

COHELAN KHOURY & SINGER

Michael D. Singer (SBN 115301)

msinger@ckslaw.com

Rosemary C. Khoury (SBN 331307)

rkhoury@ckslaw.com

605 C Street, Suite 200

San Diego, CA 92101

Telephone: (619) 595-3001/Facsimile: (619) 595-3000

D.LAW, INC.

Emil Davtyan (SBN 299363)

emil@d.law

400 N. Brand Blvd., 7th Floor

Glendale, CA 91203

Telephone: (818) 875-2008

Facsimile: (818) 722-3974

Attorneys for Plaintiff Bethany A. Butler, on behalf of herself
and similarly-situated and aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

BETHANY A. BUTLER, on behalf of
herself and similarly situated and aggrieved
employees,

Plaintiff,

v.

POWERSCHOOL GROUP LLC, a
Delaware Limited Liability Company; and
DOES 1 through 10, Inclusive,

Defendants.

Lead Case No. 34-2021-00299363-CU-OE-GDS
ASSIGNED FOR ALL PURPOSES TO:
The Honorable Jill H. Talley
Department 27

CLASS AND REPRESENTATIVE ACTION

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS,
REPRESENTATIVE, AND COLLECTIVE
ACTION SETTLEMENT**

Date: January 5, 2024
Time: 9:00 a.m.
Dept.: 27
Judge: Honorable Jill H. Talley

Complaint filed: April 26, 2021
Trial date: Not set

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I. INTRODUCTION

Plaintiff Bethany A. Butler (“Plaintiff”) seeks preliminary approval of a \$750,000 non-reversionary wage and hour class, Fair Labor Standards Act (“FLSA”), and Private Attorneys General Act (“PAGA”) settlement for an estimated 571 non-exempt California employees of Defendant PowerSchool Group, LLC (“PowerSchool” or “Defendant”) during the Class Period.¹ As to these employees, Plaintiff alleges PowerSchool failed to: pay wages based on actual time worked and based on the regular rate of pay, provide meal and rest periods, reimburse business-related cell phone expenses, and provide accurate itemized wage statements and timely final wages. Declaration of Michael D. Singer (“Singer Decl.”), ¶9; **Exhibit 1**—Stipulation of Class, Collective, and Representative Action Settlement (“SA”), ¶¶1, 6(a), (l) (t), 38.

II. PARTIES, CLASS, COLLECTIVE, AND PAGA GROUP

A. Plaintiff and Defendant

Defendant PowerSchool provides cloud-based software for K-12 education to institutions, including some in California, connecting students, teachers, administrators, and parents and facilitating learning, reporting, and human resources functions. *About PowerSchool*, PowerSchool, www.powerschool.com/company/ (last visited December 1, 2023); *PowerSchool in California*, PowerSchool, www.powerschool.com/global/north-america/united-states/california/ (last visited December 1, 2023).

Plaintiff was employed by PowerSchool as an hourly, non-exempt employee from approximately August 13, 2018 through July 2, 2020, holding the non-exempt positions of Senior Client Operations Manager and Senior Customer Success Manager. Her duties included maintaining an excel spreadsheet of client names and purchases; programming scripts to communicate with clients; hosting strategy meetings with co-workers; calling and emailing

¹ Putative Class Members worked an estimated 39,914 Qualifying Workweeks through the date of the Parties’ mediation in November 2022. Partial Qualifying Workweeks are counted as full Qualifying Workweeks for all purposes. Singer Decl., ¶9; SA, ¶¶6(ii), 14(a-c). The “Class Period” means the time period from June 30, 2017, through the date of preliminary approval, or thirty (30) days after Plaintiff files her motion for preliminary approval, whichever is sooner, unless otherwise modified by the Escalator Clause in the Settlement Agreement. SA, ¶¶6(g), 38.

1 with clients and acting as a middleman between clients and PowerSchool’s support team
2 members when necessary; communicating with PowerSchool’s support team members on an
3 instant message application called “Slack;” and periodically presenting business reviews to
4 clients and PowerSchool executives, utilizing self-made graphs and charts. Declaration of
5 Bethany A. Butler (“Butler Decl.”), ¶3.

6 **B. Class Members, Settlement Collective Members, and Aggrieved Employees**

7 The Class Period begins June 30, 2017, the PAGA Period begins February 20, 2020,
8 and the FLSA Period begins June 30, 2018; each Period runs through the date of preliminary
9 approval, or thirty (30) days after Plaintiff files her motion for preliminary approval, whichever
10 is sooner. Singer Decl., ¶10; SA, ¶¶6(g), (r), (dd). However, “[i]f the number of unique
11 Qualifying Workweeks at issue for the Class, PAGA, and Collective Members is more than ten
12 percent (10%) of the represented number of unique Qualifying Workweeks (i.e., exceeds
13 43,905 unique workweeks), Defendant will have the option to either pay a proportional amount
14 in addition to the Gross Fund Value for each additional such unique Qualifying Workweeks
15 that exceeds 43,905 unique Qualifying Workweeks, or to stop the Class Period at the point at
16 which the number of unique Qualifying Workweeks is no more 43,905 unique Qualifying
17 Workweeks.” Singer Decl., ¶11; SA, ¶38.

18 Settlement Class Members are all non-exempt employees who were employed by
19 PowerSchool during the Class Period who do not timely and properly opt out. Singer Decl.,
20 ¶12; SA, ¶6(f), (ss). Settlement Collective Members are all non-exempt employees who have
21 been employed by PowerSchool anywhere in California during the FLSA Period who opt into
22 the collective action with respect to claims under the FLSA. Singer Decl., ¶13; SA, ¶6(k), (tt).
23 PAGA Group Members are all non-exempt California employees of Defendant at any time
24 during the PAGA Period. Singer Decl., ¶14; SA, ¶6(cc). PAGA Group Members will not be
25 able to opt out of settlement of the PAGA claims and release of PAGA claims. Singer Decl.,
26 ¶15; SA, ¶22.

27 **III. PROCEDURAL HISTORY**

28 On April 26, 2021, Plaintiff filed a PAGA Complaint in Sacramento County, alleging

1 failure to: pay wages, provide meal and rest periods, reimburse business expenses, provide
2 wage statements, and provide wages due at separation. Singer Decl., ¶16; SA, ¶1. On June 30,
3 2021, Plaintiff filed a Class Action Complaint in Sacramento County, alleging failure to: pay
4 wages, provide meal and rest periods, reimburse business expenses, provide wage statements,
5 and provide wages due at separation; Plaintiff also claimed Defendant violated the Unfair
6 Competition Law. Singer Decl., ¶17; SA, ¶1. On September 15, 2022, PowerSchool filed a
7 motion to sever from the putative class 197 non-exempt employees out of 430 (46% of the
8 putative class) who had purportedly signed arbitration agreements containing class, collective,
9 and/or representative action waivers. Singer Decl., ¶18. The Court denied PowerSchool’s
10 motion as premature but provided: “The ruling is without prejudice to Defendant raising the
11 issue again in the event the parties are unable to resolve these issues on their own. Defendant's
12 ability to raise this issue again is not constrained to a motion for class certification.” Singer
13 Decl., ¶19.

14 On February 2, 2023, the Parties mediated with Hon. William McCurine, Jr. Esq. After
15 a full day of arms’-length negotiations, the matter was settled in principle. The Parties
16 negotiated all necessary terms and entered the Settlement Agreement presented for preliminary
17 approval. Singer Decl., ¶20, SA, ¶4.

18 On June 28, 2023, to effectuate the Settlement, Plaintiff filed a First Amended Class
19 Action Complaint and Representative Action Complaint (“FAC”), combining the causes of
20 action alleged in her prior PAGA Complaint and Class Complaint, and adding a cause of action
21 for Violation of the Fair Labor Standards Act. Singer Decl., ¶21, **Exhibit 2**—FAC, SA, ¶6(a).

22 **III. PRE-MEDIATION INVESTIGATION AND DISCOVERY**

23 Plaintiff conducted sufficient investigation, through both informal and formal
24 discovery, to evaluate the strengths and weaknesses of her claims and PowerSchool’s defenses.
25 Singer Decl., ¶22. Formal discovery included Requests for Production and Special
26 Interrogatories propounded by Plaintiff in late-2021, which were answered by PowerSchool in
27 February 2022. Singer Decl., ¶23.

28 Before mediation, PowerSchool produced Plaintiff’s personnel file and substantial class

1 records, company policy documents related to Plaintiff's claims, and information regarding
2 expenses reimbursed by category. Singer Decl. ¶¶24-25.

3 PowerSchool also provided, through November 30, 2022: the number of putative class
4 members (571), the number of employees terminated within the three-year statute of limitations
5 (189), the number of workweeks (39,914) and pay periods (21,503) worked by California non-
6 exempt employees, the number of non-exempt employees employed during the PAGA Period
7 (382), and the number of them terminated (145), the bi-monthly PAGA pay periods (13,095),
8 and information regarding meal and rest break premiums paid. Singer Decl., ¶26.² Plaintiff's
9 damages consultant analyzed the data and records produced, determining an average hourly
10 rate of pay of \$26.16 and an average workday of 7.4 hours. Singer Decl., ¶27.

11 **IV. PLAINTIFF'S CLAIMS AND POWERSCHOOL'S DEFENSES**

12 **A. Unpaid Wages for Off-the-Clock Work**

13 Plaintiff contends PowerSchool required non-exempt employees to manually enter the
14 start and end times of their work and meal periods and did not provide an electronic time clock
15 to record these times exactly. Singer Decl., ¶28, FAC, ¶14. Plaintiff further contends
16 PowerSchool required pre-approval to work overtime, but would not approve necessary
17 overtime when requested and would reprimand employees for working overtime. Singer Decl.,
18 ¶29, FAC, ¶14.

19 PowerSchool counterargues that it required its employees to accurately record all time
20 worked, strictly prohibited working off the clock, and instructed employees to report any errors
21 in their paychecks to supervisors; PowerSchool further argues that it did pay overtime to the
22 Class, belying Plaintiff's claims. Singer Decl., ¶30.

23 **B. Regular Rate Underpayments**

24 Plaintiff contends that non-exempt PowerSchool employees earned annual bonuses,
25 denoted "Incentive Plan" on wage statements, which were paid to employees only if they met
26 certain objective criteria related to customer satisfaction, retention, and contract renewal, but
27 that these bonuses were not factored into employees' regular rates of pay when paying overtime

28 ² The parties excluded the workweeks, employees, and pay periods covered by a prior
settlement, *Ayyad v. PowerSchool*, that was subject to a separate release. Singer Decl., ¶26.

1 wages and meal and rest premium wages. Singer Decl., ¶31, FAC, ¶¶15-17. Indeed, Plaintiff's
2 wage statements show that she earned such an annual "Incentive Plan" bonus on April 15, 2019
3 and on April 15, 2020; despite this, her Overtime pay was paid at exactly 1.5 times her Regular
4 pay rate and her "Meal Pay" was paid at exactly her Regular pay rate. Singer Decl., ¶32;
5 **Exhibit 3**, Plaintiff Personnel File Excerpts, PSG-BB 000112, 138.

6 PowerSchool disputes Plaintiff's claims of regular rate violations. Singer Decl., ¶33.

7 **C. Meal & Rest Period Violations**

8 Plaintiff contends PowerSchool did not provide a system for clocking in and out for
9 meal periods. Rather, Plaintiff contends, PowerSchool only required employees to report
10 whether they had taken meal periods in a computer system when they reported their hours
11 allegedly worked every week or every two weeks. Plaintiff further contends PowerSchool
12 discouraged employees from taking 30-minute, uninterrupted meal periods, and that job
13 demands meant these employees often worked through meal periods. Plaintiff also contends
14 PowerSchool did not authorize and permit required 10-minute rest periods because it did not
15 adequately inform employees of their right to them. Singer Decl., ¶34, FAC, ¶¶16-17.

16 PowerSchool counterargues that it provided its non-exempt California employees with a
17 meal period of at least 30 minutes for every five hours worked, in addition to other paid rest
18 periods as required by California law. Singer Decl., ¶35.

19 **D. Unreimbursed Business-Related Cell Phone Expenses**

20 Plaintiff contends she and other non-exempt employees reasonably used their personal
21 cell phones for work but were not adequately reimbursed, despite PowerSchool knowing or
22 having reason to know they incurred cell phone expenses. Singer Decl., ¶36, FAC, ¶18.
23 Specifically, Plaintiff contends that when working in an office pre-pandemic, although
24 PowerSchool provided phones to use, employees needed to use their own personal cell phones
25 for calls when they were away from the office, and when working from home post-pandemic,
26 employees regularly used their personal cell phones for work. Singer Decl., ¶37, FAC, ¶18.

27 PowerSchool disputes that it did not reimburse employees for reasonable and necessary
28 business expenses. Singer Decl., ¶38.

E. Inaccurate Wage Statements

Plaintiff contends that PowerSchool’s wage statements, for part of the Class Period, did not include the complete entity name of “PowerSchool Group, LLC,” instead displaying only the name “PowerSchool.” Singer Decl., ¶39; **Exhibit 3**—PSG - BB000115. Beyond this, due to PowerSchool’s uniform pay and timekeeping practices, Plaintiff contends incorrect total hours worked and wages earned are reflected in employees’ wage statements. Singer Decl., ¶40.

PowerSchool counters that the slight truncation of the employer name from PowerSchool Group, LLC to PowerSchool does not violate Labor Code section 226(a). *See, e.g., Perez v. DNC Parks & Resorts at Asilonar, Inc.* (E.D. Cal. Feb. 10, 2022) 2022 WL 411422, *8 (court “cannot take seriously any claim that [plaintiff] could have been confused and injured by such a minor abbreviation of [her] employer’s name [from ‘DNC Parks & Resorts at Tenaya, Inc.’ to ‘DNC P&R at Tenaya, Inc.’]). Finally, PowerSchool claims purported wage statement deficiencies did not cause injury and were not knowing and intentional, both of which are required to receive wage statement penalties. *Naranjo v. Spectrum Sec. Servs., Inc.* (2022) 13 Cal. 5th 93, 118. Singer Decl., ¶41.

F. Unpaid Final Wages

Plaintiff alleges she and other non-exempt employees were not timely paid all final wages owed due to PowerSchool’s failure to pay minimum, overtime, and premium wages earned. Singer Decl., ¶42.

PowerSchool counters that because Plaintiff’s underlying claims fail, so too will her waiting time penalty claim. *See, e.g., Falk v. Children’s Hosp. Los Angeles* (2015) 237 Cal. App. 4th 1454, 1468 (“waiting time penalty claims are derivative of the unpaid wages/overtime and meal and rest period claims”). Further, PowerSchool contends it would not be held liable for waiting time penalties even if held liable for the underlying wage claims because Plaintiff cannot prove nonpayment was willful and at minimum it has a good faith defense. *See, e.g., Barnhill v. Robert Saunders & Co.* (1981) 125 Cal. App. 3d 1, 7 (“willful” under Section 203 means “intentionally failed or refused to perform an act which was required to be done”). Singer Decl., ¶43.

V. SUMMARY OF PROPOSED SETTLEMENT

A. Settlement Terms

PowerSchool will pay a Gross Fund Value (“GFV”) of \$750,000—based on 39,914 Qualifying Workweeks worked by the putative class³—which includes all the following: (a) Settlement Administration Costs to Administrator Rust Consulting, Inc., (“Rust” or “Administrator”) of \$13,805, SA, ¶¶ 6(rr), 12; (b) Attorneys’ Fees up to \$250,000, one-third of the GFV and Costs not to exceed \$25,000, SA, ¶¶ 6(c), 10; (c) an FLSA Settlement Fund of \$25,000, SA, ¶ 6(s); (d) an Enhancement Payment of up to \$10,000 to Plaintiff, SA, ¶¶ 6(o), 11; and (e) a PAGA Fund of \$50,000 (\$37,500 to the LWDA (75%), and \$12,500 (25%) to Aggrieved Employees). SA, ¶¶ 6(bb), 13. The remainder, estimated at \$376,195, is the Class Settlement Fund. SA, ¶ 6(i). Plaintiff has consented in writing to the division of attorneys’ fees between D.Law, Inc. (33 1/3%) and Cohelan Khoury & Singer (66 2/3%). Singer Decl., ¶ 44. Current actual itemized and anticipated future costs total \$19,549.80. Singer Decl., ¶ 45, **Exhibit 4**—Itemized and Estimated Costs.

PowerSchool will pay the employer’s share of payroll taxes in addition to the GFV. Singer Decl., ¶ 46; SA, ¶¶ 6(t), 27. The Settlement does not provide for Class Settlement Fund or PAGA Fund to revert to Defendant under any circumstances, though uncashed checks from the FLSA Settlement Fund will be returned to PowerSchool, as the company will not receive an FLSA release as to those individuals. Singer Decl., ¶ 47; SA, ¶¶ 6(i),(s),(bb).

The Class Settlement Fund (est. \$376,195) will be divided by the number of Qualifying Workweeks (approximately 39,914 at the time of the Parties’ mediation) to arrive at a value per Qualifying Workweek (est. \$9.43). Singer Decl., ¶ 48; SA, ¶¶ 6(i), 14(a). Each Class Member who does not opt out, or Settlement Class Member, will receive a pro rata share of the Class Settlement Fund based on the number of Qualifying Workweeks each worked during the Class Period. Singer Decl., ¶ 49; SA, ¶¶ 6(g), (ss), 14(a). Settlement Class members separated from PowerSchool’s employment as of the date of preliminary approval will have their Qualifying

³ If Qualifying Workweeks exceed 43,905 (10% more than 39,914), PowerSchool will have the option to pay a proportional amount for the Qualifying Workweeks exceeding 43,905 or stop the Class Period at 43,905 Qualifying Workweeks. Singer Decl., ¶ 44; SA, ¶ 38.

1 Workweeks adjusted upward using a multiplier of 1.2 to account for the release of claims under
2 California Labor Code sections 201-203. Singer Decl., ¶50; SA, ¶14(a). The average amount a
3 Settlement Class Member will receive is estimated at \$658.83, if no one opts out (\$376,195
4 Class Settlement Fund/571 Class Members). Singer Decl., ¶51.

5 The \$25,000 FLSA Settlement Fund will be divided by the total number of Qualifying
6 Workweeks in the FLSA Period to arrive at a value per Qualifying Workweek. Singer Decl.,
7 ¶52; SA, ¶¶6(r), (s), 14(b). Each Collective Member will receive a check for a pro rata portion
8 of the FLSA Settlement Fund based on the number of Qualifying Workweeks each worked
9 during the FLSA Period. Singer Decl., ¶53; SA, ¶¶6(k), (s), (ss), (tt), 14(b). As noted above,
10 uncashed checks from the FLSA Settlement Fund will have their amounts returned to
11 Defendant, as the company will not have an FLSA release effectuated as to those individuals.
12 Singer Decl., ¶54; SA, ¶6(bb).

13 The \$12,500 PAGA Settlement Fund will be divided by the total number of Qualifying
14 Workweeks worked during the PAGA Period to arrive at a value per Qualifying Workweek for
15 each eligible PAGA Group Member. The value per Qualifying Workweek shall be multiplied
16 by the number of Qualifying Workweeks worked by each PAGA Group Member during the
17 PAGA Period. PAGA Group Members cannot opt out of receiving their portion of the PAGA
18 Settlement Fund. Singer Decl., ¶55; SA, ¶¶6(bb), (cc), (dd), 14(c), 22.

19 Each Individual Settlement Share⁴ will be allocated 25% to wages (reported on an IRS
20 Form W-2) and 75% to penalties and interest (reported on an IRS Form-1099). Singer Decl.,
21 ¶56; SA, ¶27.

22 **B. Released Claims**

23 “Released Claims” means the Released Class Claims, the Released PAGA Claims, and
24

25 ⁴ “Individual Settlement Share” means the pro rata share of the Net Settlement Fund that a
26 Class Member or Settlement Collective Member may be eligible to receive under the
27 Agreement, to be calculated in accordance with Paragraphs 14(a) and (c) of the Settlement
28 Agreement. “Net Settlement Fund” means the portion of the Gross Fund Value that is available
for distribution to Settlement Class Members or Settlement Collective Members, which is the
Gross Fund Value less the PAGA Fund, court-approved attorneys’ fees and costs, settlement
administration costs, and the court-approved Enhancement Payment. SA, ¶6(w), (y).

1 the Released FLSA Claims. Singer Decl., ¶57; SA, ¶6(jj). Each Release is detailed in the
2 Singer Declaration. Singer Decl., ¶¶58-60; SA, ¶¶6(kk),(ll),(mm). Upon the Effective Date and
3 distribution of Individual Settlement Payments, Settlement Class Members will have their class
4 claims released. Similarly, upon the Effective Date and distribution of Individual Settlement
5 Payments, Settlement Collective Members who participate in the settlement by timely cashing,
6 depositing, or otherwise negotiating their Individual Settlement Payment will have their FLSA
7 Claims released. Finally, upon the Effective Date and distribution of Individual PAGA
8 Payments, PAGA Group Members will have their PAGA Claims released. Singer Decl., ¶61,
9 SA, ¶32.

10 **C. Settlement Administration and Notice**

11 All Parties have agreed to the proposed language of the Class Notice. Singer Decl.,
12 ¶62. Within fourteen (14) calendar days of Preliminary Approval, Defendant will provide the
13 Class List to Rust. Singer Decl., ¶63; SA, ¶16. Within fourteen (14) calendar days after
14 receiving the Class List, Rust will search the National Change of Address Database to update
15 and correct addresses, and will mail a Preliminary Approval Notice in English to all Class
16 Members via First-Class U.S. Mail. Singer Decl., ¶64, SA, ¶17(a), Declaration of Eric Bishop
17 on Behalf of Rust (“Rust Decl.”), ¶11, **Exhibit A** thereto (“Notice”). For Notices returned as
18 undeliverable, Rust will skip-trace search for an alternate address and re-mail the Notice
19 within five (5) calendar days. Singer Decl., ¶65; SA, ¶17(b); Rust Decl., ¶12. In the event that
20 a Preliminary Approval Notice is re-mailed to a Class Member, the Response Deadline for that
21 Class Member shall be the extended by fifteen (15) calendar days. Singer Decl., ¶66, SA,
22 ¶6(pp).

23 The Notice will be in English only, as English language fluency is a necessary job
24 qualification for all Class Members and it is the sole language in which Defendant
25 communicates with its California employees, as evidenced by its English-language handbook
26 provided to Plaintiff, and by its English-language website job listings in California. Singer
27 Decl., ¶67, see also *Current Openings, Folsom, CA, PowerSchool*,
28 www.powerschool.com/company/careers/ (last visited December 11, 2023).

Mail with skip tracing is determined to be the best means to reach the most possible Class Members, as a number of them are former employees with e-mail addresses that are not verifiable. Singer Decl., ¶68, SA, ¶17(b)

The Class Notice informs all Class Members about the claims, the terms of the Settlement, the releases, the anticipated distribution, the amount of fees and expenses being requested by Class Counsel, the amount of the Enhancement Payment being requested by Plaintiff, and it explains how Class Members can dispute Workweeks, object to the Settlement, and request exclusion from the Settlement, as well as the timeline for doing so. Singer Decl., ¶69; SA, ¶¶18, 20, 24; Rust Decl., ¶13. Further, the Class Notice will include the date and place of the final approval hearing, as well as information regarding how Class Members may access the proceedings remotely. Singer Decl., ¶70, Rust Decl., **Ex. A.**

All settlement checks mailed out will expire after one hundred eighty (180) days. Singer Decl., ¶71; SA, ¶19. The total amount of expired checks (with the exception of the FLSA checks) will escheat to the State of California's Controller, to be held in the name of each expired check payee, pursuant to applicable unclaimed property laws. The Parties agree that this disposition results in no "unpaid residue" under California Civil Procedure Code section 384. Singer Decl., ¶72; SA, ¶19.

VI. ARGUMENT

A. Class Settlements Are Subject to Court Review and Approval

"Before final approval, the court must conduct an inquiry into the fairness of the proposed settlement." CRC, Rule 3.769(g). At preliminary approval, a court limits its inquiry to the extent necessary to reach a reasoned judgment "the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties." *In re Microsoft I-V Cases* (2006) 135 Cal. App. 4th 706, 723.

B. The Settlement is Fair, Reasonable, and Adequate

In deciding whether to approve a proposed class action settlement the Court must find a proposed settlement is "fair, adequate and reasonable." *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. A proposed settlement is presumed fair where: (1) parties settle after

1 extensive arms'-length negotiations; (2) sufficient investigation and discovery allow counsel
2 and the Court to act intelligently; (3) counsel is experienced; and, (4) the percentage of
3 objectors is small. *Dunk*, 48 Cal.App.4th at p. 1802. Here, the first three factors are met, as
4 explained below. Singer Decl., ¶73. The fourth *Dunk* factor cannot be known until Class notice
5 and response. Thus, the Settlement is presumptively fair. Singer Decl., ¶74.

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

7 The Settlement was reached through arm's-length negotiations facilitated by the
8 Honorable William McCurine Jr., Esq., a retired judge and an experienced and respected
9 mediator. Though cordial and professional, negotiations were at all times adversarial and non-
10 collusive. Singer Decl., ¶75.

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

12 Plaintiff's Counsel investigated all claims and defenses before filing this action. When
13 the Parties agreed to mediation, Plaintiff requested, and Defendant produced, all data and
14 documents needed to assess liability and calculate Class-wide damages. Singer Decl., ¶76.

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

19 Proof of wage and hour class claims is based, at any stage, mostly on written policies
20 and pay records. Plaintiff's counsel obtained those records, and a data consultant analyzed them
21 and prepared a damage model before a settlement was negotiated. Singer Decl., ¶77.

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

23 Plaintiff's Counsel have significant experience in wage and hour class actions. Singer
24 Decl., ¶¶3-8, 78; Declaration of Emil Davtyan ("Davtyan Decl."), ¶¶3-6. This allowed Counsel
25 to compare the settlement with the risks of further litigation, including trial and appeals.
26 Defense counsel, Coby M. Turner, Sophia Kwan, Yoon-Woo Nam, and Daniel Whang of
27 Seyfarth Shaw LLP, are experienced wage and hour class action litigators who defended
28 PowerSchool vigorously, including through mediation and negotiation of all settlement terms.

1 Singer Decl., ¶79.

2 Experienced counsel believes the Settlement is fair, reasonable, and in the Class’ best
3 interest in light of the monetary recovery; risks of non-certification, summary adjudication, or
4 that many putative class members would be excluded from the class because they signed
5 arbitration agreements; establishing damages; and uncertainty of appeals. Singer Decl., ¶80.

6 The view of the attorneys actively conducting the litigation “is entitled to significant
7 weight” in settlement approval. *Fisher Bros. v. Cambridge Lee Industries, Inc.* (E.D. Pa. 1985)
8 630 F.Supp. 482, 488. Because the Settlement satisfies the three *Dunk* requirements, it should
9 be presumed fair, adequate, and reasonable, and be preliminarily approved. Singer Decl., ¶81.

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

11 “[T]o ensure that the recovery represents a reasonable compromise, given the
12 magnitude and apparent merit of the claims being released, discounted by the risks and
13 expenses of attempting to establish and collect on those claims by pursuing the litigation,”
14 information is presented to the Court, as a fiduciary for absent class members. *Kullar v. Foot*
15 *Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129.

16 Here, Class Counsel relied on class demographics, a review of PowerSchool’s written
17 policies and materials relevant to Plaintiff’s claims, a twenty percent (20%) sample of class
18 member time and pay records, and information provided by Plaintiff. Plaintiff’s data consultant
19 analyzed voluminous data and documents, and calculated Class-wide damages through
20 November 22, 2022. Singer Decl., ¶82. Calculations of the potential maximum value for each
21 claim follow, along with rational discounts explained by Counsel. Singer Decl., ¶83.

22 Class Counsel particularly considered that if PowerSchool were to prevail on a renewed
23 motion to sever from the putative class all those who signed arbitration agreements, the Class
24 would be reduced by 46%, and the class workweeks upon which damages were based would be
25 **nearly cut in half**. See, e.g., *Tan v. GrubHub, Inc.* (N.D. Cal. July 19, 2016) 2016 U.S. Dist.
26 LEXIS 186342, at *3-4, 16 (explaining a non-signatory lead plaintiff could not make
27 procedural arguments on behalf of signatory members; denying certification). Singer Decl.,
28 ¶84.

Class Counsel also considered that some of Plaintiff's claims would be difficult to certify, prove and manage at trial, including her primary off-the-clock overtime wages claim, given that Counsel would have to reliably survey nearly 600 non-exempt employees in various positions about their unrecorded work time and devise a way to present this evidence at trial. *See, e.g. Tavares v. Cargill, Inc.* (E.D.Cal. Oct. 10, 2023) 2023 U.S.Dist.LEXIS 182865, at *26-27 (denying certification of off-the-clock claim for approximately 4,000 non-exempt employees because it would require "a myriad of individualized inquiries"); *see also Wesson v. Staples the Office Superstore, LLC* (2021) 68 Cal.App.5th 746, 775 (finding trial court did not abuse its discretion in striking a PAGA claim it deemed unmanageable); *but see Estrada v. Royalty Carpet Mills, Inc.* (2022) 76 Cal.App.5th 685, 731 (finding error in striking a PAGA claim as unmanageable, reasoning manageability requirement does not apply to PAGA claims). Singer Decl., ¶85.

D. The Value of the Class Settlement is Reasonable

Plaintiff concluded the Settlement is fair and reasonable in light of PowerSchool's substantive claim defenses, and the risks of non-certification, severance of nearly half the class, claims being stricken as unmanageable, failure to prove claims at trial, and likely appeals. The Gross Fund Value represents ninety-seven percent (97%) percent of the reasonable value of the Class claims, and eighty-three percent (83%) of the reasonable value of the Class and PAGA Claims, and as explained in by Class Counsel: [**\$194,580** (off-the-clock wages) + **\$9,175** (regular rate wages) + **\$301,245** (meal and rest period premium wages) + **\$27,528** (cell phone expense reimbursements) + **\$129,040** (wage statement penalties) + **\$109,762** (waiting time penalties) = **\$771,330**; $\$750,000/\$771,330=97\%$; $\$771,330 + \$130,950$ (PAGA value) = $\$902,280$. $\$750,000/\$902,280=83\%$). Singer Decl., ¶¶86-96.

E. The PAGA Fund is Reasonable

The \$50,000 PAGA Fund will be paid \$37,500 (75%) to the LWDA, and \$12,500 (25%) to Aggrieved Employees. Singer Decl., ¶97; SA, ¶¶6(bb), 13. Where PAGA penalties are negotiated in good faith, with "no indication [the] amount was the result of self-interest at the expense of other Class Members," such amounts are considered reasonable. *Hopson v.*

1 *Hanesbrands Inc.*, (N.D. Cal. Apr. 3, 2009) 2009 U.S. Dist. LEXIS 33900, at *24. The \$50,000
2 PAGA Fund, which represents 6.7% of the GFV (\$50,000/\$750,000), is well within the range
3 of allocations approved by California courts. Singer Decl., ¶98. Further, the percentage of
4 maximum exposure achieved by the PAGA Fund is in line with those accepted by other
5 California district courts. Singer Decl., ¶99. Finally, the Motion and exhibits were provided to
6 the LWDA on the date filed. Singer Decl., ¶100— **Exhibit 5**—LWDA Confirmation of Receipt.

7 **F. The Attorneys’ Fees Requested are Reasonable.**

8 Class Counsel seek attorneys’ fees up to \$250,000, representing one-third of the Gross
9 Fund Value. This request is reasonable and should be granted. Singer Decl., ¶101. Courts often
10 award fees equaling one-third of the gross recovery in class action settlements. “[R]egardless
11 whether the percentage method or the lodestar method is used, fee awards in class actions
12 average around one-third of the recovery.” *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66, n.
13 11 (2008); see e.g., *Laffitte*, 1 Cal. 5th at 485-87 (affirming trial court’s granting of a fee
14 request for one-third of a \$19 million settlement). Indeed, Class Counsel have been awarded
15 one-third of the common fund in numerous class action and PAGA actions. Khoury Decl. ¶¶
16 102-103. Class Counsel will provide their time records at final approval. Singer Decl., ¶104.

17 **G. The Enhancement Payment Requested is Reasonable.**

18 Plaintiff seeks a \$10,000 enhancement payment for the risks she took, the work she did,
19 and the money her efforts will confer on the Class based on the lawsuit she filed against
20 PowerSchool. Declaration of Bethany A. Butler (“Butler Decl.”), ¶ 10. Plaintiff estimates she
21 spent more than forty hours working on her two cases with her attorneys, which she details in
22 her declaration. Butler Decl., ¶ 9. Plaintiff also executed a general release in conjunction with
23 the Settlement. Singer Decl., ¶105, SA, ¶33. This enhancement payment comports with others
24 awarded by California district courts, and those obtained by Class Counsel, under similar
25 circumstances. Singer Decl., ¶106. Thus, this Court should award Plaintiff \$10,000 in
26 recognition of her service to the Class and general release. Singer Decl., ¶107.

27 **VII. CONDITIONAL CLASS CERTIFICATION IS APPROPRIATE**

28 When an ascertainable and sufficiently numerous class exists, with a well-defined
community of interest, and class litigation is superior to alternate means, certification is

appropriate. *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1021.

Here, the Class of all non-exempt employees employed by PowerSchool during the Class Period is ascertainable from PowerSchool's records, and is so numerous joinder would be impracticable, at 571 Members. Singer Decl., ¶108. Here too, the same written policies applied to the entire putative Class, and common questions predominate. Singer Decl., ¶109. Plaintiff's claims are typical because she was a non-exempt employee subject to the same written policies as the putative class and because she suffered the violations. Singer Decl., ¶110; Butler Decl., ¶3. Plaintiff can and will continue to protect the interests of the Class. Plaintiff accepted the risks of serving as a class representative, spent significant time assisting in the prosecution of the action, and placed the interest of the class above her own. Butler Decl., ¶¶3-10; Singer Decl., ¶111. Plaintiff's attorneys are qualified to conduct the litigation and Plaintiff's interests are not adverse to the interest of the Class. *McGhee v. Bank of Am.* (1976) 60 Cal.App.3d 442, 450. Butler Decl., ¶2; Singer Decl., ¶112; Davtyan Decl., ¶¶3-6.

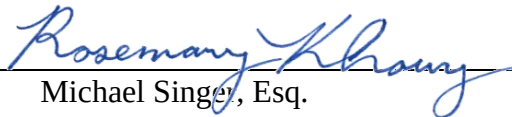
VIII. CONCLUSION

Plaintiff requests the Settlement be preliminarily approved, Notice approved and ordered mailed to the Class, Rust Consulting, Inc. appointed Settlement Administrator, Cohelan Khoury & Singer and D.Law, Inc. appointed Class Counsel, Bethany A. Butler appointed Class Representative, and a Final Approval Hearing date be set.

COHELAN KHOURY & SINGER
D.LAW, INC.

Dated: December 12, 2023

By:



Michael Singer, Esq.

Rosemary C. Khoury, Esq.

Attorneys for Plaintiff Bethany A. Butler, on
behalf of herself and similarly-situated and
aggrieved employees