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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 FINAL APPROVAL OF CLASS
ACTION SETTLEMENT**

Hearing Date: October 12, 2022

Hearing Time: 10:00 A.M.

Reservation ID: 643240879409

Dept.: 21

Action Filed: June 23, 2021

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

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Table of Contents

I.	INTRODUCTION	1
II.	CASE BACKGROUND	3
III.	OVERVIEW OF THE SETTLEMENT AGREEMENT	4
IV.	THE NOTICE PROCESS.....	7
V.	FINAL SETTLEMENT APPROVAL IS APPROPRIATE	7
A.	Class Action Settlements Are Favored; Applying Analogous Federal Law in State Court is Appropriate.	7
B.	Class Action Settlements Should Be Fair, Reasonable, and Adequate.....	8
C.	All Relevant Factors Weigh in Favor of Final Approval.....	9
1.	The Parties Reached the Proposed Settlement After Arm’s Length Negotiations Before an Elite Mediator.....	10
2.	Significant Investigation Supports the Recommendation of the Settlement	10
3.	Class Counsel is Experienced and Endorses the Settlement.....	11
4.	Class Member Reaction Has Been Very Positive.....	12
5.	The Strengths and Weaknesses of Plaintiff’s Claims Have Been Carefully Considered	13
6.	Further Litigation Would Be Lengthy and Complex.....	19
7.	Plaintiff and His Counsel Carefully Investigated the Claims at Hand and Scrutinized the Settlement’s Value Against the Long-Term Value of the Case.....	19
D.	The Recommended PAGA Resolution is Appropriate	23
E.	The Court Approved Notice Plan will be Executed Satisfactorily Satisfying Due Process Standards.....	24
F.	The Court Should Confirm its Certification of the Class	25
V.	CONCLUSION.....	26

Table of Authorities

Cases

<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> , 85 Cal.App.4th 1135 (2000)	7
<i>Artus v. Gramercy Towers Condo. Ass'n</i> , No. A161265, 2022 WL 949799 (Cal. Ct. App. Mar. 30, 2022)	23
<i>Ayala v. Antelope Valley Newspapers, Inc.</i> (2014) 59 Cal. 4th 522,	16
<i>Bell v. Farmers Ins. Exchange</i> (2004) 115 Cal.App.4th 715.....	8
<i>Cellphone Termination Fee Cases</i> (2009) 180 Cal. App. 4th 1110.....	8
<i>Churchill Village, LLC v. General Electric</i> 361 F.3d 566 (9th Cir. 2004).....	25
<i>Cicairos v. Summit Logistics, Inc.</i> (2005) 133 Cal. App. 4th 949	18
<i>City of San Jose v. Superior Court</i> (1974) 12 Cal.3d 447	8
<i>Clark v. Am. Residential Servs. LLC</i> (2009) 175 Cal. App. 4th 785	11
<i>Custom LED, LLC v. eBay, Inc.</i> , 2014 U.S. Dist. LEXIS 87180 (N.D. Cal. June 24, 2014)	12
<i>Dilts v. Penske Logistics, LLC</i> (S.D. Cal. 2010) 267 F.R.D. 625	18
<i>Donohue v. AMN Services, LLC</i> (2021) 11 Cal.5th 58.	18
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794, 1800-01	1, 8, 9, 10
<i>Duran v. U.S. Bank National Assn.</i> (2014) 59 Cal.4th 1	16
<i>Foster v. Advantage Sales & Mktg., LLC</i> , No. 18-CV-07205-LB, 2019 WL 6699793 (N.D. Cal. Dec. 9, 2019).....	24
<i>Frlekin v. Apple Inc.</i> (2020) 8 Cal. 5th 1038	15
<i>In re Microsoft I-V Cases</i> (2006) 135 Cal.App.4th 706	9
<i>In re Pacific Enters. Sec. Litig.</i> , 47 F.3d 373 (9th Cir. 1995).....	12
<i>Jones v. Agilysys, Inc.</i> , 2014 U.S. Dist. LEXIS 68562 (N.D. Cal. May 19, 2014).....	12
<i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal.App.4th 116.....	2, 9
<i>Linney v. Cellular Alaska Partnership</i> , 151 F.3d 1234 (9th Cir. 1998)	20
<i>Lopez v. UPS</i> , 2010 U.S. Dist. LEXIS 26072 (N.D. Cal. Mar. 1, 2010)	19
<i>Lowe v. Popcornopolis LLC</i> , No. CV196984PSGRAOX, 2020 WL 5991509 (C.D. Cal. July 8, 2020)	24

1	<i>Moniz v. Adecco USA, Inc.</i> (2021) 72 Cal. App. 5th 56	23
2	<i>Moore v. Fitness Int'l, LLC</i> , No. 3:12-CV-1551-LAB-NLS, 2014 WL 12571448 (S.D. Cal. Jan.	
3	22, 2014)	24
4	<i>Officers for Justice v. Service Comm’n of City and County of San Francisco</i> , 688 F.2d 615 (9th	
5	Cir. 1982)	8, 9, 20
6	<i>Pilkington v. Cardinal Health, Inc., (In re Syncor ERISA Litig.)</i> 516 F.3d 1095 (9th Cir. 2008)..	
7		8
8	<i>Rodriguez v. West Pub’l Corp.</i> , 563 F.3d 948 (9th Cir. 2009)	10, 20
9	<i>Roe v. Jose Torres L.D. Latin Club Bar, Inc.</i> , No. 19-CV-06088-LB, 2020 WL 5074392 (N.D.	
10	Cal. Aug. 27, 2020).....	24
11	<i>Rosales v. El Rancho Farms</i> , 2015 U.S. Dist. LEXIS 95756 (E.D. Cal. July 21, 2015).....	12
12	<i>Trotsky v. Los Angeles Fed. Sav. & Loan Assoc.</i> (1975) 48 Cal.App.3d 134.....	25
13	<i>Van Bronkhorst v. Safeco Corp.</i> 529 F.2d 943 (9th Cir. 1976)	8
14	<i>Vasquez v. Superior Court</i> (1971) 4 Cal.3d 800	8
15	<i>Viceral v. Mistras Grp., Inc.</i> , 2016 WL5907869 (N.D. Cal. 2016).....	23
16	<i>Weinberber v. Kendrick</i> , 698 F.2d 61 (2d Cir. 1982)	11
17	Other Authorities	
18	Newberg on Class Actions (4th ed. 2002)	9
19	Rules	
20	Cal. Lab. Code § 90.5.....	23
21	Cal. Lab. Code § 2699.....	supra
22	California Rule of Court, Rule 3.769.....	8

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Settlement Class

All current and former California non-exempt hourly employees of Defendant who worked at any time from June 23, 2017, through July 20, 2022 (“the Class Period”). Excluded from the Settlement Class are employees who submit a timely and valid Request for Exclusion (as defined by the Agreement, § 12(e)).

¹ “Polites Dec.” means the declaration of Cassandra Polites. Ms. Polites is employed by Simpluris, Inc. (hereinafter “Settlement Administrator”) as the Project Manager for this settlement administration. Polites Dec. ¶ 1. Her declaration is attached as Exhibit “B” to the Declaration of Arlo Uriarte (hereinafter “Uriarte Dec.”) in support of this motion and Plaintiff’s motion for Final Approval, which is filed concurrently herewith.

³ The Notice Period expires in just one week on September 24, 2022. Plaintiff will submit a supplemental declaration with the Settlement Administrator's final report on September 25, 2022.

1 (1996) 48 Cal. App. 4th 1794, 1802; *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th
2 116, 133.

3 Defendant has agreed to fund the settlement in exchange for a limited release from
4 SCM. Plaintiff describes the release as limited because it only applies to the wage and hour
5 claims that were alleged in his Complaint, or those that could have been alleged therein based
6 on the facts, causes of action, or legal theories brought by Plaintiff. *See*, AGMT⁴ ¶ 12(k)(ii).
7 This is an important feature of the settlement because it means SCM are permitted to pursue
8 unrelated claims against Defendant if they so choose.

9 If the settlement receives final approval, SCM will automatically receive checks by mail
10 because claims are not required. AGMT ¶ 12(e). Crucially, SCM are set to receive significant
11 cash payments, approximately **\$4,744.22**⁵ each on average. Polites Dec. ¶ 14. Individual
12 settlement payments will be calculated *pro rata* based on SCM workweeks within the Class
13 Period; this means that the longest tenured employees will receive the most. For example, the
14 Settlement Administrator projects the highest payment to any one SCM to be **\$8,405.54**. *Id.*

15 Plaintiff submits that this is a very favorable recovery for hard-working hourly workers
16 who earned or earn about \$1,100.80 per week before taxes (the average pay rate here is \$27.52
17 per hour, and the aforementioned figure assumes a 40-hour workweek). In other words, the
18 average recovery here of \$4,744.22 represents over a month of wages, while the high-end
19 recovery of \$8,405.54 represents nearly eight weeks of wages. Plaintiff and Class Counsel⁶
20 respectfully submits that SCM are best served by the instantly proposed settlement rather than
21 by further litigation and the ensuing substantial risks.

23 ⁴ The Joint Stipulation of Class Action Settlement or “Agreement” along with the Amendment to
24 Stipulation of Settlement (all abbreviated “AGMT”) are attached as Exhibit “A” to Uriarte Dec.

25 ⁵ This is calculated by assuming a Net Settlement Fund of \$1,356,846.52 (gross settlement amount
26 minus the requested deductions described below) and dividing it by two hundred eighty-six (286)
Settlement Class Members (the number provided by Defendant to the Settlement Administrator).

27 ⁶ “Class Counsel” refers to Arlo Garcia Uriarte of Liberation Law Group, P.C., as appointed by the Court
28 in its order granting preliminary approval.

II. CASE BACKGROUND

Plaintiff was employed by Defendant first from 2006 to 2009 and later from 2014 until April 2021. Plaintiff held different positions for Defendant throughout his employment tenures; his last job was as an apprentice in the mechanical department where he repaired and maintained various machinery found in Defendant's foundry.

Plaintiff initiated this lawsuit on June 23, 2021. The Complaint contains the following causes of action: (1) unpaid wages; (2) unpaid overtime compensation; (3) meal period violations; (4) rest break violations; (5) wage statement violations; (6) waiting time penalties; (7) civil penalties under the Private Attorney General Act ("PAGA"), Cal. Lab. Code §§ 2698, et seq.; and (8) unfair competition (Cal. Bus. & Prof. Code § 17200). Causes of action five through eight are ancillary to causes of action one through four (causes of action one through four are referred to herein as "Plaintiff's Core Claims").

The Parties agreed to this proposed settlement after extensive arms-length negotiations during an in-person mediation session with Jeffrey A. Ross, which occurred on March 9, 2022. Uriarte Dec. ¶ 3. Mr. Ross is a very well-regarded mediator with significant employment law class and representative action experience. *Id.* The Parties agreed to mediate before exchanging and responding to formal discovery requests. Uriarte Dec. ¶ 4. The impetus behind this approach was to conserve time (an efficient settlement gets putative settlement class members recompensed as quickly as possible) and resources (less money spent on litigation likely means more money available to fund a settlement). *Id.* Plaintiff would only agree to mediate prior to formal discovery if Defendant would provide enough information in advance of the session so that Plaintiff's negotiations could be well informed. *Id.*

In or around November 2021, the Parties met and conferred on an informal information exchange so that Plaintiff and his counsel could thoroughly investigate the factual and legal basis of Plaintiff's putative class claims. *Id.* Defendant 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

1 CBA agreements applicable to the period of June 23, 2017, through the date of the mediation;
2 and (5) numerical data regarding the size of the class and the number of workweeks worked by
3 the putative class members from June 23, 2017, forward. Uriarte Dec. ¶ 5; AGMT ¶ 4.

4 On July 20, 2022, the Court granted preliminary approval of the proposed settlement.
5 Plaintiff now moves for final approval and an award of attorney's fees, costs, and plaintiff's
6 enhancement.

7 **III. OVERVIEW OF THE SETTLEMENT AGREEMENT**

8 The Agreement entails a \$2,000,000 non-reversionary gross settlement fund from which
9 the following deductions are requested: (1) \$600,000 in attorney's fees for Class Counsel (30%
10 of the gross settlement amount); (2) \$10,618.38 in accrued litigation costs for Class Counsel; (3)
11 \$4,000-\$7,500⁷ in settlement administration fees for the Settlement Administrator; (4) a
12 representative enhancement award to Plaintiff equaling \$5,000; and (5) a \$25,000 PAGA
13 allocation (\$18,750 of this allocation must go to the LWDA, per Cal. Lab. Code § 2699(i), while
14 the remainder is for SCM who worked during the PAGA Period). AGMT ¶ 12(d). All remaining
15 funds (*i.e.*, the "Net Settlement Fund") are to be automatically distributed *pro rata* to SCM
16 because claims are not required. AGMT ¶ 12(e).

17 There are approximately two hundred eighty-six (286) SCM. Polites Dec. ¶ 5. The
18 Settlement Administrator provided initial individual settlement payment calculations⁸ on the
19 notice forms sent to putative SCM, so that all would be aware of what they approximately stand
20 to collect should the settlement receive final approval. Polites Dec. ¶ 4. SCM were given the
21 option to dispute their individual workweeks through the Settlement Administrator if they
22 believed an error was made. AGMT ¶ 12(i). To date, no one has lodged such a dispute. Polites

24 ⁷ Plaintiff provides a range here because Simpluris, Inc. provided two different capped-fee bids for two
25 different possible scenarios. As further explained below, a second distribution of checks may be required
26 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.

27 ⁸ The Settlement Administrator used the following formula to estimate individual settlement payments:
28 "Individual Workweeks (as a percentage of total workweeks by all Settlement Class Members during the
Class Period) x Net Settlement Amount." AGMT ¶ 12(e)(ii).

Dec. ¶ 10. The projected amounts provided to SCM should only increase because Plaintiff's requested deductions are \$66,696.52 less than projected⁹ for preliminary approval, increasing the Net Settlement Fund estimate from \$1,290,150 to \$1,356,846.52.

SCM will receive either one or two settlement checks each. AGMT ¶ 12(e)(iii). A second settlement check will only be necessary if ten percent or more of the Net Settlement Fund remains unnegotiated; if less than ten percent remains unnegotiated, the Parties agree that the outstanding amount should be awarded to a Court-approved *cy pres* designee. *Id.* Specifically, the Parties selected La Raza Centro Legal as the residual beneficiary. *See*, Exhibit "A", Amendment to Stipulation of Settlement ¶ 2. Plaintiff supported this selection, as required by the Court, when he filed Class Counsel's Supplemental Declaration on June 22, 2022, which included the aforementioned amendment to the Agreement.

As explained above, the Net Settlement Fund (sometimes abbreviated "NSF") is now projected to be \$1,356,846.52. This means that SCM should receive approximately \$4,744.22 each on average (NSF divided by two hundred eighty-six (286) total SCM). Polites Dec. ¶ 14. This represents a meaningful and important 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 Defendant's policies and practices have either changed to improve wage and hour compliance or been clearly re-communicated to its hourly employees. As part of this settlement, Defendant provided a declaration from a person most

⁹ The bulk of the difference here is due to the fact that Plaintiff is now requesting 30% in fees on behalf of Class Counsel instead of the 33.33% that is allowed under the Agreement because 30% is the Court's benchmark for fees. Plaintiff also requests slightly less in costs than the \$15,000 allowed by the Agreement.

1 knowledgeable regarding the aforementioned. AGMT ¶ 12(f). Specifically, Defendant provided a
2 declaration from Michael Lowe, “currently the President of AB&I Foundry (the “Foundry”)
3 located in Oakland, California.”¹⁰ Lowe Dec. ¶ 1. Mr. Lowe has declared, among other things,
4 that:

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

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

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

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

¹⁰ The Declaration of Michael Lowe (“Lowe Dec.”). was attached as Exhibit “C” to Uriarte Dec as part of Plaintiff’s Preliminary Approval papers.

1 Therefore, Plaintiff's lawsuit has not only secured significant cash recoveries for SCM in
2 exchange for an appropriately limited release, but has led Defendant to re-examine its wage and
3 hour policies and practices going forward. This is a laudable outcome. The alternative to this
4 proposed settlement would be an intense and protracted litigation, which of course comes with
5 uncertain outcomes. Plaintiff and his counsel confidently assert that this settlement is fair,
6 reasonable, and adequate. Uriarte Dec. ¶ 6.

7 **IV. THE NOTICE PROCESS**

8 On August 10, 2022, the Settlement Administrator mailed the Court-approved notice
9 forms to putative SCM. Polites Dec. ¶ 6. The response deadline is September 24, 2022. *Id.*
10 Defendant provided that there are two hundred eighty-six (286) putative SCM. Polites Dec. ¶ 5.
11 Out of two hundred eighty-six (286) initial mailings, only fourteen (14) were initially returned as
12 undeliverable. Polites Dec. ¶ 8. In reaction to this, the Settlement Administrator performed an
13 advanced address search on all undeliverable addresses using Accurint. *Id.* Updated addresses
14 were ascertained through this process, and notice forms were re-mailed. *Id.* Thirteen (13) of the
15 fourteen (14) were successfully re-mailed and delivered; therefore, only a single notice form
16 remains undeliverable. *Id.* This is clearly a very high percentage of successful mailings.

17 Most importantly, to date, the Settlement Administrator has received zero objections and
18 zero requests for exclusions. Polites Dec. ¶¶ 9, 11. This suggests that putative SCM not only
19 have no issue with the settlement but are likely very supportive of it and are eager to collect their
20 individual settlement payments. The fact that there are no objections or opt-outs is a testament to
21 the fairness and reasonableness of the proposed settlement. It vindicates the Court's preliminary
22 approval decision.

23 **V. FINAL SETTLEMENT APPROVAL IS APPROPRIATE**

24 **A. Class Action Settlements Are Favored; Applying Analogous Federal Law in** 25 **State Court is Appropriate.**

26 Numerous courts have agreed that especially for class action litigation, "voluntary
27 conciliation and settlement are the preferred means of dispute resolution." *7-Eleven Owners for*
28 *Fair Franchising v. Southland Corp.* (2000) 85 Cal. App. 4th 1135, 1151, *quoting Officers for*

1 *Justice v. Service Comm’n of City and County of San Francisco* (9th Cir. 1982) 688 F.2d 615,
2 625. *See also, Pilkington v. Cardinal Health, Inc., (In re Syncor ERISA Litig.)* (9th Cir. 2008)
3 516 F.3d 1095, 1101; *Van Bronkhorst v. Safeco Corp.* (9th Cir. 1976) 529 F.2d 943, 950 (“there
4 is an overriding public interest in settling and quieting litigation,” and this is “particularly true
5 in class action suits.”).

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

15 **B. Class Action Settlements Should Be Fair, Reasonable, and Adequate**

16 “A settlement or compromise of an entire class action...requires the approval of the
17 court after hearing.” California Rule of Court, rule 3.769. Specifically, “a two-step process is
18 required. First, the court preliminarily approves the settlement, and the class members are
19 notified as directed by the court...Second, the court conducts a final approval hearing to inquire
20 into the fairness of the proposed settlement...If the court approves the settlement, a judgment is
21 entered with provision for continued jurisdiction for the enforcement of the judgment.”
22 *Cellphone Termination Fee Cases* (2009) 180 Cal. App. 4th 1110, 1118, *quoting* California
23 Rule of Court, rule 3.769.

24 While trial courts have “broad discretion” to determine whether class action settlements
25 are fair, the inquiry “must be limited to the extent necessary to reach a reasoned judgment that
26 the agreement is not the product of fraud or overreaching by, or collusion between, the
27 negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to
28 all concerned.” *Cho v. Seagate Technology Holdings, Inc.* (2009) 177 Cal. App. 4th 734, 742-

743, *quoting Officers for Justice*, 688 F.2d at 624. *See also, Dunk v. Ford Motor Company* (1996) 48 Cal. App. 4th 1794, 1801 (whether a proposed settlement is “fair, adequate, and reasonable” is the paramount concern).

Indeed, due regard should be given to what is otherwise a private consensual agreement. *In re Microsoft I-V Cases* (2006) 135 Cal.App.4th 706, 723. Because all together, “the [trial] court’s determination is nothing more than ‘an amalgam of delicate balancing, gross approximations and rough justice.’” *Dunk*, *supra* at 1801, *quoting Officers for Justice*, 688 F.2d at 624. *See also, Wershba v. Apple Computer* (2001) 91 Cal. App. 4th 224, 246 (“The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved had plaintiffs prevailed at trial.”). Plaintiff submits that the proposed settlement was carefully crafted after significant investigation and protracted negotiations. Moreover, Plaintiff strongly feels that the deal is fair and in the best interests of SCM. The Court should have no hesitation granting final approval.

C. All Relevant Factors Weigh in Favor of Final Approval

As discussed in Plaintiff’s motion for preliminary approval, the following “well-recognized factors” are typically considered when evaluating the reasonableness of a proposed settlement. This list “is not exhaustive and should be tailored to each case”: (1) the strength of plaintiffs’ case; (2) the risk, expense, complexity and likely duration of further litigation; (3) the risk of maintaining class action status through trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members to the proposed settlement. *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128, *citing Dunk* 48 Cal.App.4th at 1801; Newberg on Class Actions, §§ 11:41, 11:43, 13:68 (4th ed. 2002).

Now that the proposed settlement has been preliminarily approved and the notice process has nearly been successfully completed, the Court should grant final approval because the settlement is indeed fair, reasonable, and adequate as required by applicable law. *Cho, supra* at 742-743. 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 are experienced in similar litigation; and (4) the percentage of objectors is small. *Dunk, supra* at 1802.

1. The Parties Reached the Proposed Settlement After Arm's Length Negotiations Before an Elite Mediator

The Parties participated in a full-day, in-person mediation session with one of the most well-respected mediators in California's San Francisco Bay Area, Jeffrey A. Ross. Uriarte Dec. ¶ 3. Mr. Ross courteously accommodated Defendant's request to hold the mediation in person in lieu of the now typical virtual mediation session brought about by the Covid-19 pandemic. *Id.* Despite being held in Monterey, CA, Plaintiff attended and even arrived the day before in order to finalize preparations with Class Counsel. Generally, the Parties methodically outlined their positions for Mr. Ross before and during the mediation. *Id.* Mr. Ross managed to settle the matter in principle that day, and the Parties executed a memorandum of understanding. *Id.*

Plaintiff negotiated from a position of strength and knowledge because he insisted upon detailed pre-mediation informal discovery from Defendant. Uriarte Dec. ¶¶ 4-5. After the key terms of a potential deal were agreed to, the Parties negotiated the Agreement over multiple weeks. Uriarte Dec. ¶ 3. This took some time because there were several disagreements that needed fleshing out. Plaintiff submits that the Parties advocated for their respective positions fiercely and at arm's length.

2. Significant Investigation Supports the Recommendation of the Settlement

Substantial informal discovery and information exchange took place before the Parties reached a deal. Uriarte Dec. ¶¶ 4-5. Counsel for Plaintiff believes the proposed settlement is in the best interests of Plaintiff and SCM considering the realities at hand, including significant hurdles like class certification, post-certification discovery, class trial plan design and approval, trial, and potential appeals. Uriarte Dec. ¶ 6. *See also, 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).

1 Prior to mediation, Class Counsel required key information from Defendant to facilitate
2 good-faith settlement discussions; Defendant produced the following items: (1) anonymized
3 putative class member timesheets; (2) a corresponding summary of payroll records; (3) a
4 putative class list with names and contact information pursuant to the Protective Order entered
5 in this case and pursuant to the Court's Order of February 8, 2022; (4) an employment
6 handbook and the two CBA agreements applicable to the period of June 23, 2017, through the
7 date of the mediation; and (5) numerical data regarding the size of the class and the number of
8 workweeks worked by the putative class members from June 23, 2017, forward. Uriarte Dec. ¶
9 5; AGMT ¶ 4.

10 Class Counsel analyzed all records in-house, including a detailed analysis of putative
11 class member timesheets and corresponding payroll records. Uriarte Dec. ¶ 5. Class Counsel,
12 with assistance from Plaintiff, spent substantial hours interviewing putative class members to
13 confirm and gain more information about Plaintiff's allegations. *Id.* These interviews were very
14 valuable and helped enlighten Class Counsel's negotiating position for the mediation process.
15 Class Counsel was not only able to succeed at mediation by obtaining important declarations
16 from SCM who worked in different departments under distinct supervisors, but the investigation
17 helped inform Plaintiff and Class Counsel about the potential challenges ahead. *Id.*

18 **3. Class Counsel is Experienced and Endorses the Settlement**

19 Class Counsel submits that given the constraints and realities of the case and his
20 significant class action experience, the Parties have been able to arrive at a settlement that is
21 fair, reasonable, adequate, and in the best interests of SCM. Uriarte Dec. ¶ 6. Generally, courts
22 should rely upon the judgment of experienced counsel when assessing the adequacy of proposed
23 class action settlements. *Clark v. Am. Residential Servs. LLC* (2009) 175 Cal. App. 4th 785, 786
24 ("A court should give considerable weight to the competency and integrity of counsel and the
25 involvement of a neutral mediator in assuring itself that a class action settlement agreement
26 represents an arm's-length transaction entered without self-dealing or other potential
27 misconduct."); *Weinberber v. Kendrick* (2d Cir. 1982) 698 F.2d 61, 74 ("The court is entitled to
28 rely heavily on the assessment of able counsel negotiating at arms' length...When a settlement

1 is achieved through arms-length negotiations between experienced counsel, the court should be
2 hesitant to substitute its own judgment for that of counsel absent a showing of fraud, collusion
3 or other forms of bad faith.”). *See also, Rodriguez v. W. Publ’g Corp.* (9th Cir. 2009) 563 F.3d
4 948, 965 (courts have long deferred to the judgment of counsel when approving class
5 settlements so long as they are experienced and well-informed); *In re Pacific Enters. Sec. Litig.*,
6 47 F.3d 373, 378 (9th Cir. 1995) (“Parties represented by competent counsel are better
7 positioned than courts to produce a settlement that fairly reflects each party’s expected outcome
8 in litigation.”).

9 Class Counsel has substantial class action experience, specifically regarding actions
10 involving the application of California’s wage and hour laws. Uriarte Dec. ¶¶ 19-28. Class
11 Counsel’s experience renders him qualified to evaluate the class claims and defenses at hand.
12 Counsel is confident that the proposed settlement meets all applicable requirements of
13 California law, and given the unique circumstances present, it is in the best interests of the
14 Settlement Class. Uriarte Dec. ¶ 6.

15 **4. Class Member Reaction Has Been Very Positive**

16 The reaction of the Settlement Class clearly supports final approval. No one has
17 objected, and no one has requested exclusion. Polites Dec. ¶¶ 9, 11. Numerous courts have
18 found settlement terms to be presumably fair when there is an absence or even a low percentage
19 of objectors. *Carter v. City of Los Angeles* (2014) 224 Cal.App.4th 808, 820, *citing Dunk,*
20 *supra*, 48 Cal.App.4th at p. 1802. *See also, Custom LED, LLC v. eBay, Inc.* (N.D. Cal. June 24,
21 2014) 2014 U.S. Dist. LEXIS 87180, *16; *Jones v. Agilysys, Inc.* (N.D. Cal. May 19, 2014)
22 2014 U.S. Dist. LEXIS 68562, *6-7; *Rosales v. El Rancho Farms* (E.D. Cal. July 21, 2015), *43
23 (absence of objections raises a strong presumption that the terms of a proposed settlement are
24 favorable to the class members). Class Counsel, and sometimes Plaintiff under his counsel’s
25 guidance, has been in communication with certain putative SCM who have asked questions
26 about the Notice Form or the settlement. Class Counsel has endeavored to provide the right
27 guidance to putative SCM whenever possible. Plaintiff submits that these efforts have been
28 important in ameliorating possible objections or requests for exclusion.

1 **5. The Strengths and Weaknesses of Plaintiff's Claims Have Been**
2 **Carefully Considered**

3 The factors detailed above indicate that the proposed settlement is presumptively fair.
4 There are other key factors that confirm the fairness, adequacy, and reasonableness of the deal.
5 For instance, Plaintiff carefully considered the strengths and weaknesses of his claims prior to
6 and during mediation before agreeing to the proposed settlement. Plaintiff's Core Claims have
7 distinct strengths and weaknesses as analyzed below.

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

9 1. *Background Information and the Parties' Respective*
10 *Positions*

11 From the beginning of the Class Period through the company's timekeeping policy
12 change which took place in May 2022, Defendant did not require SCM to track their hours
13 worked using a timeclock. Lowe Dec. ¶ 3. Defendant has explained that in the late 1990s, the
14 Foundry elected to stop using timeclocks; largely, this was meant to symbolize open
15 communications, trust, and integrity between the company and its employees. Instead of
16 tracking each minute worked, Defendant argues that it elected to credit employees with their
17 assigned shift hours, whether they arrived late, left early, or took extra meal/rest period time.
18 Departmental supervisors were tasked with verifying that employees were paid properly. The
19 crux of Plaintiff's lawsuit takes issue with the ramifications of this past system.

20 Plaintiff claims that the Foundry's time and pay policies led employees to work several
21 minutes before and after their assigned shifts without compensation. Plaintiff argues that per
22 Defendant's supervisors, he and his co-workers were expected to be engaged in their specific
23 work duties from the minute their assigned shift starts until the minute their assigned shift ends.
24 The resulting problem being that it was not possible for most employees to simply arrive on
25 premises and get right to work. The Foundry's employees work alongside large production
26 machinery and must protect themselves. To do this, they must arrive a few minutes before their
27 assigned shift, get their uniform on, don their personal protective equipment, and make their
28 way to their position. At the end of their shift, they must do the reverse, plus some employees

1 shower before leaving the Foundry. Plaintiff alleges that it is also common for many workers to
2 attend short safety or operational meetings just before their assigned shift begins. Plaintiff
3 maintains that Defendant failed to capture and pay for these pre- and post-shift work tasks.

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

16 2. *Plaintiff's Strengths*

17 First of all, in terms of strengths, Plaintiff has a strong argument that Defendant failed to
18 keep accurate timekeeping records, easing the road for his unpaid work allegations. California
19 law requires employers to accurately record employee work time and to pay employees for all
20 hours worked. *See*, 5 Cal. Code Regs., § 11010, subd. 7(A)(3) (employers must keep accurate
21 "[t]ime records showing when the employee begins and ends each work period"); 5 Cal. Code
22 Regs., § 11010, subd. 4(B) ("[e]very employer shall pay to each employee, on the established
23 payday for the period involved, not less than the applicable minimum wage for all hours worked
24 in the payroll period, whether the remuneration is measured by time, piece, commission, or
25 otherwise). Moreover, 'hours worked' means "...the time during which an employee is subject
26 to the control of an employer, and includes all the time the employee is suffered or permitted to
27 work, whether or not required to do so." *Id.* at subd. 2(G).

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

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

17 In terms of a third strength, Class Counsel interviewed dozens of SCM who shared that
18 they too performed pre- and post-shift tasks without pay. Uriarte Dec. ¶ 5. Class Counsel
19 obtained declarations from eight of these interviewees, which were very helpful during the
20 mediation. *Id.* The declarations provide some confirmation that work outside of assigned shifts
21 was a typical occurrence; it also confirms that numerous SCM support Plaintiff’s lawsuit.

22 3. Plaintiff’s Weaknesses

23 However, Plaintiff’s unrecorded and unpaid work claim also has significant weaknesses.
24 As a primary concern, it is not sufficient to establish that Defendant failed keep accurate time
25 records for its employees. Plaintiff must show that Defendant’s failure to accurately track time
26 worked commonly led SCM to work without pay. Plaintiff strongly believes that the unpaid
27 work commonly occurred, but is wary that establishing the fact on a class wide basis could be
28 quite difficult if the Court determines that too many individual determinations are required. *See,*

1 *Ayala v. Antelope Valley Newspapers, Inc.* (2014) 59 Cal. 4th 522, 539, 327 P.3d 165, 176
2 (individual issues render class certification inappropriate if they cannot be effectively managed).

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

9 Defendant employs both union and non-union employees. Union employees represent
10 about eighty-seven percent of SCM. Union employees work in seventeen different Foundry
11 departments, each with unique practices that have developed in response to the specific work
12 performed, and with numerous different supervisors. It would be necessary to seek testimony
13 from workers across the different departments, who labored under different department-specific
14 practices and supervisors, in order to attain the right representative testimony. This will be very
15 difficult considering the group at hand, and it may lead the Court to determine that obtaining
16 sufficient testimony from putative class members is unmanageable. *See, Duran v. U.S. Bank*
17 *National Assn.* (2014) 59 Cal.4th 1, 33. (“In general, when a trial plan incorporates
18 representative testimony and random sampling, a preliminary assessment should be done to
19 determine the level of variability in the class....If the variability is too great, individual issues
20 are more likely to swamp common ones and render the class action unmanageable.”)

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

27 ///

28 ///

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

2 1. *Background Information and the Parties' Respective*
3 *Positions*

4 Plaintiff's remaining Core Claims relate to meal and rest period violations. In Plaintiff's
5 view, while Defendant consistently provides meal and rest periods on a timely schedule for
6 SCM, he maintains that the breaks are actually non-compliant. Namely, Plaintiff argues that the
7 company consistently provides less than the required off-duty break time for both meal and rest
8 periods.

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

21 Defendant takes issue with Plaintiff's above characterizations. Defendant asserts that
22 employees in all departments receive meal and rest periods that are more generous than what is
23 required under the Labor Code. Defendant further maintains that the Foundry has multiple break
24 areas located throughout the facilities and provides employees with extra time (5 minutes to and
25 5 minutes from the break areas) at the beginning and end of meal and rest periods to exit the
26 production floor and walk to a break area. This extra time is intended to ensure that employees
27 have the opportunity to spend their meal and rest periods actually resting and not walking to or
28 from the production floor. Under this policy, employees receive 20-minute rest periods (20

1 minutes designated for rest and 10 minutes of walking time) and 40-minute meal periods (30
2 minutes unpaid and 10 minutes paid as walking time).

3 2. *Plaintiff's Strengths*

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

15 3. *Plaintiff's Weaknesses*

16 Despite these potential strengths, Plaintiff faces significant challenges. First of all,
17 Defendant's fifty-one declarants disagree with his allegations and instead believe they were
18 allotted adequate break times away from work. Worst of all, Defendant's PMK witness declares
19 that Defendant's walking time policy went into effect in October 2017, making employee meal
20 and rest periods longer¹¹ than necessary.

21 Generally, it is difficult to prevail on class meal and rest period claims. Our state's
22 Supreme Court indicates that "[a]n employer's duty with respect to meal [and rest] breaks is an
23 obligation to **provide** [breaks] to its employees." *Brinker Rest. Corp. v. Superior Court* (2012)
24 53 Cal. 4th 1004, 1040 (emphasis added). For example, meal breaks are provided when an
25 employer "relieves its employees of all duty, relinquishes control over their activities and

26 ¹¹ "Beginning in October 2017, the Foundry implemented a "walking-time" policy that provided non-
27 exempt hourly production employees with an additional paid 5-minutes at the beginning and end of each
28 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 permits them a reasonable opportunity to take an uninterrupted 30-minute break, and does not
2 impede or discourage them from doing so." *Id.* The "provide" standard, however, does not
3 mean that employers have to police breaks; they merely must give an opportunity or a chance
4 to go on break.

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

10 **6. Further Litigation Would Be Lengthy and Complex**

11 Class actions are complex cases by definition, and this lawsuit presents its own set of
12 potential difficulties. Class Counsel believes the risks associated with further litigation are
13 substantial. Uriarte Dec. ¶ 6. For example, the following are just some of the risks considered:
14 (1) the Court could refuse class certification entirely; (2) the Court could refuse to certify
15 Plaintiff's ancillary claims due to the "good faith dispute" defense, significantly reducing any
16 potential damages;¹² (3) if Plaintiff attains certification in whole or in part, Defendant may
17 attain decertification after post-certification discovery or if Plaintiff is unable to arrive at a
18 convincing class trial plan; (4) even if Plaintiff achieves and maintains class certification and
19 later succeeds at trial, Defendant could successfully appeal any judgment attained by Plaintiff;
20 and (5) further progression of this case would lead to increased expenses and hours worked by
21 Class Counsel and such increases would reduce future recoveries and not necessarily lead to
22 increased gains. *Id.*

23 **7. Plaintiff and His Counsel Carefully Investigated the Claims at Hand** 24 **and Scrutinized the Settlement's Value Against the Long-Term** 25 **Value of the Case**

26
27 ¹² 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).

1 Plaintiff and his counsel strongly believe the proposed settlement is in the best interests
2 of SCM considering the realities at hand, which include significant hurdles like class
3 certification, post-certification discovery, class trial plan design and approval, trial, and
4 potential appeals. Uriarte Dec. ¶ 6. *See, Rodriguez v. West Pub'l Corp.* (9th Cir. 2009) 563 F.3d
5 948, 965 (courts have long deferred to the judgment of counsel when approving class
6 settlements so long as they are experienced and well-informed).

7 Courts typically analyze the reasonableness of the settlement amount in view of the
8 following: “it is the very uncertainty of outcome in litigation and avoidance of wasteful and
9 expensive litigation that induce consensual settlements. [A] proposed settlement is thus not to
10 be judged against a hypothetical or speculative measure of what *might* have been
11 achieved...rather the very essence of a settlement is...a yielding of absolutes and an abandoning
12 of highest hopes. The fact that a proposed settlement may only amount to a fraction of the
13 potential recovery does not, in and of itself, mean that the proposed settlement is grossly
14 inadequate and should be disapproved.” *Officers for Justice*, 688 F.2d at 625; *Linney v. Cellular*
15 *Alaska Partnership* 151 F.3d 1234, 1242 (9th Cir. 1998). *See also Selk v. Pioneers Memorial*
16 *Healthcare District* (S.D. Cal. 2016) 159 F.Supp.3d 1164, 1175 (“...although the payouts to
17 individual plaintiffs are small, the certainty of recovery helps prevent the additional damage that
18 would befall plaintiffs if the case proceeds and is ultimately resolved against them.”) *citing*
19 *Glass v. UBS Fin. Serv., Inc.*, No. C-06-4068, 2007 WL 221862, at *4 (N.D. Cal. Jan. 26,
20 2007), *aff'd* 331 Fed. Appx. 452 (9th Cir.2009).

21 a. Net Settlement Fund

22 The Net Settlement Fund is now projected to be \$1,356,846.52 (*see*, 5:5-6 above). This
23 means that SCM would receive approximately \$4,744.22 each on average (NSF divided by the
24 total number of SCM). Polites Dec. ¶ 14. Individual payments will be issued *pro rata* based on
25 individual workweeks during the Class Period. AGMT ¶ 12(e). The Settlement Administrator
26 projects the highest individual recovery to be \$8,405.54. Polites Dec. ¶ 14. On the whole, this is
27 an excellent recovery in Plaintiff’s view. Class Counsel also finds this average recovery to be
28

1 much higher than the numerous recoveries he has seen in similar wage and hour class action
2 cases. Uriarte Dec. ¶ 6.

3 b. Best-Case Scenario Recovery

4 Additionally, the amount attained through settlement is an acceptable proportion of
5 Plaintiff's best-case scenario recovery, which has been adjusted down by seventy-five percent to
6 account for Plaintiff's likelihood of total success in light of the numerous litigation hurdles
7 ahead. Class Counsel performed a damages analysis prior to the mediation using the informal
8 discovery information provided by Defendant and the critical information gathered during
9 numerous interviews with SCM. Uriarte Dec. ¶ 8.

10 Class Counsel interviewed dozens of SCM but only about one-fourth provided
11 declarations (eight people in total). *Id.* Certain interviewees declined to sign declarations
12 because of their status as current employees. *Id.* However, Class Counsel asked each
13 interviewee for an estimate regarding how many off-the-clock minutes he or she worked per
14 shift. *Id.* Class Counsel then took an average of those estimates, and it equates to 23.159 unpaid
15 minutes per shift. *Id.*

16 Pursuant to Class Counsel's analysis of Defendant's informal discovery information,
17 approximately sixty-two percent of SCM work or worked five 8-hour shifts per week. *Id.* Sixty-
18 two percent of the total workweeks number (33,411) provided by Defendant is 20,715. Five
19 shifts per week with 23.159 unpaid minutes per shift equals 116 unpaid minutes per week. 116
20 unpaid overtime minutes equals \$79.82 based on the relevant average pay rate here of \$27.52
21 (\$79.82 is a time and a half rate to be clear). \$79.82 per week multiplied by 20,715 weeks
22 equals \$1,653,471.30.

23 Approximately thirty-eight percent of the putative class works or worked four 10-hour
24 shifts per week. *Id.* Thirty-eight percent of our total workweeks number is 12,696. Four shifts
25 per week with 23.159 unpaid minutes per shift equals 93 unpaid minutes per week. 93 unpaid
26 overtime minutes equals \$63.99 based on average pay rate. \$63.99 per week multiplied by
27 12,696 equals \$812,417.04. The grand total of projected unpaid wages is therefore
28 \$2,465,888.34.

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

10 c. Adjusted Maximum Damages

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

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

23 The NSF (\$1,356,846.52) represents 49.5% of maximum damages when they are
24 adjusted down as described above. Even better, the gross settlement amount of \$2,000,000 is
25 73% of adjusted maximum damages. As such, Plaintiff feels confident that the settlement
26 represents a fantastic deal for SCM.

27 Plaintiff recognizes that his best-case scenario recovery would also potentially include
28 additional moneys for wage statement violations, waiting time penalties, PAGA penalties, and

1 interest. However, courts have not required a focus on escalated damages that accompany core
2 violations (for example “treble damages” in antitrust cases) when evaluating the value of
3 specific claims for settlement approval purposes. Instead, the way the settlement compensates
4 for “actual injuries” is the greater concern. *Rodriguez v. West Publ’g Corp.* (9th Cir. 2009) 563
5 F.3d 948, 964-965.

6 **D. The Recommended PAGA Resolution is Appropriate**

7 Plaintiff submits that the proposed \$25,000 PAGA allocation is appropriate and
8 sufficient because the settlement overall, not just the allocation, helps to achieve PAGA’s chief
9 objective – to advance the state’s policy of vigorously enforcing minimum labor standards. Cal.
10 Lab. Code § 90.5. Notably, Plaintiff has led Defendant to re-examine its wage and hour policies
11 and practices for the better (*See*, 5:24-7:6 above).

12 Recently, our district’s Appellate Court shed further light on the PAGA settlement
13 approval standard: “[w]e therefore hold that a trial court should evaluate a PAGA settlement to
14 determine whether it is fair, reasonable, and adequate in view of PAGA’s purposes to remediate
15 present labor law violations, deter future ones, and to maximize enforcement of state labor
16 laws.” *Moniz v. Adecco USA, Inc.*, 72 Cal. App. 5th 56, 77, 287 Cal. Rptr. 3d 107, 127 (2021).
17 Furthermore, the *Moniz* court found the “abuse of discretion” standard appropriate when
18 reviewing trial court PAGA settlement approval decisions. *Id.* This means trial courts have wide
19 discretion to determine what is “fair, reasonable, and adequate in view of PAGA’s purposes”
20 because “abuse of discretion” means “a decision that exceeds the bounds of reason...or one that
21 is arbitrary, capricious, patently absurd, or even whimsical.” *Artus v. Gramercy Towers Condo.*
22 *Ass’n, No. A161265*, 2022 WL 949799, at *4 (Cal. Ct. App. Mar. 30, 2022) (internal quotations
23 omitted).

24 Here, we have a class settlement with a PAGA allocation. PAGA does not impose
25 specific requirements for a monetary allocation. Instead, the general principle is provided that
26 trial courts have the power to review and approve a proposed PAGA allocation that is part of a
27 class action settlement. Cal. Lab. Code § 2699(l).
28

Often, courts approve PAGA allocations that are a small fraction of the total settlement amount. For example, *Viceral v. Mistras Grp., Inc.* involved \$6,000,000 settlement and the court approved just a \$20,000 PAGA allocation. *Viceral v. Mistras Grp., Inc.*, 2016 WL5907869, at *8-9 (N.D. Cal. 2016). Moreover, a California state appellate court held that a “trial court did not abuse its discretion in approving a settlement which does not allocate any damages to the PAGA claims.” *Nordstrom Corn. Cases*, 186 Cal. App. 4th 576, 579 (2010).

The proposed monetary allocation or less (relative to the settlement total) has been commonly approved in numerous previous cases. See e.g., *Roe v. Jose Torres L.D. Latin Club Bar, Inc.*, No. 19-CV-06088-LB, 2020 WL 5074392, at *2–3 (N.D. Cal. Aug. 27, 2020) (\$2,000 PAGA allocation was approved in connection with a \$135,000 class settlement by this Court); *Lowe v. Popcornopolis LLC*, No. CV196984PSGRAOX, 2020 WL 5991509, at *9 (C.D. Cal. July 8, 2020) (the court found a \$20,000 PAGA allocation in connection with a \$500,000 class settlement reasonable); *Foster v. Advantage Sales & Mktg., LLC.*, No. 18-CV-07205-LB, 2019 WL 6699793, at *6 (N.D. Cal. Dec. 9, 2019) (this Court preliminarily approved a \$10,000 PAGA allocation in connection with a \$1,200,000 settlement); *Moore v. Fitness Int'l, LLC*, No. 3:12-CV-1551-LAB-NLS, 2014 WL 12571448, at *5 (S.D. Cal. Jan. 22, 2014) (\$2,500 PAGA allocation was approved in connection with a \$200,000 class settlement); *Franco v. Ruiz Food Prods.*, 2012 U.S. Dist. LEXIS 169057, *41-42 (E.D. Cal. 2012) (approving a \$2.5 million settlement with only a \$10,000 PAGA allocation); *Chu v. Wells Fargo Investments, LLC*, 2011 U.S. Dist. LEXIS 15821, 2011 WL 672645 at *1 (N.D. Cal. 2011) (approving an allocation of \$10,000 to settle PAGA claims out of a \$6.9 million common-fund settlement). Accordingly, the Court should have no hesitation approving the proposed PAGA allocation.

E. The Court Approved Notice Plan will be Executed Satisfactorily Satisfying Due Process Standards

Courts have broad discretion when ordering a notice plan as long as it meets the dictates of the California Rules of Court. CRC 3.769(f) (“If the court has certified the action as a class action, notice of the final approval hearing must be given to the class members in the manner specified by the court. The notice must contain an explanation of the proposed settlement and

procedures for class members to follow in filing written objections to it and in arranging to appear at the settlement hearing and state any objections to the proposed settlement.”).

Class notice procedures “must fairly apprise the class members of the terms of compromise and the options open to dissenting class members.” *Trotsky v. Los Angeles Fed. Sav. & Loan Assoc.*, (1975) 48 Cal. App. 3d 134, 151-52. Class notice should strike a balance between thoroughness and the need to avoid unduly complicating its content. *Wershba, supra* 91 Cal. App. 4th at 252. Generally, “notice is satisfactory if it...describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard.” *Churchill Village, LLC v. General Electric* (9th Cir. 2004) 361 F.3d 566, 575 (internal quotations omitted).

Here, the Court approved notice procedures have met all the aforementioned requirements. As previously determined by the Court, the relevant form contains all required information. Moreover, SCM will have had sufficient time to decide whether to opt-out or object to the settlement, forty-five days, by the time the response period expires on September 24, 2022. To date, as described herein, the notice process has gone extremely well and putative SCM reaction has been very positive. Class Counsel will update the Court with a final report after September 24, 2022 (notice period expiration). Plaintiff is confident that the ordered notice procedures will be realized in a manner that satisfies due process.

F. The Court Should Confirm its Certification of the Class

California Rule of Court, rule 3.769(d) provides: “[t]he court may make an order approving...certification of a provisional settlement class after the preliminary settlement hearing.” For the instant action, the Court provisionally certified the Settlement Class in its preliminary approval order on July 20, 2022. No subsequent event has occurred to cast doubt on the Court’s initial determination. As such, Plaintiff requests that the Court confirm its grant of class certification for settlement purposes only.

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V. CONCLUSION

For the reasons set forth above, and pursuant to Cal. Code Civ. P. § 382, Plaintiffs respectfully request that the Court grant final approval of the proposed Class Action Settlement and enter a final judgment intended to be a final disposition of this matter in its entirety.

Respectfully Submitted,



Dated: September 19, 2022

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