) that the “off-the-clock” claim lacks merit, 2) that its meal and rest period policies are
11 facially lawful, 3) that, even if facially unlawful, there were no meal/rest period violations as evidenced
12 by the acknowledgments routinely signed by Class Members, 4) that the UCL claim cannot proceed
13 because of *Sonner*, 971 F.3d at 845, 5) that Gonzalez did not suffer any injury from the derivative wage
14 statement violations, and 6) that any failure to pay waiting time penalties was not sufficiently “willful” to
15 justify their imposition. JDB Dec. ¶¶ 45-55. While Class Counsel is confident certification and success
16 on the merits could have been attained, continued litigation was guaranteed to be costly, time consuming,
17 and uncertain in outcome. By contrast, the Settlement ensures timely and substantial monetary relief—an
18 average distribution of \$733.65—particularly considering the narrow scope of the Released Claims and is
19 superior to other approved settlements raising similar claims.

20 Balancing the strengths and weaknesses of the Class Claims, combined with the risks of
21 continued litigation, weighs strongly in favor of final approval of the Settlement.

22 **3. The Expense and Duration of Further Litigation Favor Final Approval.**

23 “Settlement avoids the complexity, delay, risk and expense of continuing with the litigation and
24 will produce a prompt, certain, and substantial recovery for the Plaintiff class.” *Eddings v. Health Net,*
25 *Inc.*, 2013 WL 3013867, *3 (C.D. Cal. 2013) (internal citation and quotation omitted). Absent
26 settlement, significant additional litigation, including class member and Xtreme-affiliated witness
27 depositions, a hotly contested motion for certification, an equally difficult motion for summary judgment,
28 likely appeals to rulings in favor of the Class, and a vigorous and lengthy trial were on the horizon.

Continued litigation would require Plaintiff to establish the bases for certification, classwide liability, and then to present evidence regarding damages and penalties. Such efforts would likely be protracted and extremely costly. Additional unforeseen costs, risks, and delays, including appellate proceedings might also materialize. JDB Dec. ¶¶ 55. Even if Plaintiff overcame all these obstacles and obtained a judgment for the Class, the recovery might be less than the Settlement and would, invariably, not occur for years. There is a significant advantage to receiving a substantial monetary benefit now. This factor strongly favors approval.

4. The Risk of Maintaining Class Action Status through Trial Favors Approval

Plaintiff faced various risks regarding the maintenance of class status throughout trial. These include Xtreme's anticipated challenges to the off-the-clock claims and expected attempts to attack the reason(s) meal/rest breaks were missed in an effort to try to defeat commonality. *Ruiz v. Affinity Logistics Corp.*, 2009 WL 648973 * 6 (S.D. Cal. 2009). This risk further supports approval.

5. The Monetary Benefits of the Settlement Support Final Approval

The Settlement has and will result in substantial benefits to all Class Members, particularly in light of the strengths and risks attendant to the Class Claims. With the help of an expert, performing individual calculations and spot checks to ensure accuracy, and accounting for various litigation risks and the defenses and arguments of Xtreme, Class Counsel developed a damages model illustrating both maximum exposure and the realistic potential recovery for the alleged violations. Under this damages model, Xtreme faces a maximum of \$339,092.16 in unpaid wages based on alleged off-the-clock work, \$256,331 in unpaid meal period premiums, \$429,122 in unpaid rest period premiums, \$602,553.60 in statutory penalties under Labor Code section 203, \$325,750 in statutory penalties for inaccurate wage statements, \$43,600 in unreimbursed expenses, and \$2,002,800 in civil penalties under the PAGA—\$1,996,448.76 in damages/penalties to the Class and \$2,002,800 in PAGA civil penalties. JDB Dec. ¶¶ 29-33, 35, 36, 57. The portion of the GSA allocated to Class Claims (\$280,000) represents 14% of the Class' *maximum* recovery.³ Because 100% success in litigation is unrealistic, Class Counsel also

³ Courts regularly evaluate the fairness of a class action settlement utilizing defendant's exposure exclusive of potential penalties and interest. *Rodriguez*, 563 F.3d at 955 ("It is our impression that courts generally determine fairness of an antitrust class action settlement based on how it compensates the class for past injuries, without giving much, if any, consideration to treble damages."); *see also Miller v. CEVA Logistics USA*, 2015 WL 729638 *7 (E.D. Cal. 2015) (evaluating

determined a reasonable and much more realistic estimate for the potential recovery of the Class. Under this more measured approach, Class Counsel calculated the realistic recovery of the Class at \$933,434.17—the GSA provides for 30% recovery of that amount. Even more reflective of the fairness and adequacy of the Settlement, it provides **net** average distribution of \$733.65 to *each* Class Member. JDB Dec. ¶¶ 43-44. This is a positive result.

While it is generally accepted that “[t]he most important factor is the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement,” a court must be mindful that its function is limited solely to determining whether the settlement falls within the range of acceptable under the circumstances. *Munoz v. BCI Coca-Cola Bottling Co. of L.A.*, 186 Cal.App.4th 399, 407-409 (2010). Indeed, “[t]he proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved had plaintiffs prevailed at trial,” The fact “the settlement could have been better . . . does not mean the settlement presented was not fair, reasonable or adequate.” *Hanlon*, 150 F.3d 1027. A Settlement that provides a gross recovery amount of 30% of the Class’ realistic damages, particularly when balanced against the uncertainty and protracted nature of continued litigation, is undoubtedly a fair, reasonable, and adequate result worthy of final approval.

6. The Settlement Was Negotiated After Comprehensive Information Exchange And A Thorough Investigation Of The Issues

Courts look to the amount of exchanged information to determine whether the parties made an informed decision to settle. *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1239 (9th Cir. 1998). Prior to engaging in any settlement discussions here, Gonzalez and his counsel propounded formal written discovery, informally received the time and payroll records of 205 of the 218 Class Members between December 5, 2016 and October 28, 2021 (nearly the entire Class Period), and engaged an expert to assist in analyzing the data and assessing damages exposure. JDB Dec. ¶¶ 8, 11-15. There can be no question that “meaningful discovery” was completed and Class Counsel had sufficient information to fully evaluate the claims and make competent, informed decisions regarding the benefits and burdens of continued litigation versus settlement. *In re Heritage Bond Litig*, 2004 WL

fairness of wage and hour class action by comparison to potential exposure exclusive of interest and penalties); *Richardson v. Interstate Hotels & Resorts, Inc.* 2019 WL 803746 *3 (N.D. Cal. 2019) (same).

7339813 *3 (C.D. Cal. 2004). The comprehensive amount of information available and evaluated prior to the Settlement operates in favor of final approval.

7. The Settlement Resulted From Non-Collusive, Arm's Length Negotiations

As this Court previously recognized, this Settlement “appears to be the product of serious, informed, non-collusive negotiations.” PAO p. 18:18-19. Underscoring that point, Settlement was only reached after one mediation session, scheduling of a further session, more than two months of mediator-facilitated discussions until a settlement in principle was reached, another month of additional discussion prior to executing an MOU, and two *more* months of negotiations in finalizing the SA. JDB Dec. ¶¶ 17-18, 21-23; *In re Apple Computer, Inc. Derivative Litig.*, 2008 WL 4820784 * 3 (N.D. Cal. 2008). Mr. Marlin’s involvement in the settlement negotiation process as a neutral mediator “weighs considerably against any inference of a collusive settlement.” *In re Apple Computer*, 2008 WL 4820784 at * 3. The adversarial and protracted nature of the negotiation process further supports the fairness, adequacy, and reasonableness of the Settlement.

8. The Settlement is Supported by Skilled and Experienced Class Counsel.

“‘Great weight’ is accorded to the recommendation of counsel, who are most closely acquainted with the facts of the underlying litigation. This is because ‘[p]arties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party’s expected outcome in the litigation.’ Thus, ‘the trial judge, absent fraud, collusion, or the like, should be hesitant to substitute its own judgment for that of counsel.’” *Nat’l Rural Telecomms. Coop.*, 221 F.R.D. 528.

Class Counsel, having demonstrated a high degree of competence in the litigation of this case and numerous other employment class actions and PAGA representative actions, strongly believe the proposed Settlement properly balances the realistic monetary relief available to the Class against the magnitude of the risks of continued litigation and thus is a fair, adequate, and reasonable resolution of the Class Action. JDB Dec. ¶¶ 43, 73-76; *In re Wachovia Corp. “Pick-A-Payment” Mortgage Mktg. & Sales Practices Litig.*, 2011 WL 1877630, *3 (N.D. Cal. 2011) (approving settlement based upon belief of “Plaintiffs’ counsel, who are experienced attorneys . . . that the settlement is extremely favorable to the class”). This factor further favors approval.

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1 **9. The Absence of Any Objections or Opt-Outs Supports Approval.**

2 Multiple courts make clear that the number or percentage of class members who object to or
3 opt out of a settlement is a factor of great significance and that “the absence of a large number of
4 objections to a proposed class action settlement raises a strong presumption that the terms of a proposed
5 class action settlement are favorable to the class members.” *Nat’l Rural Telecomms. Coop.*, 221 F.R.D.
6 at 528-29. Indeed, “[t]he absence of any objector strongly supports the fairness, reasonableness, and
7 adequacy of the settlement.” *Williams v. Costco Wholesale Corp.*, 2010 WL 2721452 *5 (S.D. Cal.
8 2010). Here, **not one of the 218 Class Members elected to opt-out of the Settlement or object.** Admin.
9 Dec. ¶¶ 13-16. Class Counsel has also not received contact from anyone expressing any concern
10 whatsoever to the terms of the Settlement. JDB Dec. ¶ 65. This overwhelming support weighs strongly
11 in favor of final approval.

12 Overall, each of the relevant factors weighs in favor of finally approving the Settlement and
13 facilitating distribution of the average \$733.65 to each Class Member—the Class Members’
14 uniformly positive reaction emphasizes a conclusion the Settlement is sufficient and fair.

15 **D. The PAGA Allocation and Payment to the LWDA is Reasonable**

16 The Settlement contemplates \$10,000 allocated to the resolution of Released PAGA claims. SA
17 ¶¶ 25, 28. As this Court already observed, when viewed in light of the entire GSA, the Settlement
18 serves the deterrent purposes of the PAGA and its approval is warranted. The fact the LWDA has not
19 voiced any objection in the over four (4) months since it was notified of the Settlement further
20 highlights its propriety. JDB Dec. ¶¶ 68-69, Exh. 6.

21 **E. The Settlement Administrator’s Fees are Reasonable**

22 The Parties selected Simpluris, Inc. to serve as Administrator. SA ¶¶ 2, 47. Simpluris has
23 substantial experience in administering class action settlements, having handled thousands of such
24 settlements over the years, and has already handled distribution of the Class Notice and setting up a
25 dedicated toll-free phone number for Class Member inquiries. Admin. Dec. ¶¶ 2-4, 8-9. Following final
26 approval, the Administrator will handle distribution and mailing of all Individual Settlement Payments,
27 calculating all applicable taxes, and distribution to the LWDA, Class Counsel, and Plaintiff, as
28

appropriate. Gonzalez seeks final approval of the Administrator's fees and costs of \$5,500 to be paid out of the QSF. Admin Dec. ¶ 19.

XIV. CONCLUSION

Since the Class satisfies all of the requirements for certification, the Settlement has and will confer substantial monetary—nearly \$160,000 in *net* recovery to the Class—and because *not a single Class Member objected or opted out*, the Settlement is unquestionably fair, adequate, and reasonable. The Settlement should be approved by this Court such that Class Members can obtain the cognizable monetary benefit it embodies during this difficult economic time.

DATED: February 3, 2023

MAYALL HURLEY P.C.

By /s/ Jenny D. Baysinger
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