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7
8 **SUPERIOR COURT OF CALIFORNIA**
9
10 **FOR THE COUNTY OF SACRAMENTO**

11 AHMAD ZUBAIR HUSSAINI, individually
12 and on behalf of all other similarly situated
13 employees,

14 Plaintiff,

15 vs.

16 INTEGRATED RESOURCES, INC., a
17 California Corporation; SIEMENS
18 MOBILITY, INC., a Delaware Corporation;
and DOES 1 to 100, inclusive,

19 Defendants.

Case No. 34-2021-00297152

*Assigned for All Purposes to Hon. Jill H. Talley,
Department 25*

CLASS ACTION

**MEMORANDUM OF POINTS &
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Reservation No. 2662354

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I. INTRODUCTION AND OPENING SUMMARY OF ARGUMENT

Plaintiff Ahmad Zubair Hussaini (“Plaintiff”) seeks preliminary approval of a wage and hour class action and Private Attorneys General Act (“PAGA”) settlement in the gross amount of \$395,000. *See generally* Exhibit A (Joint Stipulation Regarding Class Action and PAGA Settlement and Release [“Agreement”]). Plaintiff brought this class action individually and on behalf of similarly situated employees who worked for Defendants Integrated Resources, Inc., and Siemens Mobility, Inc., (“Defendants”) (Plaintiff and Defendants sometimes collectively referred to as the “Parties”). There are approximately 1,051 Class Members. *See* Declaration of Justin P. Rodriguez (“Decl. Rodriguez”), ¶ 10. Plaintiff worked for Defendants in California from May 6, 2020, to July 11, 2020, and Plaintiff was subject to all the same policies and practices that are alleged to be unlawful in this litigation. *See generally* Exhibit B (Plaintiff’s Operative Complaint); Declaration of Ahmad Zubair Hussaini (“Decl. Hussaini”) ¶ 2.

Plaintiff has alleged that Defendants 1) failed to pay overtime wages, 2) failed to pay minimum wages, 3) failed to provide meal periods or pay premiums in lieu thereof, 4) failed to provide rest periods or pay premiums in lieu thereof, 5) failed to provide accurate wage statements, 6) failed to timely pay all final wages, 7) failed to reimburse employees for incurred expenses, and 8) engaged in unfair competition. *See generally* Exhibit B. Plaintiff has also alleged Defendants are liable for civil penalties under the PAGA based on these violations. *See id.*; Exhibit C (Plaintiff’s Ltr. to the Labor and Workforce Development Agency [“LWDA”] Regarding PAGA Claims). These violations primarily stem from Plaintiff’s allegations that Defendants violated California law by 1) failing to properly record and pay for all hours worked due to rounding and requiring off-the-clock work, 2) failing to authorize and permit timely meal periods and/or a second meal period and first, second, and third rest periods, 3) failing to pay meal and rest period premiums for missed, short, and late meal and rest periods, 4) failing to reimburse employees for expenses incurred for work, including but not limited to, personal cell phone use to track employees time as well as other work tasks and travel expenses required as part of the employees position, and 5) failing to pay daily overtime. The waiting time penalties, unfair competition, and PAGA claims are derivative of these violations. *See* Exhibit B. Plaintiff has contended that this is a meritorious class action lawsuit and that this case is appropriate for class

1 certification for settlement purposes as the requisites for class certification in this case can be satisfied.
2 *See* Exhibit B.

3 Defendants have denied all of Plaintiff's allegations in their entirety and any liability or
4 wrongdoing of any kind. *See* Decl. Rodriguez, ¶ 5. Defendants have denied that this case is
5 appropriate for class certification other than for purposes of settlement. *See id.* However, subject to
6 Court approval, the parties have been able to compromise and settle all asserted claims as a result of
7 extensive investigations, informal document and data exchanges, and extended negotiations relating to
8 all aspects of the asserted claims. *See* Exhibit A. Plaintiff's counsel is convinced that the proposed
9 Agreement is in the best interest of Class Members based on the discovery, investigations, negotiations,
10 and a detailed knowledge of the issues in this case. *See* Decl. Rodriguez, ¶¶ 6-10. The prospect of
11 potential class certification issues and the uncertainty of class certification, difficulties of complex
12 litigation, the lengthy process of establishing specific damages and various possible delays and appeals
13 were carefully considered by Plaintiff and Plaintiff's counsel in agreeing to the proposed Agreement.
14 *See id.*

15 It is well within the discretion of this Court to grant preliminary and conditional approval of the
16 Agreement, which satisfies all of the criteria for preliminary settlement approval under California law.
17 Accordingly, Plaintiff requests that the Court: (1) provisionally and conditionally certify the proposed
18 settlement class; (2) grant preliminary and conditional approval of the proposed Agreement (Exhibit
19 A); (3) approve the form and content of the Notice of Settlement (Exhibit F) and the method for
20 providing notice to Class Members as set forth in the Agreement; and (4) adopt the implementation
21 schedule contained in the proposed order, including the scheduling of a final approval hearing.

22 **II. PROCEDURAL AND LITIGATION HISTORY**

23 Plaintiff filed a class action complaint on approximately March 23, 2021, Sacramento County
24 Superior Court against Defendants. Plaintiff exhausted administrative remedies under the PAGA by
25 providing notice of the claims and violations to the LWDA. *See* Exhibit C; Cal. Lab. Code § 2699.3(a),
26 (c); Decl. Rodriguez, ¶ 3. Then, Plaintiff filed a First Amended Class Action Complaint on
27 approximately May 12, 2021, to include a PAGA claim. *See id.*; Exhibit B. There is no date set for a
28 motion for certification or trial in this matter. *See* Decl. Rodriguez, ¶ 4.

III. INVESTIGATION AND DISCOVERY CONDUCTED

Plaintiff thoroughly investigated issues affecting certification, the merits of the class claims, and potential damages for such claims. *See id.* at ¶¶ 3, 6-10. Plaintiff worked during the time all of Defendants' policies and practices at issue in the Complaint were in effect and provided information regarding these policies and practices, enabling pre-filing investigations to take place. *See Decl. Hussaini* ¶¶ 2, 3. The Parties engaged in informal discovery and exchange of documents, including a representative sampling of employee data, such as timecards, paystubs, payroll data, and relevant policies for the entirety of the statute of limitations applicable to the asserted claims. The discovery covered all aspects of the asserted claims, including certification issues, merits issues, damages, the scope and configuration of Class Members, the content and implementation of the wage and hour policies at issue, issues relating to manageability concerns at trial, among other relevant areas. *See Decl. Rodriguez*, ¶ 7. The information allowed Plaintiff to determine the extent and frequency of any violations in accordance with Plaintiff's contentions and create an accurate damages model to assess the reasonableness of any settlement. *See id.*

IV. NEGOTIATION AND PROPOSED SETTLEMENT

a. Plaintiff and Defendants Engaged in Extensive Arm's Length Negotiations

The final settlement occurred only after extended, and sometimes contentious, arm's length negotiations. Over the course of approximately two (2) years, Plaintiff has been investigating the claims and discussing with Defendants' counsel the merits of the claims and issues present in this case. *See id.* at ¶¶ 3, 6-10. The Parties exchanged substantial amounts of information and legal analysis in connection with these discussions. *See id.* It was only after these extended discussions, which included a full day mediation with Glenn E. Lerman and a mediator's proposal four months after the mediation, that the Parties were able resolve all claims and enter into the Agreement. *See id.* at ¶ 8.

b. The Terms of the Agreement

1. The following groups of individuals are covered by the Agreement: (a) Class Members, which include all non-exempt employees who have been, or continue to be, employed in California by Integrated Resources, Inc., at any time between March 23, 2017, up to either (1) the Preliminary Approval Date, or (2) 60 days after the Agreement is fully executed, whichever is earlier; and (b)

1 Aggrieved Employees, which include all non-exempt employees who have been, or continue to be,
2 employed in California by Integrated Resources, Inc., at any time between March 8, 2020 up to either
3 (1) the Preliminary Approval Date, or (2) 60 days after the Agreement is fully executed, whichever is
4 earlier. See Exhibit A, ¶¶ 1.2, 1.5, 1.6, 1.24. There are approximately 1,051 Class Members and
5 approximately 263 Aggrieved Employees. See Decl. Rodriguez, ¶ 10.

6 2. Defendants will pay the Gross Settlement Amount of \$395,000, which is exclusive of
7 the employer's share of payroll taxes. See *id.* at ¶ 5.1. No portion of the Gross Settlement Amount will
8 revert to Defendants. See *id.* at ¶ 5.6. Aggrieved Employees will still be paid their share of the PAGA
9 Payment regardless of whether they opt out of being Class Members. See *id.* at ¶¶ 7.5.1, 7.8.3.

10 3. Up to \$15,000 will be paid to Plaintiff as an Enhancement Payment. This amount will
11 be in addition to any amount Plaintiff may be entitled to under the terms of the Agreement. See *id.* at ¶
12 5.4.

13 4. Any Settlement Administrator Costs shall be paid from the Gross Settlement Amount.
14 Subject to Court approval, the Parties have selected ILYM Group, Inc. to act as the Settlement
15 Administrator, who has provided a maximum cost estimate of \$12,500. See Exhibit D (ILYM Group,
16 Inc. Quote); Exhibit A, ¶ 1.12. The difference between any actual Settlement Administrator Costs and
17 the \$20,000 allocated under the Agreement, if any, will be added to the Net Settlement Amount and
18 paid to Class Members on a pro rata basis. See Exhibit A, ¶ 5.3; Decl. Rodriguez, ¶ 19.

19 5. The Parties agree that \$10,000 of the Gross Settlement Amount shall be allocated to
20 resolving claims under the PAGA. Seventy-Five percent (75%) of the PAGA Payment will be paid to
21 the LWDA and Twenty-Five percent (25%) will be paid to Aggrieved Employees. See Exhibit A, ¶
22 5.5. Given the derivative nature of the penalties, the efforts by Defendants to maintain compliant
23 policies and take corrective action, the presence of what may likely be deemed good faith disputes, and
24 the Court's discretion to reduce any penalty award, Plaintiff believes the \$10,000 PAGA Payment
25 allocation represents a meaningful settlement aimed at deterring non-compliance given the facts of this
26 case. See Decl. Rodriguez, ¶ 10; see also *Davis v. Cox Commc'ns California, LLC*, 2017 U.S. Dist.
27 LEXIS 63514, *1 (S.D. Cal. 2017) (preliminarily approving \$4,000 PAGA allocation in \$275,000
28 settlement); *Jack v. Hartford Fire Ins. Co.*, 2011 U.S. Dist. LEXIS 118764, *6 (S.D. Cal. 2011)

1 (approving \$3,000 PAGA allocation in \$1,200,000 settlement); *Singer v. Becton Dickinson & Co.*,
2 2010 U.S. Dist. LEXIS 53416, *2 (S.D. Cal. 2010) (approving \$3,000 PAGA allocation in \$1,000,000
3 settlement); *Hopson v. Hanesbrands Inc.*, 2009 U.S. Dist. LEXIS 33900, *9 (N.D. Cal. 2009)
4 (approving \$1,500 PAGA allocation in \$1,026,000 settlement); *Garcia v. Gordon Trucking, Inc.*, 2012
5 U.S. Dist. LEXIS 160052, at *7 (E.D. Cal. 2012) (approving \$10,000 PAGA allocation in a \$3,700,000
6 settlement).

7 6. The Parties agree that up to thirty-five (35%) of the Gross Settlement Amount
8 (\$138,250) will be paid for Plaintiff's attorneys' fees incurred in the litigation of this case. Defendants
9 will not oppose any application for attorneys' fees so long as it is within this threshold. *See id.* at ¶ 5.2.
10 Additionally, the Parties agree that Plaintiff will also be entitled to the actual litigation costs as
11 approved by the Court in an amount not to exceed \$15,000. *See id.* The difference between any
12 awarded fees and costs and the allocated amounts will be redistributed to Class Members on a pro rata
13 basis. *See Exhibit A*, ¶ 5.2. The proposed notice to be sent to Class Members will state this
14 information. *See Exhibit F*.

15 7. Any Settlement Administrator Costs, any amounts paid for attorneys' fees and costs, the
16 Class Representative Enhancement Payment, and PAGA Payment will be paid out from the Gross
17 Settlement Amount, not in addition to the Gross Settlement Amount. *See Exhibit A*, ¶¶ 5.1-5.5.

18 8. Class Members who fail to timely opt-out of this settlement will waive all Qualified
19 Class Member's Released Claims as set forth in the Agreement. *See Exhibit A*, ¶¶ 1.5, 1.6, 1.28-1.29,
20 1.32, 6.1. Aggrieved Employees will waive all Released PAGA Claims as set forth in the Agreement
21 regardless of whether they opt out of being a Class Member. *See id.* at ¶¶ 1.2, 1.24, 1.31-1.32, 6.2,
22 7.5.1.

23 9. For any portion of the Gross Settlement Amount allocated to Qualified Class Members
24 and/or Aggrieved Employees that is not claimed by them by cashing their respective settlement checks
25 within 180 calendar days of issuance, that remaining amount shall be donated equally, *i.e.*, 50/50 to
26 Capital Pro Bono, Inc., and the Center for Workers' Rights under the doctrine of *cy pres*. *See Exhibit*
27 *A*, at ¶ 5.6. However, any monies Defendants deposited in the QSF that were necessary to satisfy
28 Defendants' respective tax obligations (e.g. employer FICA, FUTA and SDI contributions on wage

1 payments) on the unclaimed funds will be refunded to Defendants in accordance with their proportional
2 responsibility for those amounts and will not be a part of the *cy pres* distribution. Because the
3 Agreement provides for all funds such that there is no residue, the provisions of California Civil
4 Procedure Code section 384 are inapplicable. *See In re Microsoft I-V Cases*, 135 Cal.App.4th 706, 718
5 (2006). Notwithstanding this fact, the designated beneficiaries clearly promote the law consistent with
6 the objectives and purposes underlying the lawsuit. *See id.* at 723-724 (“The court's proper focus in
7 this context is not so much whether another type of distribution might be better, but the extent to which
8 the distribution, as proposed, is appropriately useful in fulfilling the purposes of the underlying cause of
9 action”). These organizations are non-profits aimed at assisting employees with wage and hour claims
10 who cannot afford legal representation, including providing representation for employees in wage
11 claims before the California Labor Commissioner. *See* Decl. Rodriguez, ¶¶ 22-24. Plaintiff's counsel
12 regularly volunteers for these organizations and, as such, can attest that they organizations fulfill the
13 purposes underlying the claims alleged in this lawsuit. *See id.* For these reasons, the proposed *cy pres*
14 distribution is appropriate.

15 **c. Allocation of Settlement Funds**

16 Payment to Qualified Class Members and Aggrieved Employees of their Individual Settlement
17 Amount will not require the submission of a claim form. A Net Settlement Amount will be determined
18 by subtracting from the Gross Settlement Amount any amounts for approved attorneys' fees and costs,
19 any Enhancement Payment to the Class Representative, the Settlement Administrator Costs, and the
20 PAGA Payment. Each Class Member's share will be determined by dividing their total weeks worked
21 within the Class Period by the total weeks worked by all Class Members within the Class Period. That
22 fraction will then be multiplied by the Net Settlement Amount to arrive at the Class Member's
23 individual share of the Net Settlement Amount. Each Aggrieved Employee's share of the 25% portion
24 of the PAGA Payment will be determined by dividing their total weeks worked within the PAGA
25 Period by the total weeks worked by all Aggrieved Employees within the PAGA Period. That fraction
26 will then be multiplied by the 25% portion of the PAGA Payment to arrive at the Aggrieved
27 Employee's individual share. *See* Exhibit A, at ¶¶ 1.16, 1.19, 1.23, 5.5, 5.8.

28 //

1 **V. ARGUMENT**

2 **a. Class Action Settlements are Subject to Court Review and Approval Under the**
3 **California Rules of Court**

4 A class action may not be dismissed, compromised, or settled without Court approval and the
5 decision to approve or reject a settlement is committed to the Court’s sound discretion. *See* Cal. Rules
6 of Court, Rule 3.769; Fed. R. Civ. Proc., Rule 23(e)¹; *Wershba v. Apple Computer, Inc.*, 91 Cal. App.
7 4th 224, 234-35 (2001); *see also* Cal. Lab. Code §§ 2699(l)(2) (requiring Court review of PAGA
8 settlements). However, courts should give “proper deference to the private consensual decision of the
9 parties,” since “the court’s intrusion upon what is otherwise a private consensual agreement negotiated
10 between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment
11 that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating
12 parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.”
13 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998). Where a settlement is reached on terms
14 agreeable to all parties, a court should disapprove of the settlement “only with considerable
15 circumspection.” *Jamison v. Butcher & Sherrerd*, 68 F.R.D. 479, 481 (E.D. Pa. 1975). The law favors
16 settlement of lawsuits, particularly class actions and other complex cases where substantial resources
17 can be conserved by avoiding the time, expense, and rigors of formal litigation. *See Neary v. Regents of*
18 *Univ. of Cal.*, 3 Cal. 4th 273, 277-81 (1992).

19 **b. The Terms of The Settlement Are Fair and Within the Range of Reasonableness**

20 The purpose of the Court’s preliminary evaluation of a proposed class action settlement is to
21 determine only whether the proposed settlement is within the range of possible approval and whether
22 notice to the class of its terms and conditions and the scheduling of a formal fairness hearing is
23 warranted. *See Wershba*, 91 Cal. App. 4th at 234-35. If the Court finds a proposed settlement falls
24 within “the range of reasonableness,” it should grant preliminary approval of the class action settlement.
25 *See, e.g., North County Contr. ’s Assn., Inc. v. Touchstone Ins. Svcs.*, 27 Cal. App. 4th 1085, 1089-90
26
27

28 ¹The California Supreme Court has authorized California’s trial courts to rely on these federal resources to decide class
 certification issues. *See Green v. Obledo*, 29 Cal.3d 126, 145-46 (1981).

(1994); *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 133 (2008). To make the fairness determination, the Court must consider several factors, including:

the strength of the Plaintiff's case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.

Dunk v. Ford Motor Co., 48 Cal. App. 4th 1794, 1801 (1996). However, this Court should begin its analysis with a presumption that the proposed settlement is fair. "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 1802; *see also In re Heritage Bond Litig.*, 2005 WL 1594403, at *10 (C.D. Cal. June 10, 2005) ("It is established that the absence of a large number of objectors to a proposed class action settlement raises a strong presumption that the terms of a proposed class settlement action are favorable to the class members").

i. The Settlement is a Result of Extensive, Non-Collusive Arm's Length Negotiations Between the Parties

Settlement of this case was reached only after substantial investigation, litigation, and extensive arm's length negotiations lasting nearly two (2) years, which included a full day mediation and resolution through a mediator's proposal, which occurred four (4) months after mediation. *See Decl. Rodriguez*, ¶¶ 3, 6-10. At all times, the negotiations were adversarial and contentious, although still professional in nature. *See id.*

ii. The Extent of Investigation and Discovery Completed Provided Ample Information to Enter Into an Informed and Reasonable Settlement

The Parties were in possession of all necessary information during the negotiations. The Parties engaged in substantial investigation and informal discovery, which included all necessary components for evaluating the class claims and creating an accurate damages model. *See id.* at ¶¶ 3, 6-10. Plaintiff was in possession of this information prior to calculating any damages in this case. *See id.* As a result, Plaintiff was able to make a reasonable estimation of Defendants' potential liability. *See id.* For these

1 reasons, the settlement now before the Court was reached at a stage where “the parties certainly have a
2 clear view of the strengths and weaknesses of their cases” sufficient to support the settlement. *See*
3 *Boyd v. Bechtel Corp.*, 485 F.Supp. 610, 617 (N.D. Cal. 1979).

4 **iii. Plaintiff’s Counsel are Experienced in Similar Litigation**

5 Plaintiff’s counsel have considerable experience in complex litigation such as class and PAGA
6 actions. *See* Decl. Rodriguez, ¶¶ 11-17. This experience makes them acutely aware of the risks of
7 complex litigation and the hurdles the claims may face if this matter proceeded to trial. *See id.* Thus,
8 Plaintiff’s counsel are qualified to evaluate the class claims, the value of settlement versus moving
9 forward with litigation, and viability of possible affirmative defenses. Plaintiff’s counsel believe that
10 the Agreement is fair, reasonable, and adequate in light of the risks associated with the PAGA claims,
11 the Court’s discretion to lower the amount of penalties ultimately awarded, the uncertainties of
12 complex litigation, and the secured benefit to the class. *See* Decl. Rodriguez, ¶¶ 6-10.

13 **iv. The Settlement is Fair, Reasonable, and Adequate Based on the Strength of**
14 **Plaintiff’s Case and the Risks and Costs of Further Litigation**

15 A review of the Agreement’s terms does not give rise to any doubts about its fairness. Based on
16 the records and facts of this case, Plaintiff has secured a gross recovery of approximately 5.6 % and a
17 net recovery of approximately 3% of the claims’ maximum likely value. *See id.* at ¶¶ 9-10.
18 Additionally, the average net award per class member is approximately \$196.72. *See id.* This
19 settlement is a reasonable compromise of the class and PAGA claims, and is within the percentile
20 ranges of the total available damages that have been approved in other class settlements. *See Wershba*,
21 91 Cal. App. 4th at 246, 250; *Rebney v. Wells Fargo Bank*, 220 Cal.App.3d 1117, 1139 (1990); *Officers*
22 *for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 628 (9th Cir. 1982); *see also In re Omnivision*
23 *Technologies, Inc.*, 559 F.Supp.2d 1036, 1042 (2007) (noting that certainty of recovery in settlement of
24 6% of maximum potential recovery after reduction for attorney’s fees was higher than median
25 percentage for recoveries in shareholder class action settlements, averaging 2.2%-3% from 2000
26 through 2002); *Bravo v. Gale Triangle, Inc.*, 2017 U.S. Dist. LEXIS 77714 (C.D. Cal. 2017) (approving
27 a settlement where the net recovery to class members was approximately 7.5% of the projected
28 maximum recovery amount); *Avila v. Cold Spring Granite Co.*, 2017 U.S. Dist. LEXIS 130878 (E.D.

Cal. 2017) (approving a settlement with a gross recovery of 11% of the projected maximum damages available and a net recovery of approximately 6.7% of the projected maximum recovery); *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245 (N.D. Cal. 2015) (approving a settlement where the gross recovery was approximately 8.5% of the projected maximum recovery).

v. The Proposed Settlement is a Reasonable Compromise of Claims

In *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116 (2008), the Court required additional information be presented in class action settlements “to ensure that the recovery represents a reasonable compromise, given the magnitude and apparent merit of the claims being released, discounted by the risks and expenses of attempting to establish and collect on those claims by pursuing the litigation” *Id.* at 129. *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal.App.4th 399 (2010), clarified that *Kullar* does not require an illusory prediction of the outer reaches of exposure without taking into account the actual risks of litigation such as dispositive motions and trial. *Kullar* also does not require an explicit statement of the maximum amount to be recovered if a plaintiff prevailed on all the claims, provided there is a record that allows “an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation.” *Id.* at 409. The *Munoz* court found the record before the trial court was sufficient, having included the number of class members, relevant payroll data, declarations describing hours and overtime worked, as well as variances in duties and rest and meal period experience, and a companion action alleging less than \$5,000,000 in damages. This information constituted “an adequate basis from which to garner a reasonably adequate understanding of the amount that is in controversy within the meaning of *Kullar*.” *Id.* Plaintiff similarly relied upon pay period data, payroll data, and Class Member data to determine the realistic potential damages suffered by the class as a whole. See Decl. Rodriguez ¶¶ 6-10. Further, while Plaintiff believes Defendants faced significant exposure, Defendant has contended that substantial barriers to class recovery exist. Specifically, Defendant contends Plaintiff would face numerous challenges to certify the class and bring the alleged claims on a class and representative basis. Defendants contend that Plaintiff’s claims were not suitable for class certification because individual issues and affirmative defenses would predominate should this case go to trial. See *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1051 (2012); *Duran v. U.S. Bank Nat. Assn.*, 59 Cal.4th 1, 35-36

(2014). Plaintiff disagrees with Defendants’ assertions; however, there is a risk that the Court may deny class certification, and, even if Plaintiff prevailed at class certification, proving the amount of wages owed to each Class Member would be an expensive, time consuming, and uncertain proposition.

Ultimately, Plaintiff secured a percentage of the total likely damages for the putative class that is well within the range of what has been found to be sufficient in several other cases. *See, supra*, Section V.c.iv; *see also, e.g., In re Omnivision Technologies, Inc.*, 559 F.Supp.2d at 1042; *Reed v. 1-800 Contacts, Inc.*, 2014 U.S. Dist. LEXIS 255 (S.D. Cal. 2014) (approving a settlement of \$11.7 million where the maximum range of damages was \$5,000 for each of the alleged 300,000 instances of unlawful recording violations (\$1.5 billion), equaling approximately .78% of the total demand and approximately \$800 per class member). The Agreement represents a reasonable compromise given the percentage of the potential damages that was secured, the average recovery per Class Member, the Court’s ability and discretion to cut PAGA penalties, Defendants’ legal and factual grounds for defending the action, and the uncertainty of class certification. *See Decl. Rodriguez ¶¶ 9-10.*

**vi. Attorneys’ Fees and Costs, Enhancement Payment, and Settlement
Administrator Costs To Be Requested In Connection With Final Approval**

Should the Court grant preliminary approval of the Agreement, Plaintiff will make a request in connection with the final approval briefing for attorney’s fees in the amount of \$138,250 (35% of the Gross Settlement Amount), costs in an amount not to exceed \$15,000, Settlement Administrator Costs in an amount not to exceed \$20,000, and an Enhancement Payment for the Class Representative in the amount of \$15,000. Plaintiff believes an award of attorney’s fees under the common fund doctrine is appropriate in this case. *See Boeing Co. v. Van Gemert*, 444 U.S. 472, 477-478 (1980) (“A lawyer who recovers a common fund for the benefit of persons other than . . . her client is entitled to a reasonable attorney’s fee from the fund as a whole.”); *Laffitte v. Robert Half Internat., Inc.*, 1 Cal.5th 480, 506 (2016). Similarly, Plaintiff believes the amounts to be requested for attorney’s fees and costs are within accepted ranges. Historically, attorneys’ fee awards in common fund cases in general range from 20% to 50% of the fund, depending on the circumstances of the case. *See Newberg on Class Actions*, (3rd Ed. 1992), §14.03 (finding 50% to be the upper limit). Awards ranging between 30% and 40% of the fund are generally approved as reasonable in representative litigation settlements below \$10 million.

1 See *Martin v. Ameripride Servs.*, 2011 U.S. Dist. LEXIS 61796, *22-23 (S.D. Cal. 2011) (collecting
2 cases); *Birch v. Office Depot, Inc.*, USDC Southern District, Case No. 06cv1690 DMS (WMC)
3 (awarding 40% fee on a \$16 million wage and hour class action settlement); *Rippee v. Boston Mkt.*
4 *Corp.*, USDC Southern District, Case No. 05cv1359 BTM (JMA) (awarding a 40% fee on a \$3.75
5 million wage and hour class action settlement). Similarly, the amounts to be requested for Settlement
6 Administrator Costs and an Enhancement Payment to the Class Representative are within accepted
7 ranges. See *West v. Circle K Stores, Inc.*, 2006 U.S. Dist. LEXIS 76558, at *7-*8, *12, *27 (E.D. Cal.
8 Oct. 19, 2006) (awarding a \$15,000 representative enhancement where 10,000 class members were to
9 receive a gross award of approximately \$500 each from the \$5,000,000 settlement); see *Dent v. ITC*
10 *Serv. Group*, 2013 U.S. Dist. LEXIS 139359, at *9-*10, *15-*16 (D. Nev. Aug. 6, 2013) (awarding a
11 \$15,000 representative enhancement out of a \$150,000 settlement for approximately 530 class
12 members); *Patel v. Nike Retail Services, Inc.*, 2019 WL 2029061 at *2 (N.D. Cal. 2019) (\$5,261 for
13 settlement administrator's fees was not excessive where PAGA group consisted of 40 employees).

14 The Notice of Settlement will state the amounts to be requested to provide Class Members the
15 ability to comment thereon, which will provide evidence of whether the requested amounts are
16 reasonable. See Exhibit F at pg. 2, § II.A; see also *In re Heritage Bond Litig.*, 2005 U.S. Dist. LEXIS
17 13555, 71 (C.D. Cal. 2005) (“the absence of objections or disapproval by class members to class
18 counsel's fee request further supports finding the fee request reasonable”). In connection with the final
19 approval briefing, Plaintiff will provide information to enable a lodestar cross check of the requested
20 fee, a detailed declaration from Plaintiff regarding their time spent on the case as well as any risks and
21 burdens incurred as the Class Representative, an updated itemized costs spreadsheet, and a declaration
22 from the Settlement Administrator detailing the work performed and Settlement Administrator Costs
23 incurred. See Decl. Rodriguez ¶ 18. Any allocated amounts not ultimately awarded by the Court will
24 be distributed to Class Members pro rata. See Exhibit A, ¶¶ 5.2-5.4, 5.8.

25 **c. The Proposed Notice Procedures Comply With Class Members' Due Process Rights**

26 It is not required that Class Members be given actual notice of class settlement; instead, “the
27 best practicable notice under the circumstances, including individual notice to all members who can be
28 identified through reasonable effort” is all that is required. See Fed. R. Civ. Proc. 23(c)(2)(b); *Silber v.*

1 *Mabon*, 18 F.3d 1449, 1453 (9th Cir. 1994); *Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121, 1129 (9th
2 Cir. 2017); *Walsh v. CorePower Yoga LLC*, 2017 U.S. Dist. LEXIS 163991, at *12-14 (N.D. Cal.
3 2017); *Wright v. Linkus Enters.*, 259 F.R.D. 468, 474-75 (E.D. Cal. 2009). In *Silber v. Mabon*, 18 F.3d
4 1449 (9th Cir. 1994), the Court rejected a class member's argument that he had not received due
5 process because he did not receive notice until after the opt out period, finding that, so long as the
6 notice process utilized is the best practicable under the circumstances, due process is satisfied even if
7 there is no actual receipt of the notice. See *Silber*, 18 F.3d at 1453-1454. A similar finding was made
8 in *Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121 (9th Cir. 2017), which further noted that those class
9 members who did not receive actual notice may still receive benefits from the settlement through a *cy*
10 *pres* distribution. See *Briseno*, 844 F.3d at 1129. With regard to any potential undeliverable Notice of
11 Settlement in this case, the Court in *Rannis v. Recchia*, 380 F. App'x 646 (9th Cir. 2010) found that
12 class members who did not receive actual notice due to their mailings being deemed undeliverable were
13 still properly held to be part of the class settlement because they received the best notice practicable
14 under the circumstances. See *Rannis v. Recchia*, 380 F. App'x at 650-651. In *Noel v. Thrifty Payless,*
15 *Inc.*, 7 Cal. 5th 955, 980-984 (2019), the California Supreme Court noted that California has adopted a
16 similar approach regarding providing notice to class members.

17 The notice method in *Rannis* is similar to that used in the present case. For example, the Notice
18 of Settlement contains all information necessary for a Class Member to assess the litigation, the
19 settlement, and whether they wanted to participate, object, or opt-out. See Exhibit F. The Settlement
20 Administrator will utilize a national change of address database, forwarding notices, and skip tracing in
21 an effort to ensure that all reasonable means were exhausted in attempting to provide Class Members
22 notice of this settlement. See Exhibit A, ¶¶ 7.1-7.4. Additionally, the entire motion for preliminary
23 approval and the Notice of Settlement will be on a web page accessible to all Class Members. See *id.* at
24 ¶ 7.2. The content of the notice provided and the manner in which it will be provided to Class
25 Members is the best practicable notice to satisfy due process. See Fed. R. Civ. Proc. 23(c)(2)(b).
26 Furthermore, as noted in *Briseno*, Class Members, including any whose Notice of Settlement are
27 deemed undeliverable, will receive indirect benefit through a *cy pres* distribution in this case. See
28 Exhibit A, ¶ 5.6.

1 **d. Provisional Certification of the Class is Appropriate**

2 Class certification is appropriate when (1) the class is ascertainable and (2) there is “a well-
3 defined community of interest in the questions of law and fact involved affecting the parties to be
4 represented.” *Dunk*, 48 Cal. App. 4th at 1806. The “community of interest” element “embodies three
5 factors: (1) common questions of law or fact predominate; (2) class representatives with claims or
6 defenses typical of the class; and (3) class representatives who can adequately represent the class.” *Id.*
7 Here, the parties agree that, for the purposes of settlement, these prerequisites are met. *See* Exhibit A.

8 **i. The Proposed Settlement Class is Ascertainable and Sufficiently Numerous**

9 The proposed settlement class is ascertainable because all putative Class Members can be
10 readily identified through employee personnel and payroll files. *See Noel v. Thrifty Payless, Inc.*, 7
11 Cal.5th 955, 980 (2019); *Rose v. City of Hayward*, 126 Cal.App.3d 926, 932 (1981); *Lee v. Dynamex*,
12 *Inc.*, 166 Cal. App. 4th 1325, 1334 (2008). The numerosity requirement is met because there are 1,051
13 individuals who fall within the definition of Class Member, which makes joinder of all members
14 impracticable. *See* Decl. Rodriguez, ¶ 10; *Gay v. Waiters’ & Dairy Lunchmen’s Union*, 489 F.Supp.
15 282 (N.D. Cal. 1980), *aff’d* 694 F.2d 531 (9th Cir. 1982); *Hebbard v. Calgrove*, 28 Cal. App. 3d 1017,
16 1030 (1972) (noting no set minimum to meet the numerosity prerequisite, but a class as few as twenty-
17 eight (28) members is acceptable). Thus, these requirements are satisfied.

18 **ii. The Commonality, Predominance, and Typicality Requirements are Met**

19 The commonality requirement is met when there are questions of law or fact regarding the class
20 as a whole. *See Hanlon*, 150 F.3d at 1019. Commonality requires only that some common legal or
21 factual questions exist; Plaintiff need not show that all issues in the litigation are identical. *See*
22 *Richmond v. Dart Ind., Inc.*, 29 Cal.3d 462, 473 (1981); *City of San Jose v. Superior Court*, 12 Cal.3d
23 447, 460 (1974). Common questions of law or fact must also predominate over individual questions
24 and class-wide treatment of a dispute must be superior to individual litigation.² *See Richmond*, 29
25 Cal.3d at 469. Predominance requires a putative class be sufficiently cohesive to warrant adjudication
26 by representation. *See Hanlon*, 150 F.3d at 1022. The typicality requirement is met when claims of the
27

28 ²When assessing predominance and superiority, a court may consider that the class will be certified for settlement purposes only and that manageability of trial is therefore irrelevant. *See Amchem Products v. Windsor*, 521 U.S. 591 (1997).

1 named representative are typical of those of the class, though “they need not be substantially identical.”
2 *Id.* at 1020; *Classen v. Weller*, 145 Cal. App. 3d 27, 46-47 (1983).

3 The common questions of law and fact in this case stem from Plaintiff's contention that
4 Defendants violated California law by 1) failing to properly record and pay for all hours worked due to
5 rounding and requiring off-the-clock work, 2) failing to authorize and permit timely meal periods
6 and/or a second meal period and first, second, and third rest periods, 3) failing to pay meal and rest
7 period premiums for missed, short, and late meal and rest periods, 4) failing to reimburse employees for
8 expenses incurred for work, including but not limited to, personal cell phone use to track employees
9 time as well as other work tasks and travel expenses required as part of the employees position, and 5)
10 failing to pay daily overtime. *See* Exhibit B. The waiting time penalties, unfair competition, and
11 PAGA claims are derivative of these violations. *See id.* Plaintiff and the Class Members seek the same
12 remedies under state law. Under these specific circumstances, the commonality and predominance
13 requirements are satisfied. Regarding the typicality requirement, Plaintiff contends he suffered from
14 the same unlawful policies, treatment, and circumstances as Class Members did, will request the same
15 remedies, and will rely on the same methods of proof to establish liability and damages. *See id.* Thus,
16 the typicality requirement is also satisfied for settlement purposes.

17 **iii. The Adequacy Requirement is Met**

18 The adequacy of representation requirement is met if the named representative and counsel have
19 no interests adverse to those of the putative class members and are committed to vigorously prosecuting
20 the case on behalf of the class. *See Hanlon*, 150 F.3d at 1020; *McGhee v. Bank of America*, 60
21 Cal.App.3d 442, 450-51 (1976). Those standards are met here. Under the proposed Agreement,
22 Plaintiff and the putative Class Members will receive a pro rata share of the settlement based on the
23 number of workweeks they worked for Defendants. *See* Exhibit A. Finally, any settlement class
24 member who wishes to opt-out of the settlement may do so, and he or she may also dispute the number
25 of workweeks stated in the Notice of Settlement (Exhibit F).

26 There is no conflict of interest between Plaintiff and Class Members. Plaintiff and Plaintiff's
27 counsel have pursued the claims made in the operative Complaint vigorously on behalf of the class.
28 Plaintiff's counsel, with Plaintiff's assistance, thoroughly investigated the claims made in this case by

1 speaking with Plaintiff and reviewing substantial amounts of documents. Plaintiff's counsel thereafter
2 engaged Defendants' counsel in settlement discussions over the course of approximately two (2) years.
3 Moreover, Plaintiff's counsel has experience defending and bringing wage and hour claims. Because
4 Plaintiff's counsel has vigorously pursued Plaintiff's and the Class Members' claims, the adequacy
5 requirement is met. *See generally* Decl. Rodriguez.

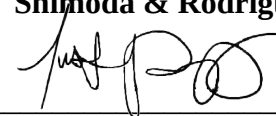
6 VI. CONCLUSION

7 For all of the foregoing reasons, Plaintiff respectfully requests that this Court preliminarily and
8 conditionally certify the class for settlement purposes; grant preliminary and conditional approval to the
9 proposed settlement, including the Enhancement Payment, the payment to the LWDA under PAGA,
10 and Class Counsel's application for reasonable attorneys' fees and costs; approve the Notice of
11 Settlement, including the proposed deadlines for opting-out of and objecting to the settlement; and
12 schedule the final settlement approval hearing. A copy of Plaintiff's proposed order is being filed
13 concurrently herewith.

14
15 Dated: October 11, 2022

Shimoda & Rodriguez Law, PC

16
17 By: _____


18 Galen T. Shimoda
19 Justin P. Rodriguez
20 Renald Konini
21 Attorneys for Plaintiff
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