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SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

ANGELYNA CELIO, MATTHEW
LYTLE, ROBERT MARTIN, and
DONELL FORT, on behalf of themselves
and others similarly situated

Plaintiffs,

v.

AIR INTERNATIONAL US, INC., a
Delaware Corporation; and DOES 1
Through 10, inclusive,

Defendants.

Case No. RG21098764

ASSIGNED FOR ALL PURPOSES TO:

The Honorable James Reilly
Department 25

CLASS AND REPRESENTATIVE ACTION

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF MOTION
FOR ORDER GRANTING PRELIMINARY
APPROVAL OF CLASS AND PAGA
ACTION SETTLEMENT, CONDITIONAL
CERTIFICATION, APPROVAL OF CLASS
NOTICE, AND SETTING A FINAL
APPROVAL HEARING DATE**

Hearing Information

Date: August 16, 2023

Time: 3:00 p.m.

Dept: 25

Judge: Hon. James Reilly

Reservation No: 405363008773

Complaint filed: May 10, 2021

Trial Date: Not Set

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I. INTRODUCTION

Plaintiffs Angelyna Celio, Matthew Lytle, Robert Martin, and Donell Fort (“Plaintiffs”) seek preliminary approval of a non-reversionary wage and hour class and Private Attorneys General Act (“PAGA”) settlement of six hundred thousand dollars (\$600,000). The proposed Settlement will benefit approximately 859 individuals employed by Defendant Air International (US), Inc. (“AIUS”) in California at any time from May 10, 2017 through the earlier of Ninety (90) calendar days after the Parties’ December 8, 2022 mediation date or the date a signed order preliminarily approving the Settlement is signed (the Class Period)¹. Declaration of Isam C. Khoury (“Khoury Decl.”), ¶ 10, Ex. 1 - Class Action and PAGA Representative Action Settlement Agreement and Release of Claims (“Agreement” or “SA”); Ex. 2 - Addendum to Class Action and PAGA Representative Action Settlement and Release of Claims (“Addendum”).

II. THE PARTIES, CLASS, AND AGGREIVED EMPLOYEES

A. Plaintiffs and Defendant

AIUS is a division of Air International Thermal Systems, founded in Australia in 1967. AIUS designs, develops, and supplies thermal systems, and offers HVAC, engine cooling, and thermal control systems to the automotive market. AIUS has its primary office in Auburn Hills, Michigan. AIUS didn’t have any employees in California until January 2020. Khoury Decl., ¶ 11.

Plaintiff Angelyna Celio was employed from June 2020 through January 2021 and worked near the start of the production line wrapping HVAC condensers and evaporators with seals. Declaration of Angelyna Celio (“Celio Decl.”), ¶ 3. Plaintiff Matthew Lytle was employed from June 2020 through December 2020 in the position of assembly line crew employee building HVAC units. Declaration of Matthew Lytle (“Lytle Decl.”), ¶ 3. Plaintiff Robert Martin was employed from October 2020 through March 2021 as warehouse lead, driving a forklift, loading and unloading trucks, and generally keeping the production line

¹ All defined terms herein are the same as in the Class Action and PAGA Representative Action Settlement Agreement and Release of Claims, attached as Ex. 1 to Khoury Decl., filed herewith.

moving. Declaration of Robert Martin (“Martin Decl.”), ¶ 3. Plaintiff Donell Fort was employed from March 2020 through December 2020 as a line tech, responsible for assembling HVAC units and boxes for a lineup. Declaration of Donnell Fort (“Fort Decl.”), ¶ 3; Khoury Decl., ¶ 12.

B. The Class and Aggrieved Employees

The Class Members are all hourly, non-exempt employees of Defendant in California from May 10, 2017 through the earlier of Ninety (90) days after the Parties’ December 8, 2022 mediation or the date a signed order preliminarily approving the Settlement is filed. Khoury Decl., ¶ 13; SA, ¶ 1.7. The approximately 859 Class Members worked an estimated 22,400 workweeks. AIUS did not have any employees in California until January 2020. Khoury Decl., ¶¶ 11, 14. The Aggrieved Employees are all hourly, non-exempt employees of Defendant in California from May 10, 2020 through the earlier of Ninety (90) days after the Parties’ December 8, 2022 mediation or the date a signed order preliminarily approving the Settlement is filed (“PAGA Period”). *Id.*, ¶ 15; SA, ¶¶ 1.3, 1.34. During the PAGA Period, 850 allegedly aggrieved employees worked 11,039 pay periods. Class Members and Aggrieved Employees worked for AIUS on various parts of a production line, assembling heating, ventilation and HVAC units. Khoury Decl., ¶¶ 16-17.

III. PROCEDURAL HISTORY, INVESTIGATION AND DISCOVERY

Plaintiffs’ counsel formally requested Plaintiffs’ personnel files. AIUS produced the requested documents. Khoury Decl., ¶ 18. On March 16, 2021, Plaintiffs Celio and Lytle filed a PAGA Notice with the Labor and Workforce Development Agency (“LWDA”) advising of their intent to pursue claims on behalf of all allegedly Aggrieved Employees. On April 2, 2021, Plaintiffs Martin and Fort filed a PAGA Notice with the LWDA advising of their intent to pursue claims on behalf of the allegedly Aggrieved Employees. *Id.* at ¶ 19.

On May 10, 2021, Plaintiffs filed their initial Class Action Complaint, asserting claims for: (1) failure to pay minimum, regular, or overtime wages for all hours worked (Cal. Labor Code §§ 510, 1194, 1194.2, 1197.2); (2) failure to provide compliant meal periods (Cal. Labor Code §§ 226.7, 512, and IWC Wage Orders); (3) failure to authorize and permit paid rest

1 periods (Cal. Lab. Code § 226.7 and IWC Wage Orders; (4) failure to provide accurate
2 itemized wage statements (Cal. Labor Code § 226); (5) failure to timely pay all wages due at
3 separation (Cal. Labor Code § 203); (6) failure to reimburse business expenses (Cal. Lab. Code
4 § 2802); violation of the unfair competition law (Cal. Business & Professions Code §§17200,
5 *et seq.*). Khoury Decl., ¶ 20.

6 On June 7, 2021, Plaintiffs filed a First Amended Class Action Complaint and
7 Representative Action (“FAC”), adding claims for PAGA civil penalties for all underlying
8 Labor Code claims alleged in their initial complaint (specifically, causes of action 8-13 of the
9 FAC). Additionally, Plaintiffs sought PAGA civil penalties for failure to maintain a reasonably
10 comfortable temperature and failure to provide one day’s rest in seven (causes of action 14-15
11 of the FAC). Khoury Decl., ¶ 21.

12 Plaintiff Celio served AIUS with formal discovery including special interrogatories.
13 The Parties engaged in meet and confer efforts and decided to attempt to resolve Plaintiffs’
14 claims through mediation. Khoury Decl., ¶ 22.

15 The Parties agreed to mediate and participated in mediation on December 8, 2022 with
16 Steve Rottman. In preparation for mediation, Plaintiffs requested and AIUS produced
17 documents and data for the Class Period and PAGA Period, including: (1) employee
18 handbooks and policies relevant to Plaintiffs’ claims; (2) number of current and former
19 putative class members and Aggrieved Employees; (3) aggregate number of workweeks; (4)
20 aggregate number of pay periods; (5) timekeeping and payroll records for twenty-five percent
21 of the Class; (6) amount of meal and rest period premium wages paid; (7) itemized wage
22 statements; (8) records showing total wages paid, including overtime, double-time, and bonus
23 wages; and (9) average hourly rate of pay for Class Members. Khoury Decl., ¶ 23; SA, ¶ 2.3.

24 **IV. PLAINTIFF’S CONTENTIONS AND DEFENDANT’S DEFENSES**

25 Plaintiffs contended that AIUS’s rounding practice resulted in systemic underpayment
26 of wages. Although AIUS’s timekeeping system captures the actual minutes worked by
27 employees, AIUS rounds the actual hours worked, resulting in a failure to pay all wages for all
28 hours worked. This rounding policy was not neutral in application and resulted in a cumulative

1 loss of time and pay to the Plaintiffs, Class Members, and Aggrieved Employees. Khoury
2 Decl., ¶ 24. See, *Morillion v. Royal Packing Co.* (2000) 22 Cal. 4th 575, 578; *Troester v.*
3 *Starbucks Corp.* (2018) 5 Cal. 5th 829, 847 [a rounding system must be fair and neutral on its
4 face and as applied – over a period of time – in order to lawfully comply with California’s
5 requirement that workers be paid for “all hours worked.”]; *Leyva v. Medline Indus.* (9th Cir.
6 2013) 716 F.3d 510, 512; *Corbin v. Time Warner Entertainment-Advance/Newhouse*
7 *Partnership* (9th Cir. 2016) 821 F.3d 1069, 1077 [“If an employer’s rounding practice does not
8 permit both upward and downward rounding, then the system is not neutral.”]; *See’s Candy*
9 *Shops, Inc. v. Superior Court* (2012) 210 Cal. App. 4th 889, 701, n.4; and *Silva v. See’s Candy*
10 *Shops, Inc.* (2016) 7 Cal. App. 5th 235, 251.

11 AIUS contended its rounding practice was for the convenience of the employees and
12 that employees were specifically instructed not to work during the pre-shift window.
13 Accordingly, AIUS contended its rounding system operated neutrally and did not result in any
14 systematic underpayment of its employees. Khoury Decl., ¶ 25.

15 Plaintiffs also contended that AIUS failed to include all compensation when calculating
16 the regular rate, resulting in the underpayment of wages, including overtime wages, meal
17 premiums and sick pay. Additionally, Plaintiffs contended that AIUS did not pay for all hours
18 worked off-the-clock including time spent by Plaintiffs and putative class members undergoing
19 the following mandatory unpaid tasks: (1) daily pre-shift mandatory COVID-19 screenings; (2)
20 cleaning up around the dumpster each day, and; (3) filling propane tanks at least twice a week.
21 For mediation, Plaintiffs estimated an average of one hour of unpaid off-the-clock time per
22 week per employee. Khoury Decl., ¶ 26.

23 AIUS contended that it did not require employees to perform any work off-the-clock
24 and had a policy informing employees that all hours worked must be accurately recorded.
25 AIUS also argued that certification would be very problematic given its policy against working
26 off-the-clock and individualized issues regarding whether any such work was performed.
27 Khoury Decl., ¶ 27.

28 Plaintiffs also contended that employees were typically scheduled for 10.5 hour shifts

1 and frequently worked in excess of 12 hours per workday. Due to the demands of the job,
2 employees were often not permitted to take their meal breaks until after the fifth hour of work
3 per their manager's instruction to keep working to make their production goals and to take their
4 meal breaks later. Although AIUS has a compliant written policy, employee records showed
5 that 98.8% of shifts between 10-12 hours did not have a recorded second meal period.
6 Additionally, on shifts in excess of 10 hours or more, Plaintiffs alleged that AIUS failed to
7 provide a third duty-free rest break. Khoury Decl., ¶ 28.

8 AIUS contended that employees were properly informed of their right to meal and rest
9 periods under California law and were not prevented from taking timely and off-duty breaks.
10 AIUS argued that if employees reported late, short, or missed meal or rest breaks, they were
11 paid premium wages, as required under California law. Khoury Decl., ¶ 29. According to
12 Plaintiffs' calculations, the overall percentage of unique meal break violations was 42.5%.² *Id.*,
13 ¶ 30.

14 In conjunction with a review of the sampled data Plaintiffs' consultant also analyzed
15 whether the Labor Code section 226.7 meal period premium payments and sick pay wages
16 were made using the appropriate hourly rate pursuant to *Ferra v. Loews Hollywood Hotel, LLC*
17 (2021) 11 Cal.5th 858. This required determining how many shifts involved pay periods in
18 which shift premiums were recorded and/or sick pay was paid. The records revealed that very
19 few of the premium payments would qualify and that the aggregate "underpayment" for meal
20 period premiums extrapolated to the class totaled \$404. The aggregate underpayment for sick
21 pay wages extrapolated to the class totaled \$5,449. Khoury Decl., ¶ 31.

22 With respect to Plaintiff's claims relating to missed second meal periods on shifts of
23 more than 10 hours, which amounted to an estimated 12.2% of all shifts analyzed, the violation
24 rate was found to be 98.8%. Khoury Decl., ¶ 32. However, AIUS produced a compliant second
25 meal period policy and argued that employees could voluntarily waive their second meal period
26

27 ² Unique meal break violations are defined as shifts with at least one of the following: 1) recorded 1st
28 meal break after the end of the 5th hour for shifts more than five (5) hours; (2) 1st meal break less than 30
minutes for shifts greater than five hours; 3) no 1st meal break for shifts greater than five (5) hours; or 4)
no 2nd meal break for shifts greater than ten (10) hours. Khoury Decl., ¶ 30.

1 so long as a compliant first meal period was provided. *Id.*

2 Plaintiff also contended AIUS had a class wide policy which failed to authorize or
3 permit non-exempt employees to receive a third rest period of at least ten minutes for shifts
4 greater than ten (10) hours. Because rest breaks were not recorded, for mediation Plaintiffs
5 assumed a 100% violation rate for shifts more than 10 hours in length, which amounted to an
6 estimated 12.2% of all shifts analyzed by Plaintiff's consultant. Khoury Decl., ¶ 33.

7 AIUS argued it followed California law at all times by authorizing and permitting rest
8 breaks, not discouraging employees from taking them, and that to the extent any employees
9 missed a break, it was voluntarily. AIUS produced a compliant rest break policy which
10 included the right to a third rest break on shifts of more than 10 hours in length. AIUS also
11 argued that certification would be very problematic given its compliant policies and the fact
12 that rest periods were not required to be recorded and that it would be entitled to individual
13 inquiries which would defeat class certification. Khoury Decl., ¶ 34.

14 Plaintiffs also contended that AIUS failed to reimburse the putative class members for
15 all necessary business expenses incurred, in violation of Labor Code section 2802. Specifically,
16 Plaintiffs had to use their personal cell phones to communicate with one another for work-
17 related purposes throughout the workday. Despite relying on employees to use their personal
18 cell phones to discharge their duties, AIUS do not reimburse the putative class members for a
19 reasonable portion of their monthly cell phone bills, thus unlawfully shifting a portion of their
20 overhead costs onto their workforce. Khoury Decl., ¶ 35. AIUS argued that its employees were
21 not required to use personal cell phones for work and that AIUS provided employees with two-
22 way radios to communicate while at work. *Id.*

23 Plaintiffs also contended, based on the underlying claims, AIUS's wage statements did
24 not display all required information, including actual hours worked, and rates earned for all
25 hours worked. Labor Code § 226; Khoury Decl., ¶ 36. Plaintiffs also alleged derivative
26 penalties pursuant to Labor Code section 203 for separated employees who were not paid all
27 wages owed at termination. Finally, Plaintiffs sought PAGA civil penalties related to the labor
28 code violations alleged and civil penalties for failure to maintain a reasonably comfortable

1 temperature. *Id.*

2 **V. MEDIATION**

3 With significant investigation, research, and consultant's analysis of the voluminous
4 data, and a class-wide damages model, the Parties attended mediation with Steve Rottman on
5 December 8, 2022, and engaged in serious and informed arm's-length negotiations. Khoury
6 Decl., ¶ 37; SA, ¶ 2.4. By the end of the day, the Parties reached an agreement in principal on a
7 proposed settlement. Thereafter the Parties signed a Memorandum of Understanding. The
8 Parties subsequently negotiated additional settlement terms and entered into a formal
9 Agreement. Khoury Decl., ¶ 38.

10 **VI. SUMMARY OF PROPOSED SETTLEMENT**

11 **A. Settlement Terms**

12 AIUS will pay the Gross Settlement Amount ("GSA") of \$600,000, which includes: (a)
13 attorneys' fees of \$200,000 (one-third of GSA) to compensate Class Counsel for all work
14 performed and remaining to be performed securing final Court approval (60% to Cohelan
15 Khoury & Singer / 40% to Stonebrook Law. Khoury Decl., ¶ 40); (b) reasonable litigation
16 costs; (c) Class Representative Service Award payments of \$7,500.00 to each of the Plaintiffs
17 for work as a Class representative; (d) \$25,000.00 in PAGA Payment (with \$18,750/75%
18 payable to the LWDA, and \$6,250/25% payable to the Aggrieved Employees); and (e)
19 Settlement Administration Costs not to exceed \$15,000. AIUS will pay the employer's share of
20 payroll taxes in addition to the GSA. Khoury Decl., ¶ 39; SA, ¶¶ 1.22, 1.33, 5.1, 5.2.

21 After Court-approved deductions, the estimated Net Settlement Amount ("NSA") of
22 \$330,000 will be distributed pro-rata to Class Members based on the number of Workweeks
23 worked during the Class Period. There are approximately 22,400 Workweeks during the Class
24 Period. Class Members who do not opt out will receive an estimated \$14.73 for each
25 Workweek worked during the Class Period. Khoury Decl., ¶ 41. Class Members employed
26 during the PAGA Period will receive a share of the \$6,250 in PAGA Payments based on
27 number of Workweeks worked during the PAGA Period whether they opt out or not. Khoury
28 Decl., ¶ 42. No portion of the GSA will revert to AIUS under any circumstances. After 180

1 days of issuance, all uncashed checks will be sent to the State of California Controller,
2 Unclaimed Property Division, for further handling on behalf of the Class Member whose check
3 was voided. Khoury Decl., ¶ 43; SA, ¶ 5.5.2.

4 **B. Released Class Claims**

5 Class Members who do not timely file a Request for Exclusion, will release all:

6 Claims alleged in Plaintiffs' Complaint and First Amended Complaint, as well as all
7 any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses,
8 attorney's fees, damages, action or causes of action of whatever kind or nature,
9 whether known or unknown, contingent or accrued, under any legal theory under
10 federal and state law that were or reasonably could have been brought based on the
11 facts alleged in any version of the complaints filed in the Action and in the LWDA
12 Letters submitted to the LWDA by Plaintiffs, regardless of theory of recovery,
13 including: claims under California Labor Code sections 201, 202, 203, 204, 206, 210,
14 218, 218.5, 226, 226.7, 227, 245 et seq., 510, 511, 512, 515, 517, 551-556, 1182.12,
15 1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802; the California IWC Wage Orders; the
16 Fair Labor Standards Act (29 U.S.C. Section 201, et seq.); and California Business and
17 Professions Code section 17200, *et seq.*

18 Khoury Decl., ¶ 44; SA, ¶ 1.40.

19 **C. Settlement Administration and Notice to the Class**

20 CPT Group (the Settlement Administrator) will search the National Change of Address
21 database, update Class Member addresses, perform skip-tracing, and mail the Notice of Class
22 Action Settlement (Settlement Notice) to each Class Member in AIUS's employment records.
23 Khoury Decl., ¶ 45; SA, ¶ 3.4; Declaration of Julie Green on behalf of CPT Group, ¶ 6.

24 The Settlement Notice explains (1) how to participate in the Settlement without
25 submitting a claim; (2) dispute the basis of an Individual Settlement Payment; (3) object or opt
26 out; (4) the release to be given³, (5) date of Final Approval hearing, and how to obtain further
27 information. Khoury Decl., ¶ 46; SA, ¶ 3, Ex. A.

28 The method of distributing the Settlement is fair and reasonable and does not give
preferential treatment to any Class Member. The information used is readily available from
AIUS's records, and the Settlement Administrator can apply the formula fairly and
transparently. Khoury Decl., ¶ 47.

///

³ Class Members are not required to provide a C.C.P 1542 waiver.

VII. ARGUMENT

A. Class Action 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). Where a settlement is reached on terms agreeable to all Parties, a court should disapprove of the settlement “only with considerable circumspection.” *Jamison v. Butcher & Sherrerd* (E.D. PA. 1975) 68 F.R.D. 479, 481. (California courts may look to federal authority guidance on class issues. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 239-40.)

At the preliminary approval stage, a court “limits its inquiry to the extent necessary to reach a reasoned judgment that 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 under Code of Civil Procedure section 382, the Court must find the proposed settlement is “fair, adequate and reasonable.” *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. The trial court considers all relevant factors, such as: “the strength of Plaintiff’s case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.” *Id.* The Court’s primary function is to determine the Settlement is not the product of fraud, overreaching, or collusion, and is fair, reasonable, and adequate. *Id.*

A proposed class action settlement is presumed fair where: (1) the parties reached agreement after extensive arms’-length negotiations; (2) investigation and discovery were sufficient to allow counsel and the Court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. *Dunk v. Ford Motor Co., supra*, 48 Cal.App.4th at p. 1802.

1 A settlement is not judged solely against what might have been recovered at trial, nor
2 must a settlement provide 100% of the damages sought to be fair and reasonable. *Linney v.*
3 *Cellular Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242. Adequacy must be judged as
4 “a yielding of absolutes. . . . Naturally, the agreement reached normally embodies a
5 compromise; in exchange for the saving of cost and elimination of risk, the parties each give up
6 something they might have won had they proceeded with litigation” *Officers for Justice v.*
7 *Civil Serv. Comm’n* (9th Cir. 1982) 688 F.2d 615, 624 (citation omitted). “It is well-settled law
8 that a cash settlement amounting to only a fraction of the potential recovery does not . . . render
9 the settlement inadequate or unfair.” *Id.* at p. 628.

10 Plaintiffs and their Counsel gave serious consideration to all facts and arguments and
11 concluded the Settlement is fair and reasonable. The proposed Settlement reflects an excellent
12 recovery for the Class and is well within the “ballpark” of reasonableness and should be
13 granted preliminary approval. Khoury Decl., ¶ 48.

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

15 The Settlement was reached because of arm’s-length negotiations facilitated by a well-
16 respected and experienced mediator, Steve Rottman. Though cordial and professional,
17 negotiations have been adversarial and non-collusive. While Plaintiffs believe in the merits of
18 their case, they recognize the inherent risks of litigation and the benefit to the Class of
19 receiving settlement funds immediately, and not risking unfavorable decisions on class
20 certification, the merits of the case, damages, or a lengthy appeal. Khoury Decl., ¶ 49.

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

22 Class Counsel investigated the claims and AIUS’s defenses before filing PAGA
23 charges with the Labor and Workforce Development Agency. With discovery responses
24 outstanding, the Parties agreed to mediation. Thereafter, Plaintiffs requested, and Defendant
25 produced, policy documents, information, and data for a representative sample of the Class⁴,
26 aggregate workweeks and pay periods, and average hourly rates, to allow liability for the

27
28 ⁴ Defendant produced a randomly-selected sample of corresponding pay and timekeeping records for
twenty-five percent (25%) of putative class members.

claims to be assessed and class-wide damages to be estimated. Khoury Decl., ¶ 50. Proof of Class claims involving alleged rounding, underpaid overtime wages, sick pay, and meal premiums, and meal period violations is based largely on written policies and an analysis of time and pay records. *Id.*; See *See's Candy Shops, Inc. v. Superior Court* (2012) 210 Cal.App.4th 889; *Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58; *Ferra v. Loews Hollywood Hotel, LLC*, *supra*.

Extensive investigation and information exchanged gave the Parties a clear understanding of the strengths and weaknesses of their positions before negotiations. Khoury Decl., ¶ 51. See *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal. App. 4th 399, 410 [approving settlement where “considerable information [exists] from which to assess the strength of the class claims” and risks and expense of litigation].

3. Counsel are Experienced in Similar Litigation

Plaintiffs’ Counsel have significant experience in litigating wage and hour employment class actions. This allowed Counsel to compare settlement of Class claims with the risks of further litigation, including trial and appeals. Khoury Decl., ¶¶ 5-9, 49; Declaration of Joseph Tojarieh (“Tojarieh Decl.”), ¶¶ 2-5. Defense counsel, Christian J. Rowley and Eric M. Lloyd of Seyfarth Shaw LLP, a well-known and respected defense firm, are highly skilled defense attorneys who defended their client vigorously throughout this case, including through mediation and subsequent negotiations. Khoury Decl., ¶ 52.

Class Counsel believes the Settlement is fair, reasonable, and in the Class’s best interest in light of the monetary recovery, risks of certification/decertification, summary adjudication, the lengthy process of establishing damages, delay and uncertainty of appeals, the substantial prior settlement payments, and the risk releases obtained would be found enforceable. Khoury Decl., ¶ 53; Tojarieh Decl., ¶ 8.

The view of the attorneys actively conducting the litigation “is entitled to significant weight” in deciding whether to approve the settlement. *Fisher Bros. v. Cambridge Lee Industries, Inc.* (E.D. Pa. 1985) 630 F.Supp. 482, 488. The Settlement satisfies the three *Dunk* requirements, should be presumed fair, adequate, and reasonable, and preliminarily approved.

1 **4. The Settlement is Fair and Reasonable Based on the Strengths of**
2 **Plaintiffs' Case and the Risks and Costs of Further Litigation**

3 Plaintiffs and their counsel concluded the proposed Settlement is reasonable. As
4 described below, AIUS strongly disputed certification, liability, and damages.

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

6 “[T]o ensure that the recovery represents a reasonable compromise, given the
7 magnitude and apparent merit of the claims being released, discounted by the risks and
8 expenses of attempting to establish and collect on those claims by pursuing the litigation,”
9 information is presented to the Court, as a fiduciary for absent class members. *Kullar v. Foot*
10 *Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129. *Kullar* does not require the parties to
11 submit an illusory prediction of the outer reaches of exposure without considering the actual
12 risks of certification, decertification, dispositive motions, and trial. *Munoz v. BCI Coca-Cola*
13 *Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 408. *Kullar* also does not require an
14 explicit statement of the maximum amount the plaintiff class could recover if it prevailed on all
15 claims provided there is a record which allows “an understanding of the amount that is in
16 controversy and the realistic range of outcomes of the litigation.” *Munoz, supra*, 186
17 Cal.App.4th at p. 409.

18 *Munoz* examined the trial court record including number of class members, payroll
19 data, declarations regarding hours worked, and variances in duties and rest and meal period
20 experience. It found this “an adequate basis from which to garner a reasonably adequate
21 ‘understanding of the amount that is in controversy’ within the meaning of *Kullar*.” *Munoz,*
22 *supra*, 186 Cal.App.4th at p. 409.

23 Class Counsel relied on similar documents and data as in *Munoz*, including time and
24 pay records for Class Members. Class Counsel reviewed, organized, and analyzed all
25 information, and worked with experienced damages consultants to calculate class-wide
26 damages through the date of mediation. Khoury Decl., ¶ 54.

27 Plaintiffs’ “rounding” claim was based on AIUS’s pay practices which Plaintiffs
28 alleged did not compensate the Class for all hours worked due to its non-neutral time
29 application. Additionally, AIUS’s pay practices failed to include non-discretionary bonus

wages in the calculation of the regular rate for payment of overtime and sick pay wages, thus underpaying both. Khoury Decl., ¶ 55.

Furthermore, Plaintiffs contended that meal periods were not legally compliant, being either late, short, or missed based on AIUS's time records. Khoury Decl., ¶ 56. In *Donohue v. AMN Services, LLC*, *supra*, the California Supreme Court addressed the concept of burden shifting to the employer when recorded meal periods identified short missed or late entries stating "we hold that time records showing noncompliant meal period raise a rebuttable presumption of meal period violations..." 11 Cal.5th at p. 61. The total meal period premiums paid by AIUS as demonstrated by the payroll data produced were credited in Plaintiffs' damage analysis. Khoury Decl., ¶ 56.

There are approximately 859 putative Class Members with approximately 22,400 workweeks during the Class Period. The number of Aggrieved Employees in the PAGA Period is approximately 850, with an aggregate number of 11,039 pay periods. The number of terminated or separated employees in the 3-year statute of limitations period for Labor Code section 203 is approximately 527. The combined average rate of pay was reported to be \$16.15 per hour. Khoury Decl., ¶ 57.

Plaintiffs' derivative claims include failure to provide accurate itemized wage statements, timely final wages, and PAGA violations. Khoury Decl., ¶ 58.

1. Unpaid Wages

(a) Time Rounding

Plaintiffs contended that over time, the use of AIUS's rounding system resulted in alleged underpaid minimum, regular, and overtime wages for impacted employees using the same time clock and payroll system. *See, Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 578; *Troester v. Starbucks Corp.* (2018) 5 Cal. 5th 829, 847 [a rounding system must be fair and neutral on its face and as applied – over a period of time – in order to lawfully comply with California's requirement that workers be paid for "all hours worked."]; *Leyva v. Medline Indus.* (9th Cir. 2013) 716 F.3d 510, 512; *Corbin v. Time Warner Entertainment-Advance/Newhouse Partnership* (9th Cir. 2016) 821 F.3d 1069, 1077 ["If an employer's

1 rounding practice does not permit both upward and downward rounding, then the system is not
2 neutral...”]; *See’s Candy Shops, Inc. v. Superior Court* (2012) 210 Cal.App.4th 889, 701, n.4;
3 and *Silva v. See’s Candy Shops, Inc.* (2016) 7 Cal.App.5th 235, 251.

4 In preparation for mediation, Plaintiffs’ damages consultant analyzed the 25% sample
5 of time and pay records, and determined that approximately 41.1% of individuals were
6 underpaid, 23% were overpaid and 35.8% were neither underpaid nor overpaid. Plaintiffs’
7 consultant calculated the alleged “loss” sustained by Class Members totaled \$6,652.00 (357.90
8 “unpaid” hours x \$16.15 (average hourly rate = \$5,780.00 plus interest of \$872.00). Khoury
9 Decl., ¶ 59.

10 Defendant also argued that certification would be problematic, and that Plaintiffs would
11 be required to prove that employees were actually working during the rounding windows and
12 that this would create significant manageability issues and defeat certification. Class counsel
13 has had considerable experience litigating “rounding” claims through appellate argument and
14 was very familiar with potential defenses to certification. This claim was discounted in light
15 the potential certification hurdles and claimed defenses by 50% to an exposure value of
16 \$3,326.00. Khoury Decl., ¶ 60.

17 **(b) Off-The-Clock**

18 Plaintiffs contended that AIUS required Plaintiffs to undergo pre-shift mandatory
19 COVID-19 screenings each workday, which Plaintiffs contended constitute hours worked
20 under California law. The COVID-19 screenings were not optional, and employees were
21 required to wait in line, oftentimes up to several minutes, to undergo screening prior to the start
22 of each shift, and were thus under the control of AIUS during the screening process.

23 In determining whether certain time constitutes hours worked, “courts may and should
24 consider additional relevant factors--including, but not limited to, the location of the activity,
25 the degree of the employer's control, whether the activity primarily benefits the employee or
26 employer, and whether the activity is enforced through disciplinary measures[.]” *Frlekin v.*
27 *Apple Inc.* (2020) 8 Cal. 5th 1038, 1056; *see also Bono Enters., Inc. v. Bradshaw* (1995) 32
28 Cal. App. 4th 968, 974-5, 38 Cal. Rptr. 2d 549 [interpreting “subject to the control of an

1 employer” to mean “[w]hen an employer directs, commands or restrains an employee.”]. For
2 example, in *Frlekin*, the California Supreme Court held that the time spent by Apple retail store
3 employees waiting for and undergoing mandatory exit searches of their personal bags before
4 leaving their employer’s premises was employer-controlled activity and therefore was
5 compensable as “hours worked.” 8 Cal. 5th at pp. 1042-43.

6 For mediation, Plaintiffs assumed on hour of unpaid off-the-clock hours worked per
7 workweek per employee using the average hourly rate of pay of \$16.15 and the overtime rate
8 of \$24.23 for 74.8% of the pay periods (based on the time records produced by Defendant for
9 mediation). Plaintiffs’ consultant calculated the estimated amount owed for unpaid wages to be
10 \$542,348.00. Khoury Decl., ¶ 61.

11 Defendant argued that working off-the-clock was strictly prohibited by AIUS and that
12 Plaintiffs were not required to perform any duties unless clocked in. Again, Defendant argued
13 that certification would be problematic, and that Plaintiffs would be required to prove on a
14 class-wide basis that employees were working off-the-clock and under the control of the
15 employer, contrary to explicit instruction by AIUS to not perform any work off-the-clock and
16 accurately record all hours worked. Khoury Decl., ¶ 62. This claim was discounted in light the
17 potential certification hurdles and claimed defenses by 75% to an exposure value of
18 \$135,584.00. *Id.*

19 **(c) Regular Rate**

20 AIUS paid employees including Plaintiffs, bonus for completing assembly of a specific
21 number of HVAC units. If employees met their quota, they would receive either a \$50 or \$100
22 production bonus. However, AIUS used the base hourly rate of pay for overtime hours, meal
23 premiums and sick pay, as demonstrated by the pay records produced. Therefore, Plaintiffs
24 contended that AIUS is liable for underpayment of overtime, meal premiums and sick pay.

25 The records revealed that very few of the premium payments would qualify and that the
26 aggregate “underpayment” for meal period premiums extrapolated to the class totaled \$404.
27 The aggregate underpayment for sick pay wages extrapolated to the class totaled \$5,449.
28 Plaintiffs’ consultant calculated that overtime wages were unpaid by approximately

1 \$163,669.00. Given the nature of this claim, a discount was not necessary. Khoury Decl., ¶ 63.

2 **2. Labor Code § 226.7 Meal Period Premiums**

3 Plaintiffs took the position that an entry showing missed, late, or short meal periods
4 presumptively established liability. *Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58. The
5 overall percentage of unique meal break violations was 42.5%. Plaintiffs also analyzed shifts
6 between 10 and 12 hours to assess whether the records showed second meal period violations,
7 which amounted to an estimated 12.2% of all shifts analyzed, the violation rate was found to be
8 98.8%. Khoury Decl., ¶ 64. Meal premiums in the amount of \$160,145.00 paid by AIUS were
9 deducted from the total amount owed. This was discounted for certification hurdles by 50% for
10 a total of \$360,799.50. *Id.*

11 **3. Labor Code § 226.7 Rest Period Claims**

12 Since rest periods are not required to be recorded, for purposes of negotiation at
13 mediation Plaintiffs' counsel assumed a violation rate of 100% for shifts over 10 hours.
14 Khoury Decl., ¶ 65. This resulted in alleged exposure of \$235,192.45 (14,563 shifts x \$16.15)).
15 Based on Plaintiffs' experience and input from Defendant that it maintained compliant policies
16 providing rest periods, this amount was discounted by 90% to \$23,519.00. Proof of this claim
17 was discounted substantially because of the total lack of supportive time records and increased
18 challenges to establishing the merits of each employee's possible rest break claims, as well as
19 the significant hurdles in certifying a rest break claim. *Id.*

20 **4. Labor Code § 2802 Claims**

21 Plaintiffs also contended that AIUS failed to reimburse the putative class members for
22 all necessary business expenses incurred, in violation of Labor Code section 2802. Plaintiffs
23 assumed a \$30 reimbursement was owed per employee per month in the class period, which
24 amount to approximately \$506,580.00. Given the difficulty in quantifying the possible
25 aggregate exposure and class certification hurdles, this claim was discounted by 90% for a total
26 of \$50,658.00. Khoury Decl., ¶ 66.

27 **5. Labor Code § 226 Wage Statement Penalties**

28 Wage statements must show, among other things, "total hours worked by the

employee” and “corresponding number of hours worked at each hourly rate.” Labor Code § 226(a)(2)(9). An employer’s failure to provide accurate itemized wage statements requires it to pay the greater of actual damages or \$50 per employee for the initial pay period and \$100 per employee for each subsequent pay period, not to exceed \$4,000. Labor Code § 226(e)(1).

Plaintiffs alleged a derivative claim wage statement claim based on the rounding claim, unpaid off-the-clock hours, and meal and rest premiums. To recover these penalties, Plaintiffs must prove the underlying violations, and prove this was a “willful violation” against Safran Cabin’s good faith defenses. “The fact that a defense is ultimately unsuccessful will not preclude a finding that a good faith dispute did exist.” *Wilson v. Skywest Airlines, Inc.*, No. 19-cv-01491-VC, (N.D.Cal. July 12, 2021) 2021 U.S.Dist.LEXIS 129507, citing 8 C.C.R. § 13520(a).

The statute provides for \$50 for the initial pay period and \$100 for each subsequent pay period with a maximum of \$4000. Labor Code § 226(e)(1). The penalty claim was calculated as follows: 11,940 pay periods x \$50 = \$597,000.00. Khoury Decl., ¶ 67. This claim, being derivative and, given the defenses available and the requirement that the underlying claims be certified and prevail at trial, was reduced by 90% to \$59,700.00. *Id.*

6. Labor Code § 203 Penalties

An employer must pay all wages due to an involuntarily terminated employee at the time of termination, or within 72 hours to an employee voluntarily terminating. If an employer willfully fails to timely pay all wages to separated employees, the wages continue at the same rate for up to 30 days. Labor Code § 203.

The claims which clearly supported waiting time penalties was for unpaid wages and meal and rest break premiums. Plaintiffs would be required to prove this underlying claim for unpaid wages and show a “willful” violation. Even if wages were found to owed, a court could find AIUS had a good faith belief it was paying all wages, and “a good faith dispute that any wages are due will preclude imposition of waiting time penalties under Section 203.” *Hill v. Walmart Inc.* (N.D. Cal. January 14, 2021) 2021 U.S. Dist. LEXIS 20950, *17.

There are 527 separated employees for a total exposure of \$2,093,718.00 (527 x 8.2

hours x \$16.15 x 30 days). Plaintiffs' counsel believed there was only a 25% probability of prevailing based on difficulties in certifying and proving the underlying violation and particularly showing willfulness and used a 75% discount to reach an estimated realistic exposure for this claim of \$418,743.66. Khoury Decl., ¶ 68.

TOTAL NON-PAGA REASONABLE EXPOSURE CALCULATIONS FOR
MEDIATION:

Failure to pay wages (Rounding)	\$ 3,326.00
Failure to pay wages (OTC)	\$ 135,584.00
Failure to pay OT wages (reg rate)	\$ 163,669.00
Reg rate (sick pay + meal prem)	\$ 5,449.00
Meal Period Violations	\$ 360,799.50
3 rd Rest Period Violations	\$ 23,519.00
Business Expenses Reimbursement	\$ 50,658.00
Wage Statement Violations	\$ 59,700.00
Waiting Time Penalties	\$ 418,743.66
TOTAL:	\$ 1,221,448.16

7. Labor Code § 2699 PAGA Penalties

“PAGA penalties are paid 75% to the California Labor and Workforce Development Agency and 25% to aggrieved employees. Thus, in wage and hour class action cases that settle, very little of the total settlement is paid to PAGA penalties in order to maximize payments to class members.” *Magadia v. Wal-Mart Assocs.* (2019) 384 F. Supp. 3d 1058, 1101.

“[T]he amount of the common settlement fund reserved for PAGA penalties [is adequate], as courts frequently approve settlements in wage and hour class action and PAGA actions that minimize the total amount of the settlement that is paid to PAGA penalties in order to maximize payments to class members.” *Mejia v. Walgreen Co.* (E.D. Cal. Mar. 24, 2021) 2020 U.S. Dist. LEXIS 220685, *26 (citations omitted).

Initial violation rates were used, based on the defense argument, “courts have held that employers are not subject to heightened penalties for subsequent violations unless and until a

1 court or commissioner notifies the employer that it is in violation of the Labor Code.” *Vieyara-*
2 *Flores v. Sika Corp.* (C.D. Cal. 2019) 2019 U.S. Dist. LEXIS 98081, *13.

3 A court has authority to completely reduce penalties, as long as not to “zero.” *Thurman*
4 *v. Bayshore Transit Management, Inc.* (2012) 203 Cal. App. 4th 1112, 1135. *See Carrington v.*
5 *Starbucks Corp.* (2018) 30 Cal. App. 5th 504, 517 [Plaintiff requested “nearly \$70 million in
6 penalties,” trial court’s \$150,000 award upheld on appeal].

7 There are 850 allegedly aggrieved employees and approximately 11,940 pay periods
8 during the PAGA period. Using initial violation rates of \$100 for these pay periods, maximum
9 penalties were estimated for all potential violations for a total of \$6,110,050 in PAGA
10 penalties. Khoury Decl., ¶ 69. Maximum PAGA exposure was discounted by 90% to
11 \$611,050.00 for several reasons, i.e., the risk of not proving underlying violations, Defendant’s
12 compliant policies, and Court’s authority to reduce penalties, as long as not to “zero.” *Thurman*
13 *v. Bayshore Transit Management, Inc.* (2012) 203 Cal. App. 4th 1112, 1135. *See Carrington v.*
14 *Starbucks Corp.* (2018) 30 Cal.App.5th 504, 517 [Plaintiff requested “nearly \$70 million in
15 penalties”; trial court’s \$150,000 award upheld on appeal].

16 The Court also has the authority to reduce or eliminate any civil penalty deemed
17 punitive or confiscatory under the circumstances. Under all the circumstances here, regardless
18 of liability proven or damages awarded, it would be extremely unlikely to obtain a significant
19 amount of PAGA penalties, and perhaps no award in addition to Labor code awards for the
20 same violations. Indeed, courts have rejected attempts to “stack” PAGA penalties with
21 statutory penalties. *See Li v. A Perfect Day Franchise, Inc.* (N.D. Cal. June 15, 2012) 2012
22 U.S. Dist. LEXIS 83677, *52 [denying PAGA penalty as duplicative of penalty provided under
23 Labor Code section 226(e)]; *see also Rodriguez v. Scripps Media* (C.D. Cal. Jan. 28, 2015)
24 2015 U.S. Dist. LEXIS 9936 [“there is no basis for plaintiff to recover penalties under the
25 PAGA §2699(f)(2) in addition to the penalties provided for in § 226(e) for a violation of §
26 226(a)”].

27 The \$25,000 PAGA allocation is well within the range approved by California courts.
28 *See, In Re Nordstrom Commission Cases* (2010) 186 Cal. App. 4th 576, 589 [no abuse of

discretion approving a class action settlement attributing \$0 to PAGA penalties.]; *Alcala v. Meyer Logistics, Inc.* (C.D. Cal. June 17, 2019) 2019 LEXIS 166879, *26 [PAGA penalties 1.25% of settlement reasonable, “falls within the zero to two percent range for PAGA claims approved by courts.”]; *In re M.L. Stern Overtime Litig.* (S.D. Cal. Apr. 13, 2009) 2009 LEXIS 31650, *1 [PAGA settlement of 2%]; *Ceja-Corona v. CVS Pharm., Inc.* (E.D. Cal. Jan. 14, 2015) 2015 U.S. Dist. LEXIS 5118 [\$10,000 penalties, \$900,000 settlement, recommendation adopted, 2015 U.S. Dist. LEXIS 25730 (E.D. Cal. Mar. 3, 2015)]. (This Motion and its exhibits were provided to the LWDA, via its website on the date filed with the Court. Khoury Decl., ¶ 72, Ex. 3.)

TOTAL PAGA REASONABLE EXPOSURE CALCULATIONS FOR MEDIATION:

Lab Code § 1194	\$ 1,194,000.00
Lab. Code §510	\$ 144,100.00
Lab. Code § 226.7 Meal Periods	\$ 728,300.00
Lab. Code § 226.7 Rest Periods	\$ 409,400.00
Lab. Code § 2802	\$1,194,000.00
Temperature Claim (Wage Order)	\$1,194,000.00
Lab. Code § 226	\$1,194,000.00
Lab. Code § 203	\$ 52,700.00
PAGA Sub-Total	\$6,110,500.00
Discount Rate:	90%
TOTAL:	\$ 611,050.00

Plaintiffs and their Counsel gave serious consideration to all facts and arguments and concluded the Settlement is fair and reasonable. The Gross Settlement Amount of \$600,000.00 represents approximately 32.92% of the reasonable combined value of the claims, \$1,822,498.00 (Non-PAGA \$1,221,448.16 + PAGA \$611,050.00= \$1,822,498.00). Khoury Decl., ¶ 70.

The proposed Settlement reflects an excellent recovery for the Class and is well within

the “ballpark” of reasonableness and should be granted preliminary approval.

D. The Class Notice Properly Informs the Class about the Case and Settlement

Class members are entitled to the best practical notice under the circumstances. *Kass v. Young* (1977) 67 Cal. App. 3d 100, 106. The purpose of the notice is to give class members sufficient information to decide whether they should accept the benefits offered, opt out and pursue their own remedies, or object to the settlement. *Trotsky v. Los Angeles Fed Savings & Loan Assn.* (1975) 48 Cal. App. 3d 143, 151-52. The notice must advise class members “that they may be excluded from the class if they so request and that they will be bound by the judgment, whether favorable or not, if they do not request exclusion.” *Kass v. Young, supra*, 67 Cal. App. 3d at p. 106. In a case such as this involving a significant number of class members, California authorities generally require service of the class notice by mail or similar reliable means. *Chance v. Super. Ct.* (1962) 58 Cal. 2d 275, 290; *Cartt v. Sup. Ct.* (1975) 50 Cal. App. 3d 960, 972.

The Parties have jointly drafted the Notice of Class Action Settlement. The Notice will be mailed along with a change of address form and pre-printed return envelope and will fairly and neutrally provide a (a) the amount of the Settlement; (b) a calculation of the Class Member’s anticipated share of the NSA; (c) the full amounts of the Class Counsel Payment, Class Representative Service Awards; and Administrative Costs to be awarded; (d) the terms of the releases and Class Members’ waiver of the right to pursue litigation of the Released Claims; (e) the procedure to opt out of the Settlement through a Request for Exclusion; (f) the procedure to Object to the Settlement; and (g) the date of the Fairness Hearing. SA, ¶ 3.1, Exhibit A.

Before mailing the Settlement Notices, for all Class Members, the Settlement Administrator will verify the addresses produced by AIUS by conducting a search of the National Change of Address Database of the U.S. Postal Office. SA, ¶ 3.4. Any mailing returned as undeliverable shall be sent with ten (10) calendar days via U.S. First Class Mail to any available forwarding address. If no forwarding address is available, the Settlement

1 Administrator shall attempt to determine the correct address by using a computer-based skip-
2 trace search. *Id.*

3 Accordingly, both the method of disseminating the Settlement Notice and content of the
4 Settlement Notice satisfy due process and the requirements of California law. See C.R.C.
5 3.776(e)-(t); *State of Cal. v. Levi Strauss* (1986) 41 Cal. 3d 460, 485 [the class notice must
6 “fairly apprise the class members of the terms of the proposed compromise and of the options
7 open to dissenting class members.”].

8 **E. Individual Settlement Payments**

9 The Individual Settlement Payment for each Class Member shall be calculated by
10 dividing the number of Eligible Workweeks attributed to the Settlement Class Member during
11 the Class Period by all Eligible Workweeks during the Class Period attributed to members of
12 the Settlement Class, multiplied by the portion of the Net Settlement Amount that is not
13 attributable to the PAGA Payment. If the Settlement Class Member is an Aggrieved
14 Employee, then the Settlement Class Member shall also receive a share of the PAGA
15 Payment. The Settlement Class Member’s share of the PAGA Payment shall be proportionate
16 to the number of Eligible Workweeks attributed to the Settlement Class Member during the
17 PAGA Period divided by all Eligible Workweeks attributed to Aggrieved Employees during
18 the PAGA Period. Khoury Decl., ¶ 71; SA, ¶ 5.5.1. Settlement Payments are characterized as
19 one-third (1/3) wages and two-thirds (2/3) penalties and interest. Khoury Decl., ¶ 71; SA, ¶
20 5.5.3.

21 **F. The Settlement is Fair, Adequate, and Reasonable**

22 A settlement is not judged solely against what might have been recovered at trial, nor
23 must a settlement provide 100% of the damages sought to be fair and reasonable. *Linney v.*
24 *Cellular Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242. Adequacy must be judged as
25 “a yielding of absolutes. . . Naturally, the agreement reached normally embodies a
26 compromise; in exchange for the saving of cost and elimination of risk, the parties each give up
27 something they might have won had they proceeded with litigation . . .” *Officers for Justice v.*
28 *Civil Serv. Comm’n* (9th Cir. 1982) 688 F.2d 615, 624 (citation omitted). “It is well-settled law

1 that a cash settlement amounting to only a fraction of the potential recovery does not . . . render
2 the settlement inadequate or unfair.” *Id.* at p. 628.

3 Plaintiffs and their Counsel gave serious consideration to all facts and arguments and
4 concluded the Settlement is fair and reasonable. Khoury Decl., ¶¶ 47-48, 53. The Gross
5 Settlement Amount represents approximately 32.9% of the maximum value of the Class and
6 PAGA claims. ($\$600,000/\$1,822,498 = .3292$). *Id.*, ¶ 70.

7 The proposed Settlement reflects an excellent recovery for the Class and is well within
8 the “ballpark” of reasonableness and should be granted preliminary approval. Khoury Decl., ¶
9 48.

10 **VIII. CONDITIONAL CERTIFICATION OF THE CLASS IS APPROPRIATE**

11 When an ascertainable and sufficiently numerous class exists, with a well-defined
12 community of interest, and class litigation would be superior to alternate means, certification is
13 appropriate. See *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1021.

14 Ascertainability is determined by examining class definition, size, and means for
15 identifying members. *Reyes v. Bd. of Supervisors* (1987) 196 Cal. App. 3d 1263, 1271. The
16 class is ascertainable from Safran Cabin’s records, and joinder is impracticable.

17 The community of interest requirement embodies three factors: predominant common
18 questions of law or fact; class representatives with claims typical of the class; and class
19 representatives who can adequately represent the class. *Fireside Bank v. Superior Court* (2007)
20 40 Cal. 4th 1069, 1089.

21 Plaintiffs allege each Class Member was subject to policies and practices Plaintiffs
22 alleged caused damage to them and the Class, including policies which caused underpaid
23 wages, including meal period premium wages, and non-compliant wage statements. Where the
24 same alleged conduct forms the basis for claims of Plaintiffs and the class, it is common for
25 settlement purposes.

26 Plaintiffs can adequately protect the interests of the Class. See *Wershba v. Apple*
27 *Computer, Inc., supra*, 91 Cal. App. 4th at p. 238. Plaintiff accepted the risks of serving as
28 class representatives, spent significant time assisting in the prosecution of the action, and

placed the interest of the class above their own. *Clark v. American Residential Services LLC* (2009)175 Cal.App.4th 785, 804-807.

Plaintiffs' attorneys are qualified to conduct the litigation and Plaintiffs' interests are not antagonistic to the interests of the Class. *McGhee v. Bank of Am.* (1976) 60 Cal. App. 3d 442, 450. Khoury Decl., ¶¶ 3-9; Tojarieh Decl., ¶¶ 4-7; Celio Decl., ¶¶ 6-8; Lytle Decl., ¶¶ 6-8; Martin Decl., ¶¶ 6-8; Fort Decl., ¶¶ 6-8.

IX. PROPOSED SCHEDULE OF SETTLEMENT PROCEEDINGS

The Parties propose the following schedule for the fairness hearing and final proceedings:

Class Data provided to Settlement Administrator	Within twenty-one (21) calendar days of Preliminary Approval
Settlement Administrator mails Notice to Class	Within ten (10) calendar days of receipt of Class Information
Consideration Period	On or before the 60th calendar day from initial date Settlement Administrator mails Notice to Class
File Motion for Final Approval and Administrator's Declaration re: Claims	No sooner than twenty (20) calendar days after the close of the Consideration Period
Final Approval Hearing	A date convenient on the Court's calendar

X. CONCLUSION

Plaintiffs request the Settlement be preliminarily approved, Settlement Notice approved and ordered disseminated to the Class, CPT Group, Inc. be appointed Administrator, Cohelan Khoury & Singer and Stonebrook Law be appointed Class Counsel, Plaintiffs Angelyna Celio, Matthew Lytle, Robert Martin, and Donell Fort be appointed as the Class Representatives, and a Final Approval Hearing date be set.

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COHELAN KHOURY & SINGER

Dated: March 7, 2023

By: _____



Michael D. Singer

Marta Manus

Attorneys for Plaintiffs Angelyna Celio, Matthew
Lytle, Robert Martin, and Donell Fort, on behalf
of themselves and all others similarly situated