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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

JUAN HERRADA, on behalf of himself
and others similarly situated and the
general public,

Plaintiff,

vs.

McWANE, INC. dba AB&I FOUNDRY
and DOES 1 through 500; inclusive,

Defendants.

Case No. RG21103064

CLASS ACTION - COMPLEX

[Assigned for All Purposes to the Hon. Evelio
Grillo-Dept. 21]

**NOTICE OF MOTION AND MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT,
CONDITIONAL CERTIFICATION OF
SETTLEMENT CLASS, AND APPROVAL
OF NOTICE PROCEDURES**

Hearing Date: May 25, 2022

Hearing Time: 10:00 A.M.

Dept.: 21

Action Filed: June 23, 2021

1 **NOTICE OF MOTION**

2 TO EACH PARTY AND TO COUNSEL FOR EACH PARTY OF RECORD: NOTICE
3 IS HEREBY GIVEN that on May 25, 2022, at 10:00 AM or as soon thereafter as counsel may
4 be heard, Plaintiff Juan Herrada (“Plaintiff”) will move for an order granting: (1) preliminary
5 approval of the class action settlement between Plaintiff and Defendant McWane, Inc. dba
6 AB&I Foundry (“Defendant”); (2) conditional certification of the proposed settlement class; (3)
7 approval of the proposed notice procedures; (4) appointment of Plaintiff as class representative;
8 (5) appointment of Arlo Garcia Uriarte of Liberation Law Group, P.C. as class counsel; (6)
9 appointment of Simpluris, Inc. as the Settlement Administrator; and (7) the scheduling of a final
10 fairness hearing.

11 This motion will be made and based upon: (1) this notice of motion; (2) the
12 memorandum of points and authorities in support thereof; (3) the declaration of Arlo Garcia
13 Uriarte and the exhibits attached thereto, all of which are filed and served concurrently
14 herewith; as well as (4) the records, pleadings, and papers on file in this action, and upon such
15 other matters as may be presented at the time of hearing on this motion.

16
17
18 Dated: May 10, 2022



19 _____
20 Arlo Garcia Uriarte
21 Liberation Law Group, P.C.
22 Attorneys for Plaintiff
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I. INTRODUCTION

Plaintiff Juan Herrada (“Plaintiff”) respectfully requests preliminary approval of the instantly proposed \$2,000,000 class action settlement reached between him and Defendant McWane, Inc. dba AB&I Foundry (“Defendant” or “Foundry”) (collectively “the Parties”). The settlement is non-reversionary; meaning, if approved, all proceeds would be issued to Settlement Class Members (hereinafter “SCM”) after Court-approved deductions. Plaintiff’s requested deductions will be: (1) \$666,600 in attorney’s fees for Plaintiff’s counsel (33.33% of the gross settlement amount); (2) approximately \$12,000 in accrued litigation costs for Plaintiff’s counsel; (3) \$4,000-\$7,500 in settlement administration fees for Simpluris, Inc. (“Settlement Administrator”); (4) a representative enhancement award to Plaintiff equaling \$5,000; and (5) a \$25,000 PAGA allocation (\$18,750 of this allocation must go to the LWDA, per Cal. Lab. Code § 2699(i), while the remainder is for SCM who worked during the “PAGA Period” (March 8, 2020, through the date of Preliminary Approval)). AGMT ¶ 12(d).

Defendant has agreed to pay the \$2,000,000 all-in settlement in exchange for a limited release from participating SCM. Plaintiff describes the release as limited because it only applies to the wage and hour claims that were alleged in the instant Complaint, or those that could have been alleged therein based on the facts, causes of action, or legal theories brought by Plaintiff. See, AGMT¹ ¶ 12(k)(2). SCM are defined as follows:

Proposed Settlement Class

All current and former California non-exempt hourly employees of Defendant who worked at any time from June 23, 2017, through the date of Preliminary Approval (“the Class Period”) See, AGMT ¶ 6.

SCM are set to receive significant cash payments – approximately \$4,433.51² each on average. Individual settlement payments will be calculated *pro rata* based on SCM workweeks

¹ The Joint Stipulation of Class Action Settlement or “Agreement” (abbreviated “AGMT”) is attached as Exhibit “A” to the Declaration of Arlo Uriarte (abbreviated “Uriarte Dec.”).

² This is calculated by assuming a Net Settlement Fund of \$1,290,150 (gross settlement amount minus the requested deductions described above) and dividing it by approximately two hundred ninety-one Settlement Class Members (the number represented by Defendant prior to mediation). AGMT ¶ 12(k).

1 within the Class Period; this means that the longest tenured employees will receive the most.
2 For example, someone who worked about five years for Defendant during the Class Period, or
3 about two hundred and fifty workweeks, will receive approximately \$9,653.62.³ Plaintiff
4 submits that this is a very favorable recovery for hard-working hourly workers who earned or
5 earn \$1,100.80 per week before taxes (the average pay rate here is \$27.52 per hour, and the
6 aforementioned figure assumes a 40-hour workweek). In other words, the average recovery here
7 of \$4,433.51 represents about four weeks of wages, while the high-end recovery of 9,653.62
8 represents nearly nine weeks of wages.

9 The Parties agreed to this proposed settlement after extensive arms-length negotiations,
10 which occurred on March 9, 2022, during an in-person mediation session with Jeffrey A. Ross.
11 Uriarte Dec. ¶ 5. Mr. Ross is a very well-regarded mediator with significant employment law
12 class and representative action experience. *Id.* Plaintiff would only agree to mediate prior to
13 formal discovery if Defendant would provide enough information in advance of the session so
14 that his negotiations could be well informed. Uriarte Dec. ¶ 3.

15 In or around November 2021, the Parties met and conferred on an informal information
16 exchange so that Plaintiff and his counsel could thoroughly investigate the factual and legal
17 basis of Plaintiff's putative class claims. Uriarte Dec. ¶¶ 3-4. Defendant provided: (1)
18 anonymized putative class member timesheets; (2) a corresponding summary of payroll
19 records; (3) a putative class list with names and contact information pursuant to the Protective
20 Order entered in this case and pursuant to the Court's Order of February 8, 2022; (4) an
21 employment handbook and the two CBA agreements applicable to the period of June 23, 2017,
22 through the date of the mediation; and (5) numerical data regarding the size of the class and the
23 number of workweeks worked by the putative class members from June 23, 2017, forward.
24 AGMT ¶ 4.

25 As further explained below, the proposed settlement warrants preliminary approval.
26 Plaintiff submits that it is a fair, reasonable, and adequate compromise of hotly contested wage

27
28 ³ This is calculated by dividing the Net Settlement Amount, \$1,290,150, by the approximate amount of
aggregate SCM workweeks, which is 33,411. Uriarte Dec. ¶ 4.

1 and hour claims. Additionally, the requirements for conditional certification are met; the
2 proposed notice and claim procedures comply with all relevant rules; and, Plaintiff's
3 enhancement, the administration costs, and the attorney's fees and litigation costs to be
4 requested are reasonable.

5 **II. CASE BACKGROUND**

6 Plaintiff was employed by Defendant first from 2006 to 2009 and later from 2014 until
7 April 2021. Uriarte Dec. ¶ 2. Plaintiff held different positions for Defendant throughout his
8 employment tenures; his last job was as an apprentice in the mechanical department where he
9 repaired and maintained various machinery found in the Foundry. *Id.*

10 Plaintiff initiated this lawsuit on June 23, 2021. The Complaint contains the following
11 causes of action: (1) unpaid wages; (2) unpaid overtime compensation; (3) meal period
12 violations; (4) rest break violations; (5) wage statement violations; (6) waiting time penalties;
13 (7) civil penalties under PAGA; and (8) unfair competition (Cal. Bus. & Prof. Code ¶17200).
14 Causes of action five through eight are ancillary to causes of action one through four (causes of
15 action one through four are referred to herein as Plaintiff's Core Claims).

16 The Parties decided that early mediation (prior to formal discovery) was worth pursuing
17 in order to be more efficient and preserve resources. Uriarte Dec. ¶ 3. Plaintiff was amenable to
18 this approach only if Defendant would produce certain informal discovery items before the
19 mediation so that Plaintiff could be well-informed for negotiations. *Id.* Defendant agreed to
20 produce the requested items, which included: (1) anonymized putative class member timesheets;
21 (2) a corresponding summary of payroll records; (3) a putative class list with names and contact
22 information pursuant to the Protective Order entered in this case and pursuant to the Court's
23 Order of February 8, 2022; (4) an employment handbook and the two CBA agreements
24 applicable to the period of June 23, 2017, through the date of the mediation; and (5) numerical
25 data regarding the size of the class and the number of workweeks worked by the putative class
26 members from June 23, 2017, forward. AGMT ¶ 4.

27 Mediation occurred on March 9, 2022, with Jeffrey A. Ross. AGMT ¶ 5. Mr. Ross is a
28 highly regarded employment law mediator with considerable experience mediating class action

1 or representative action employment law disputes. Uriarte Dec. ¶ 5. The matter was indeed
2 settled in principle on March 9, 2022, and the Parties executed a memorandum of understanding
3 the next day. AGMT ¶ 5. Now, Plaintiff seeks preliminary approval of this proposed class
4 action settlement.

5 III. OVERVIEW OF THE SETTLEMENT AGREEMENT

6 The Agreement entails a \$2,000,000 non-reversionary gross settlement fund from which
7 the following agreed upon deductions will be requested: (1) \$666,600 in attorney’s fees for
8 Plaintiff’s counsel (33.33% of the gross settlement amount); (2) approximately \$12,000 in
9 accrued litigation costs for Plaintiff’s counsel; (3) \$4,000-\$7,500⁴ in settlement administration
10 fees for Simpluris, Inc. (“Settlement Administrator”); (4) a representative enhancement award to
11 Plaintiff equaling \$5,000; and (5) a \$25,000 PAGA allocation (\$18,750 of this allocation must go
12 to the LWDA, per Cal. Lab. Code § 2699(i), while the remainder is for SCM who worked during
13 the PAGA Period). AGMT ¶ 12(d).

14 All remaining funds (*i.e.*, the “Net Settlement Fund”) are to be distributed *pro rata* to
15 SCM who do not exclude themselves from the settlement – claims will not be required. AGMT ¶
16 12(e). There are approximately two hundred ninety-one SCM. AGMT ¶ 12(k). The Settlement
17 Administrator will carry out its *pro rata* individual settlement payment calculations after
18 receiving from Defendant a listing of individual workweeks for each SCM. AGMT ¶ 12(e)(i).
19 SCM are permitted to dispute their individual workweeks through the Settlement Administrator
20 if they believe an error has been made. AGMT ¶ 12(i). The Settlement Administrator will use the
21 following formula to determine individual settlement payments: “Individual Workweeks (as a
22 percentage of total workweeks by all Settlement Class Members during the Class Period) x Net
23 Settlement Amount.” AGMT ¶ 12(e)(ii).

24 SCM will receive either one or two settlement checks each. AGMT ¶ 12(e)(iii). A second
25 settlement check will only be necessary if ten percent or more of the Net Settlement Fund

26 ⁴ Plaintiff provides a range here because Simpluris, Inc. provided two different capped-fee bids for two
27 different possible scenarios. As further explained below, a second distribution of checks may be required
28 if ten percent or more of the Net Settlement Amount remains unnegotiated by SCM. Simpluris, Inc. will
charge \$4,000 if only one distribution is required, and it will charge \$7,500 if two distributions are
required. Uriarte Dec. ¶ 7.

remains unnegotiated; if less than ten percent remains unnegotiated, the Parties recommend the outstanding amount be awarded to a Court-approved *cy pres* designee. *Id.* Specifically, the Parties recommend La Raza Centro Legal as a worthy and appropriate *cy pres* recipient consistent with the requirements of Code of Civil Procedure § 384. “La Raza Centro Legal is a community-based legal organization dedicated to empowering Latino, immigrant, and low-income communities of San Francisco to advocate for their civil and human rights.” <https://lrcl.org/who-we-are/mission-values/>.

The Net Settlement Fund (abbreviated “NSF”) is projected to be \$1,290,150. This means that SCM would receive approximately \$4,433.51 each on average (NSF divided by the total number of SCM). This represents a valuable and worthwhile recovery for hardworking, hourly employees. Plus, their participation in this settlement would only require them to release the wage and hour claims brought by Plaintiff or those directly related thereto that accrued during the Class Period:

ii. Settlement Class Member Release: The claims released by Settlement Class Members, other than those who submit requests for exclusion (“Settled Claims”), are all claims, rights, demands, liabilities, and causes of action arising from, or related to, the same set of operative facts as those set for in Plaintiff’s Class Action Complaint for this Action. The Settled Claims are those that accrued during the Class Period. [AGMT ¶ 12(k)(2)].

Additionally, Plaintiff has confirmed that the Foundry’s policies and practices have changed and are currently compliant with relevant wage and hours laws. As part of this settlement, Defendant has provided a declaration from a person most knowledgeable regarding this topic. AGMT ¶ 12(f). Specifically, Defendant provided a declaration from Michael Lowe, “currently the President of AB&I Foundry (the “Foundry”) located in Oakland, California.”⁵ Lowe Dec. ¶ 1. Mr. Lowe has declared, among other things, that:

Beginning in October 2017, the Foundry implemented a “walking-time” policy that provided non-exempt hourly production employees with an additional paid 5-minutes at the beginning and end of each meal and rest period...to enable them to travel from

⁵ The Declaration of Michael Lowe (“Lowe Dec.”) is attached as Exhibit “C” to Uriarte Dec.

1 the production floor to one of 6 break rooms located at the Foundry
2 or to the parking lot, should employees so choose. [Lowe Dec. ¶
3 2]; and

4 As of May 10, 2022, the Foundry will be adjusting its timekeeping
5 policies and practices as follows: non-exempt hourly employees
6 will be responsible for writing down, on physical (paper)
7 timesheets, the times they clock in and out each workday,
8 including when they begin and end work each workday, and when
9 they begin and end off-the-clock, unpaid meal periods. [Lowe Dec.
10 ¶ 3]; and

11 As of approximately February 2022, the Foundry has
12 communicated with non-exempt hourly production employees
13 working a 3-day a week/12-hour shift (the “3/12”; the 3/12 shift is
14 pursuant to the current collective bargaining agreement) as to their
15 entitlement to a second meal period and third rest period when they
16 work more than 10-hours in a day. As of May 2022, the Foundry
17 has communicated with non-exempt hourly production employees
18 working a 4-day a week/10-hour shift (the “4/10” shift; this shift is
19 pursuant to the current applicable collective bargaining agreement)
20 as to their entitlement to a second meal period and third rest period
21 when they work more than 10-hours in a day. [Lowe Dec. ¶ 4]; and

22 From at least June 23, 2017, and continuing through the present,
23 the Foundry continues to identify and pay required premium pay
24 pursuant to Labor Code Section 226.7 for all missed, late, or short
25 meal periods where there is no waiver, and for all missed, late or
26 short rest periods where the employees in question were not
27 provided with compliant breaks/could not take compliant breaks
28 because of work demands. [Lowe Dec. ¶ 5].

29 Therefore, Plaintiff’s lawsuit has confirmed Defendant’s wage and hour compliance, and
30 also secured significant cash recoveries for SCM in exchange for an appropriately limited
31 release. The alternative to this proposed settlement would be an intense and protracted litigation,
32 which of course comes with uncertain outcomes. Plaintiff and his counsel confidently assert that
33 this settlement is fair, reasonable, and adequate. Uriarte Dec. ¶ 6.

34 **IV. PROPOSED NOTICE PROCEDURES**

35 **A. Settlement Administrator Information and Selection Process**

36 The Parties requested bids from three, reputable settlement administrators: CPT Group,
37 Inc., Simpluris, Inc., and ILYM Group, Inc. Uriarte Dec. ¶ 7. Plaintiff’s counsel provided key
38

1 information to these companies so that they could formulate bids, including: (1) the approximate
2 length of the notice form; (2) the estimated number of SCM; (3) the need to establish and
3 manage a settlement website where SCM could download key pleadings like the Complaint and
4 all filed settlement approval papers free of charge; and (4) the fact that settlement administration
5 would require a mailing of the notice form in both English and Spanish (translation required) by
6 first class United States mail (including skip tracing and re-mailings of undeliverable notices)
7 and one round of checks (potentially two). *Id.* Simpluris, Inc.’s bid was the most competitive. *Id.*

8 Plaintiff’s counsel has a history of working with Simpluris, Inc. and CPT Group, Inc.;
9 both have performed settlement administration services for his firm in similar cases numerous
10 times. Uriarte Dec. ¶ 8. However, Plaintiff’s counsel nor his firm have any financial interest in
11 either company. *Id.* In counsel’s experience, Simpluris, Inc.’s quoted fee is reasonable
12 considering the work required and the amount of class members involved. *Id.* Plaintiff’s counsel
13 is confident that Simpluris, Inc. can effectively administer the settlement based on prior
14 experience. *Id.*

15 **B. SCM Will Have Forty-Five Days to Act Regarding the Settlement if They Choose**
16 **to Opt-Out or Object**

17 The proposed “Notice Form” is attached as Exhibit “B” to the declaration of Arlo Uriarte
18 in support of this motion (it still requires Spanish translation, which will be performed by
19 Simpluris, Inc.). Plaintiff submits that the form meets all relevant requirements and represents
20 adequate notice to SCM.

21 Class members are not required to act to participate in the settlement. AGMT ¶ 12(e).
22 Those who do not request exclusion will be sent settlement checks. However, SCM may act and
23 exclude themselves or object to the settlement. AGMT ¶ 12(h). Each SCM will have forty-five
24 calendar days from the date the Notice Form is mailed to request exclusion or object to the
25 settlement. *Id.* SCM may object or exclude themselves from the settlement by sending the
26 Settlement Administrator a written request. AGMT ¶¶ 12(h)-(i). SCM who do not exclude
27 themselves may object to the settlement. AGMT ¶ 12(i). Any SCM who does not submit a timely
28 and valid request for exclusion will be bound by the terms of this settlement, including those

1 pertaining to the released claims, as well as any Judgment that may be entered by the Court if it
2 grants final approval of the settlement. AGMT ¶ 12(j).

3 **C. Defendant Shall Promptly Provide Class Information to the Settlement**
4 **Administrator and the Administrator Shall Send Notice to the Class After Taking**
5 **Reasonable Steps to Ensure Receipt**

6 Defendant shall provide the “Class List” to the Settlement Administrator within ten
7 calendar days of the Court’s preliminary approval of the settlement. AGMT ¶ 13. The Class List
8 should include the following class member information, assuming it is available: (1) SCM’s
9 name, (2) last-known address, (3) last-known telephone number, (4) Social Security Number,
10 and (5) dates of employment with Defendant during the Class Period. *Id.*

11 Simpluris, Inc. shall use all reasonably available means, such as NCOA searches and
12 skip traces, to find SCM. AGMT ¶ 14. Within twenty calendar days of the Court’s preliminary
13 approval of this settlement, Simpluris, Inc. shall send the Notice Form to SCM via first class
14 United States mail. *Id.* For any SCM for whom a Notice Form is returned by the post office as
15 undeliverable, Simpluris, Inc. shall re-mail the Notice Form to a forwarding address if one is
16 provided. *Id.* If one is not provided, Simpluris, Inc. shall also use all reasonably available and
17 accessible means, such as skip traces, to find updated and current addresses. *Id.* Plaintiff submits
18 that these methods are commonly used and sufficient to ensure that as many SCM as reasonably
19 possible will be well informed regarding the proposed settlement.

20 **V. THE PROPOSED SETTLEMENT WARRANTS PRELIMINARY APPROVAL**

21 Class action settlement approval is a two-step process. “First, the court preliminarily
22 approves the settlement, and the class members are notified as directed by the court. Rule
23 3.769(c)-(f). The notice must contain an explanation of the proposed settlement and procedures
24 for class members to follow in filing written objections to it and in arranging to appear at the
25 settlement hearing and state any objections to the proposed settlement. Rule 3.769(f). Second,
26 the court conducts a final approval hearing to inquire into the fairness of the proposed
27 settlement. Rule 3.769(g).” *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110,
28 1111.

1 Numerous courts have agreed that especially for class action litigation, “voluntary
2 conciliation and settlement are the preferred means of dispute resolution.” *7-Eleven Owners for*
3 *Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1151 (2000), *quoting Officers for*
4 *Justice v. Service Comm’n of City and County of San Francisco*, 688 F.2d 615, 625 (9th Cir.
5 1982). *See also, Pilkington v. Cardinal Health, Inc., (In re Syncor ERISA Litig.)*, 516 F.3d 1095,
6 1101 (9th Cir. 2008); *Van Bronkhorst v. Safeco Corp.* 529 F.2d 943, 950 (9th Cir. 1976) (“there
7 is an overriding public interest in settling and quieting litigation,” and this is “particularly true
8 in class action suits.”)

9 California courts commonly look to Federal Rule of Civil Procedure (“FRCP”) 23
10 jurisprudence for guidance when adjudicating class action litigation under California Code of
11 Civil Procedure (“CCP”) § 382 and California Rule of Court (“CRC”) 3.769. *Vasquez v.*
12 *Superior Court* (1971) 4 Cal.3d 800, 821; *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794,
13 1800-01. *See also, Bell v. Farmers Ins. Exchange* (2004) 115 Cal.App.4th 715, 740, *citing City*
14 *of San Jose v. Superior Court* (1974) 12 Cal.3d 447, 453 (“the California Supreme Court has
15 urged trial courts to be procedurally innovative in determining whether to allow class suits,
16 encouraging them to incorporate procedures from outside sources in particular Rule 23 of the
17 Federal Rules of Civil Procedure”) (internal quotations omitted).

18 **A. Class Action Settlements Should Be Fair, Reasonable, and Adequate**

19 The Court should preliminarily approve this settlement because it is fair, reasonable, and
20 adequate. The following “well-recognized factors” should be considered in evaluating the
21 reasonableness of a proposed settlement; this list “is not exhaustive and should be tailored to
22 each case”: (1) the strength of plaintiff's case; (2) the risk, expense, complexity and likely
23 duration of further litigation; (3) the risk of maintaining class action status through trial; (4) the
24 amount offered in settlement; (5) the extent of discovery completed and the stage of the
25 proceedings; (6) the experience and views of counsel; (7) the presence of a governmental
26 participant; and (8) the reaction of the class members to the proposed settlement. *Kullar v. Foot*
27 *Locker Retail, Inc.*, 168 Cal.App.4th 116, 128 (2008) *citing Dunk* 48 Cal.App.4th at 1801;
28 *Newberg on Class Actions*, §§ 11:41, 11:43, 13:68 (4th ed. 2002).

Furthermore, “a presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are 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.” *Id.*

At the preliminary approval stage, “the settlement need only be *potentially* fair, as the Court will make a final determination of its adequacy at the hearing on Final Approval, after such time as any party has had a chance to object and/or opt out.” *Acosta v. Trans Union, LLC*, 243 F.R.D. 377, 386 (C.D. Cal. 2007) (emphasis in original) *citing Armstrong v. Board of School Directors*, 616 F.2d 305, 314 (7th Cir. 1980), overruled on other grounds by *Felzen v. Andreas*, 134 F.3d 873 (7th Cir. 1998).

Preliminary approval is appropriate in light of all applicable standards. After significant investigation, the Parties engaged in non-collusive negotiations before an experienced and well-respected mediator. Uriarte Dec. ¶¶ 3-5. The Parties have worked to ensure that the Agreement at hand treats all SCM fairly and appropriately. Uriarte Dec. ¶ 10. The key points addressed below emphasize why the proposed settlement meets and exceeds the threshold required for a determination that the proposed settlement is fair, adequate and reasonable, and should receive preliminary approval.

1. The Strengths and Weaknesses of Plaintiff’s Claims

a. Unrecorded and Unpaid Work (COA nos. 1 and 2)

From the beginning of the Class Period through its anticipated policy change set to begin on May 10, 2022, Defendant has not required SCM to track their hours worked using a timeclock. Lowe Dec. ¶ 3. Through counsel, Defendant has explained that in the late 1990s, the Foundry elected to stop using timeclocks; largely, this was meant to symbolize open communications, trust, and integrity between the company and its employees. Uriarte Dec. ¶ 11. Instead of tracking each minute worked, Defendant elected to credit employees with their assigned shift hours, whether they arrive late, leave early, or take extra meal/rest period time. *Id.* Departmental supervisors were tasked with verifying that employees were paid properly. *Id.* The crux of Plaintiff’s lawsuit takes issue with the ramifications of this system.

1 Plaintiff claims that the Foundry's time and pay policies led employees to work several
2 minutes before and after their assigned shifts without compensation. Plaintiff argues that per
3 Defendant's supervisors, he and his co-workers were expected to be engaged in their specific
4 work duties from the minute their assigned shift starts until the minute their assigned shift ends.
5 The resulting problem being that it was not possible for most employees to simply arrive on
6 premises and get right to work. The Foundry's employees work with or very near to large
7 production machinery and must protect themselves. To do this, they must arrive a few minutes
8 before their assigned shift, get their uniform on, don their personal protective equipment, and
9 make their way to their position. At the end of their shift, they must do the reverse plus some
10 employees shower before leaving the Foundry. Plaintiff alleges that it is also common for many
11 workers to attend short safety or operational meetings just before their assigned shift begins.
12 Plaintiff maintains that Defendant failed to capture and pay for these pre- and post-shift work
13 tasks.

14 Defendant vehemently disputes the legal and factual merits of Plaintiff's allegations of
15 unrecorded and unpaid work. Defendant agrees that it credits employees with their assigned
16 shift hours (whether they arrive late, leave early, or take extra meal/rest period time), but the
17 company sees this as a floor for the payment of wages. Defendant maintains that supervisors,
18 who are present on the production floor, record any overtime for their department as it occurs.
19 Defendant further argues that supervisors are trained to round-up only, not down, and to credit
20 employees with any overtime they report and not to dispute employees' assertions of time
21 worked. Defendant disputes that there is any pre-or post-shift work requirements and asserts
22 that all safety or operational meetings occur on the clock and after employees have begun their
23 shifts. Defendant also argues that employees are provided significant freedom and control over
24 whether they wear a uniform, the location where they keep certain personal protective
25 equipment and where they don and doff such equipment.

26 First of all, in terms of strengths, Plaintiff has a strong argument that Defendant failed to
27 keep accurate timekeeping records, easing the road for his unpaid work allegations. California
28 law requires employers to accurately record employee work time and to pay employees for all

1 hours worked. *See*, 5 Cal. Code Regs., § 11010, subd. 7(A)(3) (employers must keep accurate
2 “[t]ime records showing when the employee begins and ends each work period”); 5 Cal. Code
3 Regs., § 11010, subd. 4(B) (“[e]very employer shall pay to each employee, on the established
4 payday for the period involved, not less than the applicable minimum wage for all hours worked
5 in the payroll period, whether the remuneration is measured by time, piece, commission, or
6 otherwise). Moreover, ‘hours worked’ means “...the time during which an employee is subject
7 to the control of an employer, and includes all the time the employee is suffered or permitted to
8 work, whether or not required to do so.” *Id.* at subd. 2(G).

9 Moreover, our state’s Supreme Court has said that when determining whether an
10 employee is under an employer’s control several factors should be considered. *Frlekin v. Apple*
11 *Inc.* (2020) 8 Cal. 5th 1038, 1056, 457 P.3d 526, 538, reh’g denied (May 13, 2020) (“But, at
12 least with regard to cases involving onsite employer-controlled activities, the mandatory nature
13 of an activity is not the only factor to consider. We conclude that courts may and should
14 consider additional relevant factors — including, but not limited to, the location of the activity,
15 the degree of the employer’s control, whether the activity primarily benefits the employee or
16 employer, and whether the activity is enforced through disciplinary measures — when
17 evaluating such employer-controlled conduct.”)

18 As a second strength, the *Frlekin* factors listed above arguably weigh in Plaintiff’s favor
19 regarding the pre- and post- shift work claimed. Defendant’s employees are unable to work
20 without their uniforms and safety gear on or without attending safety briefings and/or
21 operational meetings prior to shifts. Moreover, Defendant has a high degree of employee
22 control in this context because employees perform these tasks on-site. Lastly, the claimed
23 activities primarily benefit Defendant because they are performed so that the Foundry’s workers
24 can be completely prepared to work on the company’s behalf.

25 In terms of a third strength, Plaintiff’s counsel interviewed dozens of SCM who shared
26 that they too performed pre- and post-shift tasks without pay. Uriarte Dec. ¶ 12. Plaintiff’s
27 counsel obtained declarations from eight of these interviewees, which were very helpful during
28

1 the mediation. *Id.* The declarations provide some confirmation that work outside of assigned
2 shifts was a typical occurrence; it also confirms that numerous SCM support Plaintiff’s lawsuit.

3 However, Plaintiff’s unrecorded and unpaid work claim also has serious weaknesses. As
4 a primary concern, it is not sufficient to establish that Defendant failed keep accurate time
5 records for its employees. Plaintiff must show that Defendant’s failure to accurately track time
6 worked commonly led SCM to work without pay. Plaintiff strongly believes that the unpaid
7 work commonly occurred, but is wary that establishing the fact on a class wide basis could be
8 quite difficult if the Court determines that too many individual determinations are required. *See,*
9 *Ayala v. Antelope Valley Newspapers, Inc.* (2014) 59 Cal. 4th 522, 539, 327 P.3d 165, 176
10 (individual issues render class certification inappropriate if they cannot be effectively managed).

11 Plaintiff fears an “individual issues” problem as discussed in *Ayala* for the following
12 reasons. To begin with, the only way to determine whether Defendant’s time and pay policies
13 led to unpaid work is to ask SCM whether they worked outside of assigned shifts. Plaintiff
14 cannot simply rely on a review of records to establish liability (a much easier way to show
15 common issues). Plaintiff needs the right testimony from a sufficient number of workers to
16 establish this claim. Seeking this testimony is complicated by the realities of the workforce.

17 Defendant employs both union and non-union employees. Uriarte Dec. ¶ 13. Union
18 employees represent about eighty-seven percent of SCM. *Id.* Union employees work in
19 seventeen different Foundry departments, each with unique practices that have developed in
20 response to the specific work performed, and with numerous different supervisors. *Id.* It would
21 be necessary to seek testimony from workers across the different departments, who labored
22 under different department-specific practices and supervisors, in order to attain the right
23 representative testimony. This will be very difficult considering the group at hand, and it may
24 lead the Court to determine that obtaining sufficient testimony from putative class members is
25 unmanageable. *See, Duran v. U.S. Bank National Assn.* (2014) 59 Cal.4th 1, 33. (“In general,
26 when a trial plan incorporates representative testimony and random sampling, a preliminary
27 assessment should be done to determine the level of variability in the class....If the variability is
28

1 too great, individual issues are more likely to swamp common ones and render the class action
2 unmanageable.”)

3 Secondly, while Plaintiff felt supported by some SCM because eight of them agreed to
4 provide declarations, Defendant was able to attain fifty-one declarations in support of its
5 defense. Uriarte Dec. ¶ 12. This presents the strong possibility that Plaintiff’s claims may only
6 be shared by a small subsection of the workforce. If this reasonable suspicion is true, then his
7 likelihood of certifying a class may be very low. At best, he may be able to certify a small
8 subclass of employees, drastically reducing the potential class damages.

9 b. Meal and Rest Period Violations (COA nos. 3 and 4)

10 Plaintiff’s remaining core claims relate to meal and rest period violations. In Plaintiff’s
11 view, while Defendant consistently provides meal and rest periods on a timely schedule for
12 SCM, he maintains that the breaks are actually non-compliant. Namely, Plaintiff argues that the
13 company consistently provides less than the required off-duty break time for both meal and rest
14 periods.

15 Plaintiff claims that SCM are shortchanged break time because their meal and rest
16 periods begin from the minute they are told to go on break and leave their position. However,
17 SCM cannot simply go on break right when they are told to do so by their supervisor. Similar to
18 the pre- and post-shift work problem, putative class members must do certain things to
19 disengage from work and commence their breaks; employees must leave their work position,
20 walk to the break area, take off at least some of their protective gear, and wash their hands to
21 begin a break. The time it takes them to prepare for their break should be counted as work time
22 because they are still under Defendant’s control. Similarly, just before their allotted break time
23 elapses, SCM must get their safety gear back on and head back to their work position.
24 Employees must be back at their post right after thirty minutes for meal periods or ten minutes
25 for rest periods per Plaintiff. Plaintiff’s declarants echo his experience as to meal and rest
26 periods.

27 Defendant takes issue with Plaintiff’s above characterizations. Defendant asserts that
28 employees in all departments receive meal and rest periods that are more generous than what is

1 required under the Labor Code. Defendant further maintains that the Foundry has multiple break
2 areas located throughout the facilities and provides employees with extra time (5 minutes to and
3 5 minutes from the break areas) at the beginning and end of meal and rest periods to exit the
4 production floor and walk to a break area. This extra time is intended to ensure that employees
5 have the opportunity to spend their meal and rest periods actually resting and not walking to or
6 from the production floor. Under this policy, employees receive 20-minute rest periods (20
7 minutes designated for rest and 10 minutes of walking time) and 40-minute meal periods (30
8 minutes unpaid and 10 minutes paid as walking time).

9 If proven, Plaintiff's allegations would present significant liability issues for Defendant
10 because "...an employer may not undermine a formal policy of providing meal breaks by
11 pressuring employees to perform their duties in ways that omit breaks." *Id. citing Cicairos v.*
12 *Summit Logistics, Inc.* (2005) 133 Cal. App. 4th 949, 962-63. *See also, e.g. Dilts v. Penske*
13 *Logistics, LLC* (S.D. Cal. 2010) 267 F.R.D. 625, 638 (court certified a break class based on
14 common proof of structural barriers to wage and hour compliance instead of proof of a single,
15 written policy). Furthermore, a recent California Supreme Court decision underscored the
16 importance of providing full and complete breaks to employees by prohibiting the rounding of
17 time punches for meal periods. *See, Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58, 61. It
18 is presumable in light of this that slightly reduced break times for other reasons outside of
19 rounding would also be unacceptable.

20 Despite these potential strengths, Plaintiff faces significant challenges. First of all,
21 Defendant's fifty-one declarants disagree with his allegations and instead believe they were
22 allotted adequate break times away from work. Worst of all, Defendant's PMK witness declares
23 that Defendant's walking time policy went into effect in October 2017, making employee meal
24 and rest periods longer⁶ than necessary.

25
26
27 ⁶ "Beginning in October 2017, the Foundry implemented a "walking-time" policy that provided non-
28 exempt hourly production employees with an additional paid 5-minutes at the beginning and end of each
meal and rest period...to enable them to travel from the production floor to one of 6 break rooms located
at the Foundry or to the parking lot, should employees so choose." Lowe Dec. ¶ 2.

1 Generally, it is difficult to prevail on class meal and rest period claims. Our state's
2 Supreme Court indicates that "[a]n employer's duty with respect to meal [and rest] breaks is an
3 obligation to **provide** [breaks] to its employees." *Brinker Rest. Corp. v. Superior Court* (2012)
4 53 Cal. 4th 1004, 1040 (emphasis added). For example, meal breaks are provided when an
5 employer "relieves its employees of all duty, relinquishes control over their activities and
6 permits them a reasonable opportunity to take an uninterrupted 30-minute break, and does not
7 impede or discourage them from doing so." *Id.* The "provide" standard, however, does not
8 mean that employers have to police breaks; they merely must give an opportunity or a chance
9 to go on break.

10 More than likely, Plaintiff would only prevail on his meal and rest period claims by
11 successfully arguing that the nature of the work in combination with pressure exerted by
12 supervisors forced shortened breaks. The Court may or may not find this convincing,
13 especially considering Defendant's assertion that employee break times were extended in
14 October 2017.

15 2. Further Litigation Would Be Lengthy and Complex

16 Class actions are complex cases by definition, and this lawsuit presents its own set of
17 potential difficulties. Plaintiff's counsel believes the risks associated with further litigation are
18 substantial. Uriarte Dec. ¶ 14. For example, the following are just some of the risks considered:
19 (1) the Court could refuse class certification entirely; (2) the Court could refuse to certify
20 Plaintiff's ancillary claims due to the "good faith dispute" defense, significantly reducing any
21 potential damages;⁷ (3) if Plaintiff attains certification in whole or in part, Defendant may attain
22 decertification after post-certification discovery or if Plaintiff is unable to arrive at a convincing
23 class trial plan; (4) even if Plaintiff achieves and maintains class certification and later succeeds
24 at trial, Defendant could successfully appeal any judgment attained by Plaintiff; and (5) further
25 progression of this case would lead to increased expenses and hours worked by Plaintiff's
26

27 ⁷ See, e.g., *Maldonado v. Epsilon Plastics, Inc.* (2018) 22 Cal.App.5th 1308, 1323-1324 (acknowledging
28 the good faith dispute defense as to waiting time penalties); *Lopez v. UPS* (N.D. Cal. Mar. 1, 2010) 2010
U.S. Dist. LEXIS 26072, 29-30 (stating that a good faith dispute is a defense to wage statement
violations).

counsel and such increases would reduce future recoveries and not necessarily lead to increased gains. *Id.*

3. Plaintiff and His Counsel Carefully Investigated the Claims at Hand and Scrutinized the Settlement’s Value Against the Long-Term Value of the Case

Plaintiff and his counsel strongly believe the proposed settlement is in the best interests of SCM considering the realities at hand, which include significant hurdles like class certification, post-certification discovery, class trial plan design and approval, trial, and potential appeals. Uriarte Dec. ¶ 6; *See, Rodriguez v. West Pub’l Corp.* (9th Cir. 2009) 563 F.3d 948, 965 (courts have long deferred to the judgment of counsel when approving class settlements so long as they are experienced and well-informed).

Plaintiff was presented with the opportunity for early mediation in this case. Uriarte Dec. ¶ 3. Plaintiff’s counsel recommended early mediation under the right circumstances to conserve resources in favor of an efficient resolution. *Id.* The right circumstances for Plaintiff entailed receiving sufficient information prior to mediation to properly investigate Plaintiff’s class claims. *Id.* Defendant complied and provided: (1) anonymized putative class member timesheets; (2) a corresponding summary of payroll records; (3) a putative class list with names and contact information pursuant to the Protective Order entered in this case and pursuant to the Court’s Order of February 8, 2022; (4) an employment handbook and the two CBA agreements applicable to the period of June 23, 2017, through the date of the mediation; and (5) numerical data regarding the size of the class and the number of workweeks worked by the putative class members from June 23, 2017, forward. AGMT ¶ 4.

Courts typically analyze the reasonableness of the settlement amount in view of the following: “it is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements. [A] proposed settlement is thus not to be judged against a hypothetical or speculative measure of what *might* have been achieved...rather the very essence of a settlement is...a yielding of absolutes and an abandoning of highest hopes. The fact that a proposed settlement may only amount to a fraction of the

1 potential recovery does not, in and of itself, mean that the proposed settlement is grossly
2 inadequate and should be disapproved.” *Officers for Justice*, 688 F.2d at 625; *Linney v. Cellular*
3 *Alaska Partnership* 151 F.3d 1234, 1242 (9th Cir. 1998). *See also Selk v. Pioneers Memorial*
4 *Healthcare District* (S.D. Cal. 2016) 159 F.Supp.3d 1164, 1175 (“...although the payouts to
5 individual plaintiffs are small, the certainty of recovery helps prevent the additional damage that
6 would befall plaintiffs if the case proceeds and is ultimately resolved against them.”) *citing*
7 *Glass v. UBS Fin. Serv., Inc.*, No. C–06–4068, 2007 WL 221862, at *4 (N.D. Cal. Jan. 26,
8 2007), *aff’d* 331 Fed. Appx. 452 (9th Cir.2009).

9 a. Net Settlement Fund

10 The NSF is projected to be \$1,290,150. This means that SCM would receive
11 approximately \$4,433.51 each on average (NSF divided by the total number of SCM).
12 Individual payments will be issued *pro rata* based on individual workweeks during the Class
13 Period. AGMT ¶ 12(e). Accordingly, someone who worked about five years for Defendant
14 during the Class Period, or about two hundred and fifty workweeks, will receive approximately
15 \$9,653.62. Plaintiff submits that this is a very favorable recovery for hard-working hourly
16 workers who earned or earn approximately \$1,100.80 per week before taxes (the average pay
17 rate here is \$27.52 per hour, and the aforementioned figure assumes a 40-hour workweek). In
18 other words, the average recovery here of \$4,433.51 represents about four weeks of wages,
19 while the high-end recovery of 9,653.62 represents nearly nine weeks of wages. This is an
20 excellent recovery in Plaintiff’s view.

21 b. Best-Case Scenario Recovery

22 Moreover, the amount attained through settlement is an acceptable proportion of
23 Plaintiff’s best-case scenario recovery, which has been adjusted down by seventy-five percent to
24 account for Plaintiff’s likelihood of total success in light of the numerous litigation hurdles
25 ahead. Plaintiff’s counsel performed a damages analysis prior to the mediation using the
26 informal discovery information provided by Defendant and the critical information gathered
27 during numerous interviews with SCM. Uriarte Dec. ¶ 15.

1 Plaintiff's counsel interviewed dozens of SCM but only about one-fourth provided
2 declarations (eight people in total). *Id.* Certain interviewees declined to sign declarations
3 because of their status as current employees. *Id.* However, Plaintiff's counsel asked each
4 interviewee for an estimate regarding how many off-the-clock minutes he or she worked per
5 shift. *Id.* Plaintiff's counsel then took an average of those estimates, and it equates to 23.159
6 unpaid minutes per shift. *Id.*

7 Approximately sixty-two percent of SCM work or worked five 8-hour shifts per week.
8 Uriarte Dec. ¶ 16. Sixty-two percent of the total workweeks number (33,411) provided by
9 Defendant is 20,715. Uriarte Dec. ¶ 4. Five shifts per week with 23.159 unpaid minutes per shift
10 equals 116 unpaid minutes per week. 116 unpaid overtime minutes equals \$79.82 based on the
11 relevant average pay rate here of \$27.52 (\$79.82 is a time and a half rate to be clear). \$79.82 per
12 week multiplied by 20,715 weeks equals \$1,653,471.30.

13 Approximately thirty-eight percent of the putative class works or worked four 10-hour
14 shifts per week. Uriarte Dec. ¶ 16. Thirty-eight percent of our total workweeks number is
15 12,696. Four shifts per week with 23.159 unpaid minutes per shift equals 93 unpaid minutes per
16 week. 93 unpaid overtime minutes equals \$63.99 based on average pay rate. \$63.99 per week
17 multiplied by 12,696 equals \$812,417.04. The grand total of projected unpaid wages is therefore
18 \$2,465,888.34.

19 A similar analysis was done to gauge maximum meal and rest period damages. As
20 mentioned directly above, there are 20,715 workweeks for 8-hour workers and 12,696 for 10-
21 hour workers. The average pay rate is \$27.52. 8-hour workers have five shifts per week. Five
22 multiplied by \$55.04 (one hour for meal periods and another hour for rest periods) is \$275.20.
23 \$275.20 multiplied by 20,715 equals \$5,700,768. Similarly, for 10-hour workers who only work
24 four shifts per week, you multiply \$55.04 by 4 to get \$220.16. \$220.16 multiplied by 12,696
25 equals \$2,795,151.36. The total here is \$8,495,919.36, aggressively assuming that every meal
26 and rest period provided by Defendant represented a violation. The grand total for all core claim
27 damages is therefore \$10,961,807.70.
28

1 c. Adjusted Maximum Damages

2 Without any reasonable adjustment down, the gross settlement value of \$2,000,000
3 represents 18.2% of maximum core claim damages. Plaintiff submits that this percentage, in and
4 of itself, is a favorable result. Yet, he maintains that an adjustment down to account for
5 likelihood of success is reasonable and appropriate.

6 Plaintiff estimates that his chances of a total success are about twenty-five percent.
7 Twenty-five percent of \$10,961,807.70. is \$2,740,451.93. Significantly, the matter is pre-
8 certification. Plaintiff faces serious hurdles ahead. The main one being attaining and
9 maintaining class certification status through trial. In order to do so, Plaintiff would likely have
10 to hire a class action expert to develop an acceptable trial plan. Plaintiff would then have to
11 convince the Court that class action treatment is preferable here considering all factors at hand.
12 This is no small feat, and would considerably increase litigation costs (reducing any future
13 recovery).

14 The NSF (\$1,290,150) represents 47.1% of maximum damages when they are adjusted
15 down as described above. Even better, the gross settlement amount of \$2,000,000 is 73% of
16 adjusted maximum damages. As such, Plaintiff feels confident that the settlement represents a
17 fantastic deal for SCM.

18 Plaintiff recognizes that his best-case scenario recovery would also potentially include
19 additional moneys for wage statement violations, waiting time penalties, PAGA penalties, and
20 interest. However, courts have not required a focus on escalated damages that accompany core
21 violations (for example “treble damages” in antitrust cases) when evaluating the value of
22 specific claims for settlement approval purposes. Instead, the way the settlement compensates
23 for “actual injuries” is the greater concern. *Rodriguez v. West Publ’g Corp.* (9th Cir. 2009) 563
24 F.3d 948, 964-965.

25 **4. The Proposed Notice Plan Meets Applicable Due Process Standards**

26 SCM will receive notice of the proposed settlement and all of its details in English and
27 Spanish via First Class Mail. The Notice Form includes information about the final approval
28 hearing along with information concerning the right of SCM to exclude themselves from the

1 settlement or object to its terms. *See generally*, Exhibit “B” attached to Uriarte Dec.

2 The Court has discretion to order notice that it deems appropriate pursuant to guidance
3 provided by the Rules of Court. CRC 3.769(f) (“If the court has certified the action as a class
4 action, notice of the final approval hearing must be given to the class members in the manner
5 specified by the court. The notice must contain an explanation of the proposed settlement and
6 procedures for class members to follow in filing written objections to it and in arranging to
7 appear at the settlement hearing and state any objections to the proposed settlement.”).

8 Courts agree that class notice procedures “must fairly apprise the class members of the
9 terms of compromise and the options open to dissenting class members.” *Trotsky v. Los Angeles*
10 *Fed. Sav. & Loan Assoc.*, 48 Cal.App.3d 134, 151-52 (1975). An appropriate notice is one that
11 has a reasonable chance of reaching class members. *Cartt v. Superior Court*, 50 Cal.App.3d
12 960, 974 (1975). Class notice should strike a balance between thoroughness and the need to
13 avoid unduly complicating its content and confusing class members. *Wershba*, 91 Cal.App.4th
14 at 252. Generally, “notice is satisfactory if it...describes the terms of the settlement in sufficient
15 detail to alert those with adverse viewpoints to investigate and to come forward and be heard.”
16 *Churchill Village, LLC v. General Electric* 361 F.3d 566, 575 (9th Cir. 2004) (internal
17 quotations omitted).

18 The proposed notice procedures meet the criteria detailed above. They fully, clearly, and
19 neutrally apprise SCM of the essential terms and conditions of the settlement without over
20 complication. They describe the nature of the claims in suit and the Parties’ respective positions.
21 Lastly, they properly advise the recipients that they have the right to exclude themselves from or
22 object to the settlement, and the procedures for doing so. In short, the proposed Notice
23 “communicate[s] the essentials of the proposed settlement in a sufficiently balanced, accurate
24 and informative way to satisfy due process concerns.” *Rodriguez* 563 F.3d at 963.

25 **B. The Class Should Be Conditionally Certified for Settlement Purposes**

26 Parties to a class action suit may negotiate a proposed settlement prior to obtaining class
27 certification. *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 240 (2001)
28 (“precertification settlements are...routinely approved if found to be fair and reasonable”) *citing*

1 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011 (9th Cir. 1998); *Mars Steel Corp. v. Continental*
2 *Illinois Nat'l Bank & Trust Co.*, 834 F.2d 677 (7th Cir. 1987); *In re Beef Industry Antitrust*
3 *Litigation*, 607 F.2d 167 (5th Cir. 1979).

4 When a class has not been certified by the court prior to a stipulated settlement, as here,
5 the class may be conditionally or provisionally certified for settlement purposes only. *In re*
6 *Wireless Facilities, Inc.*, 253 F.R.D. 630, 633 (S.D.Cal. 2008) *citing* *Molski v. Gleich*, 318 F.3d
7 937 (9th Cir. 2003). The traditional prerequisites for certification are still used to determine
8 whether conditional certification of the proposed class should be granted. *Id.* Plaintiff moves to
9 conditionally certify the following Settlement Class:

10 **Proposed Settlement Class**

11 **All current and former California non-exempt hourly**
12 **employees of Defendant who worked at any time from June 23,**
13 **2017, through the date of Preliminary Approval (“the Class**
14 **Period”).**

15 “A class action should be certified only if it will provide substantial benefits both to the
16 courts and the litigants.” *Washington Mutual Bank v. Superior Court* 24 Cal.4th 906, 914
17 (2001). Section 382 of the Code of Civil Procedure authorizes class suits in California when the
18 question is one of a common or general interest, of many persons, or when the parties are
19 numerous, and it is impracticable to bring them all before the court. *Id.* at 913 (internal
20 quotations omitted). In other words, a well-defined “community of interest” must be
21 established, and to do so, the proponent of certification must show “that questions of law or fact
22 common to the class predominate over the questions affecting the individual members.” *Id.*

23 The Proposed Settlement Class satisfies the criteria outlined directly above because the
24 questions at hand are of common interest to approximately two hundred ninety-one SCM, and it
25 would be impracticable to bring them all before the court. AGMT ¶ 12(k). As such, certification
26 would greatly benefit all involved. It would allow SCM to positively resolve their individual
27 disputes quickly and satisfactorily, and it would save the Court valuable resources by merging
28 many potential, relatively small lawsuits that might otherwise be filed against Defendant
containing nearly identical claims.

1 **1. Commonality is Satisfied**

2 The following are important common questions that apply to the litigation at hand: (1)
3 whether Defendant's time and pay policies led SCM to work without pay due to required and
4 compensable pre- and post-shift tasks; (2) whether SCM were shortchanged meal and rest
5 period time due to practices promulgated by Defendant's supervisors; (3) whether Defendant's
6 policy or practice to break premiums adequately remediated all instances where breaks were not
7 provided; (4) whether Defendant knowingly and intentionally issued inaccurate wage statements
8 in connection with Plaintiff's core claims; and (5) whether Defendant owe waiting time
9 penalties to separated employees due to the wage and hour violations discussed herein.

10 **2. Numerosity is Satisfied**

11 A showing that joinder of putative class members is merely difficult or inconvenient is
12 sufficient to satisfy numerosity; a showing that joinder is impossible is not required. *Hanlon* at
13 150 F.3d 1119. Based on the information and records provided by Defendant, the Settlement
14 Class consists of approximately two hundred ninety-one members. AGMT ¶ 12(k). This size
15 easily satisfies the numerosity requirement.

16 **3. Typicality is Satisfied**

17 Plaintiff's claims are typical when compared to those of other SCM. "Under Rule 23's
18 permissive standards [which, as mentioned above, influence CCP § 382 class certification
19 jurisprudence], representative claims are 'typical' if they are reasonably coextensive with those
20 of absent class members." *Huberman v. Tag-It Pacific Inc.*, 314 Fed. Appx. 59, 62 (9th Cir.
21 2009).

22 This litigation does not involve alleged harms that are unique to Plaintiff. On the
23 contrary, Plaintiff claims that he and SCM experienced the exact same wage and hour
24 violations. Plaintiff and SCM are all non-exempt, hourly-paid employees subject the same wage
25 and hour company policies and practices promulgated and managed by Defendant. Plaintiff
26 complains of actions or inactions taken by Defendant specifically as they relate to these policies
27 and practices. Plaintiff and SCM share the same causes of action and theories of recovery, and
28 they may be answered by Defendant using common defenses.

1 **4. Predominance and Superiority Are Satisfied**

2 Under federal law, parties seeking class certification must show that the designation is
3 maintainable under FRCP 23(b)(1), (b)(2), or (b)(3). *Amchem Prods. v. Windsor*, 521 U.S. 591,
4 614 (1997); Fed. R. Civ. P. 23(b). Rule 23(b)(3), which requires the predominance of common
5 questions and for the class action device to be the superior method of controversy adjudication,
6 is most applicable here because Plaintiffs seeks class-wide monetary relief. While not strictly
7 required under CCP § 382, FRCP 23(b)(3) compliance is routinely considered when evaluating
8 class certification for California state law cases like the instant action. *See e.g., Rosack v. Volvo*
9 *of America Corp.*, 119 Cal.App.3d 554 (1981) (discussing how Rule 23 jurisprudence is
10 persuasive but not binding in California state court).

11 Common questions of law and fact predominate here because Plaintiff is challenging
12 Defendant’s alleged company-wide practice of only paying putative class members for their
13 assigned shifts. *See, e.g. Bibo v. FedEx, Inc.*, 2009 U.S. Dist. LEXIS 37597, 24-27 (N.D. Cal.
14 Apr. 21, 2009 (relevant policies or practices which lead to common questions of law or fact
15 indicate predominance).

16 Representative adjudication is superior here because SCM would avoid bearing
17 significant legal costs that could minimize their potential recoveries if they desire to sue
18 Defendant. Class treatment is far superior to hundreds of smaller, individual claims “[w]here
19 damages suffered by each putative class member are not large.” *Id.*

20 It is extremely desirable to concentrate the instant claims in this forum because it
21 facilitates economies of time, effort, and scale. Additionally, uniformity of decision is promoted
22 while ensuring procedural fairness. Since Defendant has provided records related to the harms
23 complained of, calculations can be performed from an individual standpoint so that recoveries
24 are commensurate with the amount of work performed by SCM. As such, a class action is the
25 superior method of adjudication.

26 **5. Representation of the Settlement Class is Adequate**

27 Plaintiff and his counsel further assert that they are adequate representatives for the
28 Settlement Class. FRCP 23(a)(4), which is commonly applied as a standard in CCP § 382 cases,

1 requires that class representatives “fairly and adequately protect the interests of the class.” Fed.
2 R. Civ. P. 23(a)(4). The adequacy of representation requirement “depends on the qualifications
3 of counsel for the representatives, an absence of antagonism, a sharing of interests between
4 representatives and absentees, and the unlikelihood that the suit is collusive.” *Molski v.* 318 F.3d
5 at 955 (9th Cir. 2003).

6 The adequacy of representation requirement is satisfied here. Plaintiff represents that he
7 understands his obligations as a class representative. Uriarte Dec. ¶ 17. He knows that taking a
8 position antagonistic to the interests of the Settlement Class is forbidden, and has actively
9 avoided doing so. *Id.* Furthermore, he has dedicated his time and effort in effectively
10 representing the interests of the Settlement Class by retaining competent counsel and working to
11 secure the instantly proposed settlement. *Id.* Plaintiff’s counsel is indeed highly qualified,
12 experienced in class action litigation, and more than capable of managing this litigation and
13 settlement. Uriarte Dec. ¶¶ 18-30.

14 VI. CONCLUSION

15 For all reasons stated herein, Plaintiff respectfully requests that the Court grant
16 preliminary approval of the proposed settlement, grant conditional certification of the proposed
17 settlement class, approve the proposed notice and claim procedures, appoint Simpluris, Inc. as
18 the Settlement Administrator, and set the matter for final approval hearing.

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20 Respectfully Submitted,

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23 Dated: May 10, 2022

24 _____
25 Arlo Garcia Uriarte
26 Liberation Law Group, P.C.
27 Attorneys for Plaintiff
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