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11
12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF LOS ANGELES**
14

15 MARCUS FRENCH, on behalf of himself
16 and others similarly situated,

17 Plaintiff,

18 vs.

19 LONZA BIOLOGICS, INC. a Delaware
20 corporation, and DOES 1 to 50, Inclusive,

21 Defendants.
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Case No.: 21STCV08097

Assigned for all Purposes to:
Hon. Daniel J. Buckley
Dept. SSC-1

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF MOTION
FOR PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

[Filed concurrently with Notice of Motion and
Motion; Declarations of Zachary M. Crosner and
Marcus French; [Proposed] Order]

Date: February 9, 2022
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Dept.: SSC-1

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1 **I. INTRODUCTION**

2 Plaintiff Marcus French hereby moves the Court for an order granting preliminary
3 approval to a proposed non-reversionary class action settlement to resolve wage and hour claims
4 on behalf of approximately 224 individuals employed by Defendant Lonza Biologics, Inc.
5 (“Lonza” or “Defendant”) as non-exempt employees during the period of March 2, 2017 through
6 January 1, 2022. The proposed \$556,500 total settlement will provide about \$298,000 in cash
7 payments to the settlement class, with an average award estimated at about \$1,330. The balance
8 of approximately \$258,500 will cover a modest enhancement award to Plaintiff, reasonable
9 attorney’s fees and actual litigation costs, settlement administration costs, and payment of civil
10 penalties to the state. The settlement is the product of Plaintiff’s pre- and post-filing investigation,
11 a pre-mediation exchange of information, and multi-day arms-length and adversarial negotiations
12 overseen by an experienced and well-regarded mediator -- the Honorable Michael Latin, (Ret.).

13 As demonstrated below, the settlement is within the “range of reasonableness” for
14 preliminary approval. Plaintiff’s counsel believes the settlement is a fair result for the class given
15 the substantial risks inherent in this matter. Accordingly, Plaintiff requests the Court enter an
16 order: (1) granting preliminary approval to the proposed class action settlement and the Joint
17 Stipulation of Class and Representative Action Settlement and Release (“Settlement Agreement”);
18 (2) conditionally certifying the settlement class as defined below; (3) appointing Zachary M.
19 Crosner, Blake R. Jones, and Chad R. Saunders and Crosner Legal, PC as Class Counsel; (4)
20 appointing plaintiff Marcus French as the Class Representative; (5) appointing Simpluris, Inc. as
21 the Settlement Administrator; (6) approving the form of notice to the class and the procedure for
22 providing such notice; and (7) scheduling a final fairness hearing.

23 **II. FACTUAL BACKGROUND AND PROCEDURAL POSTURE**

24 On March 2, 2021, Plaintiff filed a class and representative action complaint seeking
25 damages and penalties against Defendant for several alleged violations of the Labor Code and
26 IWC Wage Orders. Defendant Lonza is an international biotechnology corporation that produces
27 chemicals for the pharmaceutical industry. In approximately October 2017, Lonza acquired a
28 manufacturing facility from Baxalta in Hayward, California, which is Lonza’s only current

1 California location. Lonza employed Plaintiff Marcus French at the Hayward facility from
2 approximately February-October 2020 as a non-exempt employee. Mr. French and the class
3 members worked under an alternative work schedule (“AWS”) of four 10-hour shifts per week and
4 Plaintiff and the class were not paid overtime unless they worked more than 10 hours. Plaintiff
5 contends, however, Defendant’s AWS was invalid because at least 2/3 of the affected employees
6 did not vote in favor of the AWS, and he further contends Lonza also applied the AWS to all non-
7 exempt employees regardless of whether they worked in a department that voted to adopt an
8 AWS. Per Plaintiff, since the AWS was invalid, Defendant failed to pay the class members for
9 their overtime hours. Plaintiff also alleges Lonza failed to pay for overtime hours worked at the
10 correct regular rate of compensation. [Declaration of Zachary M. Crosner (“Crosner Decl.”), ¶ 3.]

11 Plaintiff contends further he did not receive compliant meal or rest periods, and that
12 Lonza’s rest period policy did not comply with California law. First, although the meal period
13 policy appears largely compliant with California law, Plaintiff’s counsel’s review of time and
14 payroll records suggests substantial de facto meal period violations, as many meal periods appear
15 to be late and/or short and Lonza provided few if any second meal periods. On the rest period
16 policy, Plaintiff argues it failed to advise employees that their rest breaks were off-duty and that
17 they were entitled to 10 net consecutive minutes of break time. Lastly, to the extent Lonza paid
18 premium wages for missed/non-complaint breaks, it did not do so at the regular rate of
19 compensation as required by the recent decision in Ferra v. Loews Hollywood Hotel, LLC (2021)
20 11 Cal.5th 858. [Crosner Decl., ¶ 4.]

21 Based on these allegations, Plaintiff’s class action complaint asserted claims for: (1) failure
22 to pay all wages due, including overtime wages; (2) failure to provide all required meal and rest
23 breaks or proper compensation in lieu thereof; (3) failure to provide accurate, itemized wage
24 statements; (4) failure to pay all wages due upon termination of employment; and (5) violations of
25 the Unfair Competition Law, Bus. & Prof. Code sections 17200, *et seq.* Plaintiff also alleged
26 claims under the Private Attorneys General Act (“PAGA”) based on the same alleged Labor Code
27 violations. [Crosner Decl., ¶ 5.]

28 Lonza has at all times denied Plaintiff’s allegations and maintained its AWS and meal

1 break and payroll policies and procedures comply with California law, that it provided the class
2 members with required meal and rest breaks, had valid meal break waivers in place, and that it
3 paid Plaintiffs and the class members all wages due. Additionally, Lonza strongly contends the
4 case cannot be maintained as any kind of class or representative action, arguing that to the extent
5 class members missed breaks or had non-compliant breaks it paid out meal and rest break
6 premiums, and that intermittent or infrequent evidence of such violations would be purely
7 anecdotal. Thus, per Lonza individualized issues predominate and trial would be unmanageable.
8 [Crosner Decl., ¶ 6.]

9 Finally, Lonza argued that many class members participated in a class action settlement in
10 two matters pending against Baxalta US, Inc., the prior owner of the Hayward facility (Randolph
11 v. Baxalta US, Inc., et al., Los Angeles Superior Court Case No. BC667176, and Martinez v.
12 Baxalta US, Inc., Los Angeles Superior Court Case No. BC705969, and together the “Baxalta
13 Actions”), and accordingly had released some or all of the claims at issue. Plaintiff countered that
14 Lonza did not assume any of Baxalta’s liabilities when it acquired the Hayward facility, and that
15 the settlement in the Baxalta Actions only covered employees of Baxalta. [Crosner Decl., ¶ 7.]

16 After Plaintiff filed the complaint, the Parties engaged in significant meet and confer
17 sessions regarding the Plaintiff’s claims and the merits of the case, as well as potential discovery
18 and law and motion, and ultimately agreed to attempt early mediation. They then undertook
19 substantial informal discovery to facilitate an exchange of information necessary to engage in a
20 meaningful mediation. Consequently, Plaintiff and his counsel reviewed payroll records,
21 personnel policies/handbooks, meal and rest break policies, personnel files, and a random
22 sampling of paystubs and time records produced by Lonza for about 20% of the class. Defendant
23 also provided documents and information reflecting the estimated total amount of workweeks and
24 pay periods they worked, and average hourly pay rates, among other relevant data. Plaintiffs then
25 had that information analyzed by Berger Consulting Group to look for, inter alia, meal/rest break
26 violation rates, the estimated amount of off the clock work, etc. [Crosner Decl., ¶ 8; Exh. 2.]

27 The Parties then engaged the Hon. Michael Latin (Ret.), a respected mediator with
28 extensive wage and hour class action experience and, on July 23, 2021, participated in a full day

1 mediation with Judge Latin. Throughout the day, the arms-length negotiations were hard-fought
2 and adversarial as the Parties exchanged extensive information on their legal and factual positions,
3 and made numerous offers and counter-offers. After several days of negotiation following a
4 mediator's proposal, the Parties reached agreement on all major issues and collaboratively drafted
5 the Settlement Agreement setting forth the full and final settlement terms. [Crosner Decl., ¶ 9.]

6 **III. PROPOSED SETTLEMENT TERMS**

7 Under the settlement, Lonza will pay \$556,500.00 into a common fund, the Gross
8 Settlement Amount or GSA. Attorney's fees of up to 33.3% of the GSA (\$185,314.50), litigation
9 costs of up to \$15,000, an enhancement award of up to \$10,000 for Plaintiff French, settlement
10 administration costs of no more than \$5,500, and a payment of \$41,737.50 to the Labor &
11 Workforce Development Agency for its share of the PAGA penalties will all be paid from the
12 Gross Settlement Amount. The remainder of approximately \$298,000 will be allocated among the
13 Participating Settlement Class Members based on their total weeks worked during the Class
14 Period. No portion of the GSA will revert to Lonza. [Crosner Decl., ¶ 10.]

15 **A. Certification of the Settlement Class**

16 The settlement provides for conditional certification of a settlement class including all
17 individuals who worked for Defendant as a non-exempt employee in California during the Class
18 Period, which runs from March 2, 2017 through January 1, 2022. The Settlement Class consists of
19 approximately 224 individuals as of June 2021. [Crosner Decl., ¶ 11.]

20 **B. The Benefit Conferred on the Settlement Class**

21 As noted, the settlement obligates Lonza to pay \$556,500 to resolve the Settlement Class's
22 claims, inclusive of attorney's fees and costs. Approximately \$298,000 from the GSA will be
23 distributed to the Participating Settlement Class Members. This is a cash settlement that does not
24 require Participating Settlement Class Members to submit a claim form to receive their settlement
25 share. Participating Settlement Class Members will receive their settlement checks automatically
26 via First Class U.S. Mail. Ten percent of each settlement share will be allocated to wages and the
27 remaining ninety percent will be allocated to penalties and interest. Lonza will pay any and all
28 applicable employer-side payroll taxes separately and in addition to the GSA. Subject to the

1 Court's approval, any amounts not claimed (because a class member does not cash his or her
2 settlement check), plus interest, will be forwarded to Legal Aid at Work as the agreed upon *cy*
3 *pres* beneficiary. [Crosner Decl., ¶ 12.]

4 Each Participating Settlement Class Member will receive a share of the Net Class
5 Settlement Amount based on his or her total weeks worked for Lonza during the Class Period
6 while employed in a non-exempt position, and after accounting for any potential releases of the
7 claims at issue in the Baxalta Actions, as well as amounts already paid. Thus, each Class
8 Member's Individual Class Settlement Payment will be calculated using criteria typically used in
9 determining appropriate amounts of unpaid wages, unpaid premium wages for missed meal
10 breaks, and potential statutory penalties under applicable law. These methods are intended to
11 ensure each Class Member receives a portion of the available settlement funds corresponding to
12 the relative value of his or her potential claims. The proposed allocation provides a reasonable
13 way to compensate Class Members based on the amount of time they worked for Lonza and the
14 number of instances they missed a meal or rest break, were not provided compensation in lieu of
15 such missed breaks, or did not receive proper overtime compensation. The average award
16 currently is estimated to be approximately \$1,330.00. [Crosner Decl., ¶ 13.]

17 **C. Settlement Administration**

18 Subject to the Court's approval, the Parties have agreed on Simpluris, Inc. ("Simpluris") as
19 the Settlement Administrator. Simpluris is qualified and has significant experience administering
20 class action settlements, including numerous wage and hour matters. Simpluris has agreed to cap
21 its fees and costs at \$5,500.00. If the Court approves less than the above amount, the difference
22 will remain in the Net Class Settlement Amount for distribution to the Participating Settlement
23 Class Members. [Crosner Decl., ¶ 14; Exh. 3.]

24 **D. The Class Notice**

25 The proposed Notice (Exhibit A to the Settlement Agreement) sets out information about
26 this case and explains the basic settlement terms in plain language. The Notice also sets forth the
27 individualized information used to calculate Class Members' Individual Class Settlement Shares
28 and each Class Member's estimated settlement award. The Notice likewise details the procedures

1 for Class Members to dispute their individual information, the procedure for submitting an
2 objection to the Settlement, and the procedure to request exclusion. In sum, the Notice provides
3 the Class Members with the information necessary to evaluate the Settlement and provides fair
4 opportunity to participate in, opt out of, or object to the proposed Settlement. Coupled with the
5 notice procedure, the proposed Notice provides the Settlement Class with the best notice
6 practicable. [Crosner Decl., ¶ 15.]

7 **E. Right to Correct Information, Opt Out, or Object**

8 Class Members will have sixty (60) days to dispute the information in their Notice used to
9 calculate their settlement award, and also have 60 days to submit any objections to the settlement
10 or to request exclusion. In the event a Class Member disputes their individual information, the
11 Settlement Administrator will review the Class Member's records as well as any additional
12 information submitted, and make a final determination. [Crosner Decl., ¶ 16.]

13 **F. Release of Claims**

14 All Participating Settlement Class Members will be deemed to release defendant Lonza
15 from all claims alleged in the operative complaint, or that could have been brought based on the
16 allegations in the operative complaint, including PAGA claims, from March 2, 2017 through
17 January 1, 2022. The release is limited to the claims that were actually pleaded or could have been
18 pleaded based on the alleged facts in the operative complaint. [Crosner Decl., ¶ 17.]

19 **G. Attorney's Fees and Costs, and Plaintiff's Enhancement Award**

20 The settlement provides Defendant will not oppose a request for attorney's fees not to
21 exceed 33.3% of the GSA, or \$185,314.50, nor will it oppose a request for reimbursement of
22 litigation costs and expenses of up to \$15,000.00. Defendant also will not oppose a request for an
23 enhancement award to Plaintiff French of not more than \$10,000, in recognition of his time spent
24 on this matter, the risks he undertook on behalf of the class, and the benefit conferred to the class.
25 Plaintiff's counsel will provide the Court with appropriate summaries and evidence of its efforts
26 and time records in anticipation of the Final Approval Hearing. If the Court approves less than the
27 above amounts, the difference will remain in the Net Class Settlement Amount for distribution to
28 the Participating Settlement Class Members. [Crosner Decl., ¶ 18.]

1 **H. PAGA and Notice to the LWDA**

2 As noted, the Parties allocated \$55,650 from the GSA to resolution of Plaintiff's claims
3 under PAGA, and respectfully request the Court approve that amount. As required by Cal. Labor
4 Code § 2699(l)(2), Plaintiff gave notice of the settlement and the approval hearing to the LWDA
5 via its online portal. [Crosner Decl., ¶ 19; Exh. 4.]

6 **IV. ARGUMENT**

7 **A. Standard of Review for a Class Action Settlement**

8 The law favors settlement, particularly in class actions where substantial resources can be
9 conserved by avoiding the time, costs and rigors of formal litigation. H. Newberg & A. Conte, 4
10 Newberg on Class Actions (4th ed. 2002) § 11.41; Class Plaintiffs v. City of Seattle (9th Cir.
11 1992) 955 F.2d 1268, 1276, cert. denied, 506 U.S. 953; Potter v. Pacific Coast Lumber Co. (1951)
12 37 Cal.2d 592, 602. Nevertheless, to ensure the rights of absent class members are not unjustly
13 compromised, settlement of a class action requires court approval. Cal. Rule of Court. 3.769;
14 Wershba v. Apple Computer (2001) 91 Cal.App.4th 224, 245; Dunk v. Ford Motor Co. (1996) 48
15 Cal.App.4th 1794, 1801. This judicial review protects against fraud or collusion and ensures
16 fairness to the absent class members. Dunk, 48 Cal.App.4th at 1800-01. Judicial review occurs
17 via a two-step process to determine, under all the circumstances, if the proposed settlement is fair,
18 reasonable and adequate. Id. at 1801; Wershba, 91 Cal.App.4th at 245.

19 The first step is a motion for preliminary approval, through which the parties present the
20 court with the proposed settlement and seek a determination if it is sufficiently fair and reasonable
21 to warrant notice to the class and further proceedings as to its fairness and adequacy. Cal. Rule of
22 Court 3.769(c). This preliminary evaluation determines if the proposed settlement is within the
23 "range of reasonableness" and if notice should be provided to the class regarding the settlement's
24 proposed terms and conditions, and whether a final fairness hearing should be scheduled.
25 Wershba, 91 Cal.App.4th at 234-35; North County Contractors Ass'n, Inc. v. Touchstone Ins.
26 Servs. (1994) 27 Cal.App.4th 1085, 1089-90. Considering the strong judicial policy favoring
27 settlement of class actions, courts generally apply a presumption of fairness to class action
28 settlements when (1) the settlement results from arms-length bargaining, (2) investigation and

1 discovery are sufficient to allow counsel and the court to act intelligently, (3) counsel is
2 experienced in similar litigation, and (4) the percentage of objectors is small. Dunk, 48
3 Cal.App.4th at 1802; Wershba, 91 Cal.App.4th at 245.

4 If the court grants preliminary approval, it then orders the class be given notice in an
5 appropriate manner, establishes a schedule and procedures for class members to request exclusion
6 or object, and sets the matter for a final fairness hearing. Typically, any motion for attorney's fees
7 and costs, and any enhancement for the class representative(s), is filed subsequent to preliminary
8 approval and heard with the motion for final approval, as part of the second step of the two-step
9 approval process. Dunk, 48 Cal.App.4th at 1800; Wershba, 91 Cal.App.4th at 232.

10 The proposed settlement in this matter warrants preliminary approval under the liberal
11 standard discussed above, as it is fair, reasonable and adequate under all the circumstances, and
12 represents a favorable result for the class.

13 **B. The Proposed Settlement Class Should Be Conditionally Certified**

14 The purpose of conditional class certification for purposes of settlement is to facilitate
15 provision of notice of the proposed settlement's terms, and the date and time of the final fairness
16 hearing. In this context, courts apply lesser scrutiny than they would otherwise in the context of
17 certifying a class. Dunk, 48 Cal.App.4th at 1807, n.19; Global Minerals & Metals Corp. v.
18 Superior Court (2003) 113 Cal.App.4th 836, 839 ("[I]t is well established that trial courts should
19 use different standards to determine the propriety of a settlement class.")

20 In the present matter, conditional certification is proper since this matter satisfies all
21 requirements for class certification under Code of Civil Procedure section 382. First, the class is
22 both sufficiently numerous, consisting of approximately 224 individuals, and ascertainable by
23 reference to Lonza's personnel and payroll records. [Crosner Decl., ¶ 20.] Next, Plaintiff is an
24 adequate class representative, as his claims do not conflict with and are not antagonistic to the
25 claims of other class members. Further, his claims are typical given his a member of the class and
26 his claims arise from the same employment practices and course of conduct giving rise to the
27 claims of the other class members. [Crosner Decl., ¶ 21; Declaration of Marcus French, ¶¶ 2-9.]
28 Lastly, his counsel is experienced and adequate class counsel. [Crosner Decl., ¶¶ 35-40.]

1 Next, common questions of law and fact predominate – particularly for purposes of a
2 settlement class – as the Class Members all were subject to the same AWS as well as the same
3 break policy. Since the focus of the claims against Lonza concerns the legality of common
4 policies applied uniformly to the entire class, common issues predominate over individualized
5 inquiries concerning liability. Whether Lonza had a proper AWS, or if it properly applied any
6 such policy to pay all overtime wages due, are common questions applicable to all class members.
7 Regardless of the outcome, determining these questions will decide liability for all class members
8 one way or another. Similarly, the rest break issue raises questions common to all class members
9 as to whether Lonza’s break policy complied with California law. [Crosner Decl., ¶ 22.]

10 By now it is well-settled that a theory of recovery asserting the existence of a uniform
11 policy violating California law is sufficient to satisfy the requirements for class certification. Jones
12 v. Farmers Ins. Exch. (2013) 221 Cal.App.4th 986, 996 (“Claims alleging that a uniform policy
13 consistently applied to a group of employees is in violation of the wage and hour laws are of the
14 sort routinely, and properly, found suitable for class treatment”); Williams v. Superior Court
15 (2013) 221 Cal.App.4th 1353 (“A company-wide practice can sustain a common question of fact
16 or law that supports commonality for class certification”). Lastly, a class action is superior to
17 other means for the fair and efficient adjudication of this controversy. [Crosner Decl., ¶ 23.]

18 **C. The Proposed Settlement Meets the Dunk and Kullar Factors and is within the**
19 **Range of Reasonableness**

20 The proposed settlement resulted from serious, arms-length negotiations facilitated by
21 respected mediators the Hon. Michael Latin, (Ret.), who has extensive experience mediating wage
22 and hour class actions. [Crosner Decl., ¶ 9.] Plaintiff’s counsel Zachary M. Crosner and Blake R.
23 Jones of Crosner Legal, P.C. have years of litigation experience, including litigating wage and hour
24 class actions. Plaintiff’s counsel is well-qualified to evaluate the risks and benefits of pursuing
25 further litigation or settling the matter. [Crosner Decl., ¶¶ 35-40.]

26 Next, California law recognizes several factors bearing on the fairness, adequacy, and
27 reasonableness of a proposed class settlement. Kullar v. Foot Locker Retail, Inc. (2008) 168
28 Cal.App.4th 116, 128. In relevant part, these factors include: 1) the amount offered in settlement 2)

1 the strength of plaintiff's case; 3) the risk, expense, complexity, and likely duration of further
2 litigation; 4) the risk of maintaining class action status throughout trial; 5) the experience and views
3 of counsel; and 6) the reaction of the class members to the proposed settlement. Id. As demonstrated
4 below, the proposed settlement satisfies these requirements.

5 Prior to settlement, the parties engaged in extensive informal discovery to facilitate
6 settlement discussions. As a result, Plaintiff reviewed documents and information regarding
7 Lonza's payroll practices, the AWS, pay stubs and time records for a sampling of class members,
8 meal and rest break policies, etc., and information from Defendant regarding class size and
9 breakdown, work weeks, rates of pay, and other information used to formulate a damages model.
10 Plaintiff also had that information reviewed by a consulting expert to assist with calculating potential
11 violation rates and potential damages. Plaintiff's counsel is confident they obtained sufficient
12 information to enable them to understand the law and facts of this case and make an informed
13 decision regarding the proposed settlement and whether it is in the best interests of the class.
14 [Crosner Decl., ¶¶ 8, 24.]

15 Using that data, plaintiff's counsel ran various calculations and estimated Lonza's likely
16 maximum exposure on the class claims at approximately \$4.021 million, including \$1,471,000 on
17 the meal break claims, \$1,122,000 on the rest break claims, \$396,000 on the wage statement
18 claims, \$628,000 on the waiting time penalty claims, and \$396,000 on the unpaid overtime
19 wage/regular rate claims. Plaintiff's counsel substantially discounted the value of these claims,
20 however, in light of the considerable risks posed by proceeding with the litigation. [Crosner
21 Decl., ¶¶ 25-26.]

22 On the unpaid overtime wage claims, Plaintiff argued Lonza's AWS was invalid because it
23 did not receive the required 2/3 approval by the employees who voted on it, and that Lonza also
24 imposed the AWS on all of its non-exempt employees, including those in departments that didn't
25 even vote on it. Thus Plaintiff alleges Lonza was required to pay daily overtime for all hours
26 worked over 8 in a shift rather than only paying overtime once class members worked 10 hours
27 under the invalid AWS. Plaintiff also alleges Defendant failed to properly calculate and pay
28 overtime based on the class members regular rate of compensation because Lonza failed to

1 incorporate all forms of non-hourly compensation (primarily shift differentials) in the overtime
2 calculation. In response, Defendant took the position that its AWS was properly implemented and
3 it paid employees for all hours worked at the proper hourly rate consistent with California law.
4 [Crosner Decl., ¶ 27.]

5 For the meal break claim, Plaintiff argued that, despite maintaining a compliant written
6 policy, Defendant's own time and payroll records suggest substantial de facto violations for
7 missed, late and/or short meal periods. This was particularly true as to second meal periods,
8 which Lonza's own records indicate were rarely if ever provided. Additionally, although Lonza
9 did pay at least some meal period premiums, its records also indicate it paid those premiums at the
10 class member's base rate of pay rather than at the "regular rate of compensation" as required by
11 the California Supreme Court's recent Ferra v. Loews decision. [Crosner Decl., ¶ 28.]

12 In response, Defendant emphasized its policy was fully compliant with California law, and
13 that it provided all required meal periods and thereby met its obligations under the Labor Code
14 and Wage Order. Further, Defendant argued to the extent employees missed a meal break or took a
15 non-compliant break, any such discrepancies were aberrational and against company policy and a
16 myriad of individual issues would be required to determine if the potential violation resulted from
17 employee choice or some other reason. Consequently, per the Defendant, individualized inquiries
18 would dominate on this issue and render class certification inappropriate. [Crosner Decl., ¶ 29.]

19 As with meal breaks, Defendant argued its rest break policies complied with California law
20 and authorized and permitted employees to take all required breaks. Defendant further contended
21 that, in light of the fact that it is not required to maintain a record of rest periods, any evidence of
22 failure to authorize rest periods and/or discouragement from taking rest periods would be purely
23 anecdotal and individual issues would predominate on liability. Defendant also may contend that it
24 is only liable if Plaintiff can prove, on a shift-by-shift basis, the aggrieved employees actually did
25 not receive a fully compliant rest break. This arguably would make a trial unmanageable since the
26 number of instances an employee missed a rest break would have to be tested on a case by case
27 basis to determine if there was compliance. [Crosner Decl., ¶ 30.]

1 Finally, Plaintiff also alleged derivative claims under Labor Code § 226 (alleged
2 inaccurate wage statement violations) and §§ 201-203 (alleged waiting time penalties). These
3 claims were based on the invalid AWS/unpaid overtime claim and will rise or fall along with that
4 primary claim, in addition to being subject to “good faith” and other defenses available to
5 Defendant.¹ E.g., Amaral v. Cintas Corp. No. 2 (2008) 163 Cal.App.4th 1157, 1203-04 (holding
6 employer did not willfully fail to pay wages under Labor Code § 203 even though the class
7 prevailed on the merits on the underlying claim for failing to pay living wages). Accordingly,
8 Plaintiff discounted the derivative claims significantly in light of these multiple potential defenses.
9 [Crosner Decl., ¶ 31.]

10 As far as potential PAGA liability, the penalties theoretically totaled around \$1.7 million
11 should Plaintiff prevail on all claims and establish violations of the multiple Labor Code sections
12 at issue for every single eligible pay period. [Crosner Decl., ¶ 32.] As with the class claims,
13 Plaintiff discounted the potential PAGA penalties for the multi-layered defenses proffered by
14 Defendant on the merits, and further discounted these claims since the Court possesses wide
15 discretion to reduce such penalties even if Plaintiff ultimately prevailed. Fleming v. Covidien
16 (C.D. Cal. 2011) 2011 U.S. Dist. LEXIS 154590, *8-9(court reduced the potential penalties by
17 over 82% after a bench trial); Carrington v. Starbucks Corp. (2018) 30 Cal.App.5th 504 (after a
18 bench trial, the trial court awarded penalties of just \$5 per pay period, a 90% reduction, which
19 decision was upheld on appeal); In re Taco Bell Wage and Hour Actions (E.D. Cal. Apr. 8, 2016)
20 2016 U.S. Dist. Lexis 48557 (PAGA penalties denied after trial). Accordingly, the Parties
21 allocated \$55,650 to PAGA penalties, which amount is reasonable and in line with comparable
22 settlements in other class actions in California. Van Kempen v. Matheson Tri-Gas, Inc. (N.D. Cal.
23 Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182 (granting final approval of \$5,000 PAGA penalty
24 from \$370,000 settlement, or 1.4 percent of total settlement); Slavkov v. First Water Heater
25 Partners I (N.D. Cal. July 25, 2017) 2017 U.S. Dist. LEXIS 11630 (finding a \$7,500 PAGA
26 payment reasonable when measured against the overall settlement of \$345,000 and the possible
27

28 ¹ Defendant almost certainly will argue the alleged meal and rest break violations cannot support these claims based
on Maldonado v. Epsilon Plastics, Inc. (2018) 22 Cal.App.5th 1308.

1 weaknesses in plaintiffs' case, or 2.2 percent of total settlement). Additionally, the LWDA has
2 been informed of the terms of the PAGA portion of the settlement, and will be able to weigh in as
3 necessary. Jennings v. Open Door Mktg. Inc. (N.D. Cal. Oct. 3, 2018) 2018 U.S. Dist. LEXIS
4 171356, at *27 (approving settlement with PAGA penalties of 0.6% where "[p]laintiffs [have]
5 submitted the settlement agreement to the LWDA, and the LWDA has not objected to the
6 settlement").

7 The settlement obviates the significant risk that this Court may find any kind of class or
8 representative resolution unachievable or deny certification of all or some of Plaintiff's claims.
9 Furthermore, even if Plaintiff obtained certification of all or some of the claims, continued
10 litigation would be lengthy and expensive as the parties pursued merits discovery, a probable
11 motion to decertify, as well as trial and possible appeals, and would substantially delay any
12 recovery by the class with no assurance of recovering significantly more than the proposed
13 settlement. While Plaintiff is confident in the merits of his case, legitimate controversies exist
14 regarding each of his claims. Plaintiff also recognizes proving the amount of wages and penalties
15 due to each Class Member would be an expensive, time-consuming, and uncertain proposition.
16 [Crosner Decl., ¶¶ 33-34.]

17 Plaintiff and his counsel discounted the value of the class claims consistent with the risks
18 discussed above, and carefully weighed the likelihood of the class receiving substantially greater
19 benefit if the litigation continued. Plaintiff and his counsel concluded – in light of these very real
20 and substantial risks – settlement on the proposed terms and without prolonged and costly
21 litigation was in the best interests of the class. The overall \$556,500 recovery represents a
22 significant percentage of Defendant's potential exposure at roughly 14% of the maximum value of
23 the class claims. Given these risks, a total recovery for the class of \$556,500, which will result in
24 average award of some \$1,330 per class member, is a significant result well within the range of
25 reasonableness considering all potential outcomes, and it will provide direct monetary awards to
26 all Class Members without further delay. [Crosner Decl., ¶¶ 33-34.]

27 Importantly, the mere fact that a settlement does not provide the same recovery as might be
28 achieved at trial is not a proper indicator of whether the settlement is fair, reasonable, and

1 adequate. Wershba, 91 Cal.App.4th at 246, 250 (“Compromise is inherent and necessary in the
2 settlement process...even if the relief afforded by the proposed settlement is substantially
3 narrower than it would be if the suits were to be successfully litigated, this is no bar to a class
4 settlement because the public interest may indeed be served by a voluntary settlement in which
5 each side gives ground in the interest of avoiding litigation”); Lane v. Facebook, Inc. (9th Cir.
6 2012) 696 F.3d 811, 819 (“[T]he question whether a settlement is fundamentally fair . . . is
7 different from the question whether the settlement is perfect in the estimation of the reviewing
8 court”); 7-Eleven Owners for Fair Franchising v. Southland Corp. (2000) 85 Cal.App.4th 1135,
9 1150 (“The fact that a proposed settlement may amount to only a fraction of the potential recovery
10 does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be
11 disapproved”); White v. Experian Information Solutions, Inc. (C.D. Cal. 2011) 803 F.Supp.2d
12 1086, 1098 (rejecting contention settlement was not fair and reasonable even though it represented
13 99% discount off the maximum value of the claims). Importantly as well, the proposed settlement
14 is non-reversionary and will provide timely benefits to the Class Members without a claims
15 process. White, 803 F.Supp.2d at 1098; c.f., Federal Judicial Center, Managing Class Action
16 Litigation: A Pocket Guide for Judges (3d ed. 2010) at 20, available at [http://](http://www.fjc.gov/sites/default/files/2012/ClassGd3.pdf)
17 www.fjc.gov/sites/default/files/2012/ClassGd3.pdf (reversionary provisions and/or cumbersome
18 claims process may indicate lack of fairness). Plaintiff and his counsel submit the settlement is
19 within the “range of reasonableness,” and is fair and adequate for the Class.

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1 **V. CONCLUSION**

2 For all the foregoing reasons, Plaintiff respectfully requests that the Court grant this
3 motion, conditionally certify the settlement class, grant preliminary approval to the proposed class
4 action settlement, and enter the [Proposed] Order filed herewith.

5 Dated: January 18, 2022

CROSNER LEGAL, P.C.

6
7 By: 
8 Michael Crosner
9 Zach Crosner
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