

Eric K. Yaeckel [CSB No. 274608]
yaeckel@sullivanlawgroupapc.com
Katherine A. Dishongh [CSB No. 339223]
kdishongh@sullivanlawgroupapc.com
SULLIVAN & YAECKEL LAW GROUP, APC
2330 Third Avenue
San Diego, California 92101
(619) 702-6760 * (619) 702-6761 FAX

Attorneys for Plaintiff JAMES PACKES, in a Representative capacity only, and on behalf of other members of the general public similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

JAMES PACKES, in a Representative
capacity only, and on behalf of other
members of the general public similarly
situated,

Plaintiff,

v.

SCHOOL OF ROCK LLC, a Delaware
Limited Liability Company; and DOES 1-10,
inclusive

Defendants

CASE NO. 30-2021-01217507-CU-OE-CXC

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR
CERTIFICATION OF SETTLEMENT
CLASS AND PRELIMINARY APPROVAL
OF GOOD FAITH DETERMINATION OF
CLASS ACTION SETTLEMENT**

Date: August 26, 2022

Time: 10:00 a.m.

Dept.: CX105

Judge: Hon. Randall J. Sherman

Reservation Number: 73777761

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1 **I. SUMMARY OF MOTION**

2 This matter is “wage and hour” proposed class action. JAMES PACKES, (“Plaintiff” or
3 “PACKES”) has made class action allegations involving violations of the California Labor Code,
4 against SCHOOL OF ROCK LLC, and SOR Schools VII, LLC (“Defendants” or “SoR”).

5 After several months of pre-filing investigation, almost a year of litigation, and following
6 lengthy mediation and settlement discussions, the parties agreed to the terms of the proposed class
7 action settlement. The parties have drafted and executed a formal Stipulation of Class and PAGA
8 Action Settlement and Release (the “Agreement,” please see **Exhibit 1** to Yaeckel Decl. Paragraph
9 14). The proposed terms of the settlement are as follows:

10	Approximate Size of Class:	145 individuals
11	Settlement Fund (“GSA”):	\$240,000.00
12	Claims Administration:	Not to exceed \$3,000.00
13	Claims Period:	45 days from Mailing of Notice
14	Class Representative Incentive:	\$5,000.00
15	LWDA Payment:	\$18,000.00 (75% Share of \$24,000.00 allocation)
16	Attorney’s Fees:	\$80,000.00 (1/3 of total)
17	Litigation Costs:	\$10,000.00
18	Resultant Net Settlement Fund ¹	\$124,000.00

19 After the deductions proposed above, there will be a Net Settlement Fund available to class
20 members who do not opt-out of participation in the class. An “average” class member will receive a
21 payment of approximately \$855.17. The actual amount will vary as it will be determined by the
22 amount of workweeks each aggrieved employee was employed. (**Exhibit 1** ¶ 49.)

23 **Please Note:** While Plaintiff can calculate the average pay, the estimated high and low
24 payments will not be known until Defendant provides the workweek data following preliminary
25 approval. These figures will be provided as part of the final approval motion. (Yaeckel Decl. ¶ 18.)

26
27 ¹ The Net Settlement Fund total assumes all other contingent costs, listed above, will be
28 approved by the Court at the amounts agreed to in the parties’ Settlement Agreement.

1 **Please Further Note:** This is a **non-reversionary** settlement, in that the entire net settlement
2 amount, after the awarded costs and fees are deducted, will be automatically disbursed to all class
3 members who do not file a request to “opt-out” of participation in the lawsuit.

4 The parties now move the Court for an order: (1) provisionally certifying the proposed class;
5 (2) preliminarily approving the proposed settlement; (3) directing that the Notice of the proposed
6 settlement be provided to Class Members; and (3) scheduling a hearing for final approval of the
7 proposed settlement and entry of the parties’ proposed Final Order Approving Class Action Settlement.

8 **II. PROCEDURAL HISTORY AND STATEMENT OF RELEVANT FACTS**

9 This matter is a proposed wage and hour Class and PAGA Action involving California
10 employees of Defendant SoR. (Yaeckel Decl. ¶ 3.)

11 **1. The Operative Claims and Investigation and Discovery Conducted**

12 On August 31, 2021, Plaintiff PACKES filed a PAGA Complaint against Defendant SoR. The
13 original Complaint alleged 6 causes of action for alleged violations pursuant to California’s Private
14 Attorneys General Act (“PAGA”) - Labor Code § 2698 *et seq.* for: (1) Meal and rest period violations;
15 (2) Minimum wage violations; (3) Overtime violations; (4) Wage statement violations; (5) Failure to
16 reimburse business expense and improper deduction of those expenses; and (6) Failure to pay all
17 wages to ex-employees. (Yaeckel Decl. ¶ 4, see ROA # 2.)

18 **Please Note:** As part of the settlement agreement, the parties are separately seeking the Court’s
19 permission for Plaintiff to file a First Amended Complaint to allege Class Action Claims based on the
20 same underlying conduct of the Labor Code violations referenced above. (Yaeckel decl. ¶ 5.) A
21 separate stipulation will be submitted.

22 On October 20, 2021, Plaintiff PACKES propounded his first set of written discovery requests
23 on SoR (Yaeckel decl. ¶ 6.) Plaintiff PACKES sought (among other information and documents) the
24 identities of putative class member, SoR Compensation policies, employee handbooks, wage
25 statements, payroll records, time records and reimbursement policies. (Yaeckel decl. ¶ 6.)

26 SoR agreed to informally produce information and documents responsive to Plaintiff’s requests
27 for mediation purposes. SoR produced, *inter alia*, PACKES’s wage records, a copy of the operative
28 faculty employment policies, copies of all other relevant employment policies, sample payroll records

1 for other class members, and the contents of PACKES’s employee file. (Yaeckel decl. ¶ 7.)

2 SoR also agreed to turn over a large sampling of these same records for other putative
3 aggrieved employees during the operative limitations period. (Yaeckel decl. ¶ 8.)

4 As part of the investigation, Plaintiff’s counsel also spoke with several putative class members
5 during the course of the litigation. (Yaeckel decl. ¶ 9.)

6 **2. Settlement Efforts**

7 On March 3, 2022, the parties attended a mediation before an experienced and well-respected
8 wage and hour class action mediator, Mike Young (Yaeckel decl. ¶ 10.) Prior to, and during, the
9 mediation, counsel for both parties agreed to the informal exchange of information pertinent to a class-
10 wide settlement. Such information included verification of policies and procedures of SoR, as well as
11 the class size of any potential Class and PAGA representative group. (Yaeckel decl. ¶ 11.)

12 Both parties submitted detailed written submissions to the Mediator. Plaintiff’s brief (shared
13 with SoR) contained a detailed explanation of the claims at issue, and the results of Plaintiff’s
14 counsel’s analysis of the potential Class Members’ time and wage records. (Yaeckel decl. ¶ 12.)

15 The parties were able to reach an agreement on the key terms of settlement at the mediation.
16 Negotiations over the final terms continued for several months (Yaeckel decl. ¶ 13)

17 As of June of 2022, the parties finalized and executed a Joint Stipulation re: Class Action
18 Settlement, (the “Agreement”) which contains all of the parties’ agreed upon terms (Yaeckel decl. ¶
19 14; see **Exhibit 1.**)

20 **III. SUMMARY OF CLAIMS AND ESTIMATES OF POTENTIAL DAMAGES**

21 Counsel hereby submits estimate calculations for the total potential value of all claims so this
22 Court may evaluate if the amount to be paid to the class ultimately could be determined to be fair and
23 reasonable when balanced against the probable outcome of future litigation. *Kullar v. Foor Locker*
24 *Retail, Inc.*, (2008) 168 Cal.App.4th 116, 133.

25 Concerning the strength of the plaintiff’s case, the California Court of Appeal has said that the
26 “merits of the underlying class claims are not a basis for upsetting the settlement of a class action; the
27 operative word is ‘settlement.’” *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85
28 Cal.App.4th 1135, 1150 (citing, *inter alia*, *City of Detroit v. Grinnell Corp.* (2d Cir. 1974) 495 F.2d

1 448, 455) (“The fact that a proposed settlement may only amount to a fraction of the potential recovery
2 does not, in and of itself, mean the proposed settlement is grossly inadequate and should be
3 disapproved. “)

4 Here, Plaintiff alleged that Defendant did not pay for “all time worked” by Defendant,
5 specifically, for time spent preparing for lessons, and under Defendant’s control. Plaintiff contends that
6 as a result of only paying for time spent in lessons (verses total time spent at work), Defendant failed
7 to allow for meal and rest periods and failed to pay meal and rest period penalties. (Yaeckel decl. ¶ 15.)
8 Plaintiff also alleged that Defendant also failed to include on Class Member’s wage statements all
9 hours worked, and instead listed only time spent in lessons. (Yaeckel decl. ¶ 16.) In addition, Plaintiff
10 contends that Defendant failed to permit and authorize off-duty rest periods and off-duty meal periods
11 and failed to pay premium pay for missed rest and meal breaks; failed to issue accurate itemized wage
12 statements that, in addition to the above, failed to include accurate total net and gross wages earned
13 as a result fo failing to compensate Class Members for all hours worked; failed to pay all wages due
14 upon termination. (Yaeckel decl. ¶ 17.)

15 Counsel submits that this settlement provides class members with a guaranteed recovery of a
16 large portion of their “potential” damages. The “average” recovery will be approximately \$855.17
17 per class member (Yaeckel decl. ¶ 18.) Each of the primary claims also had risks to obtaining both
18 class certification and liability. *Id.* Defendants’ defenses were successful, the class would not receive
19 anything. As is set forth below, Plaintiff submits that the most realistic “best case” scenario would
20 be an average recovery per class member of \$4,025.54 and a worst case scenario would be a
21 recovery of \$0, by way of denial of class certification or defense verdict. (Yaeckel decl. ¶ 24.)

22 **A. UNPAID WAGES AND OVERTIME CLAIMS**

23 As discussed above, Plaintiff’s unpaid wages (and unpaid overtime) claims were centered
24 around the allegation that employees were under employer control when they were preparing for
25 lessons, and learning the SoR method of teaching (which took extra time as the SoR teaching method
26 is distinct from traditional music schools). Plaintiff alleged this resulted in regular and overtime pay
27 being owed where Defendant was on notice of work being performed that exceeded 8 hours in a work
28 day or 40 hours in a workweek. Defendant was defending these claims on the grounds that Plaintiff

1 and other instructors and employees were only under employer control during lesson periods and that
2 time spent preparing for lessons was not under employer “control.” (Yaeckel decl. ¶ 19.)

3 Based on Plaintiff’s counsels’ analysis, this claim was worth as little as \$0 (a defense verdict
4 or denial of class certification) or as much as \$136,080.00. (Yaeckel decl. ¶ 24.)

5 **B. MEAL AND REST PERIOD CLAIMS**

6 As to meal and rest period claims, Plaintiff alleged Defendant lacked any substantive written
7 meal and rest period policies and as a result, Plaintiff and other employees were improperly restricted
8 from taking legally compliant breaks. Plaintiffs also alleged the lack of time records could establish
9 liability. Defendants argued that employees we instructors and could take rest periods in between
10 classes. Defendants also contended individualized inquiries will abound as to why individual
11 employees may have failed to take appropriate meal or rest periods. (Yaeckel decl. ¶ 20.)

12 There are no time records showing meal periods to prove Plaintiff or other employees were
13 provided with meal periods. (Yaeckel decl. ¶ 21.) Additionally, no records exist to show Plaintiff or
14 other employees were provided rest periods, making this aspect of the claim much harder to prove.
15 (*Id.*) Some Courts have been disinclined to accept survey evidence that may have been needed to help
16 establish Labor Code violations. See e.g. *Duran v. U.S. Bank National Assn.* (2018) 19 Cal.App.5th
17 630.

18 Based on Plaintiff’s counsels’ analysis, this claim was worth as little as \$0 (a defense verdict
19 or denial of class certification) or as much as \$816,480.00. (Yaeckel decl. ¶ 24.)

20 **C. REIMBURSEMENT CLAIMS**

21 Plaintiff contends that Defendant violated Labor Code § 2802 by failing to reimburse its
22 employees for, *inter alia*, cell phone and internet costs. Specifically, Plaintiff argues that, during the
23 pandemic, Plaintiff and other aggrieved employees were forced to incur internet and cell phone
24 expenses to teach lessons and remain in contact with SoR via cell phone, but were not adequately
25 reimbursed for such expenses. Plaintiff contends that California law requires reimbursement to these
26 employees whenever a cell phone is used in such a manner. See e.g., *Cochrane v. Schwan’s Home*
27 *Service, Inc.* (2014) 228 Cal.App.4th 1137. Defendant argued that *Cochran* is distinguishable because
28 the policy in this case does not require employees to use their cellular phones. Defendant also argued

1 that individualized inquiries regarding the use of cellular phones and necessity of other expenses would
2 predominate and bar class certification. (Yaeckel decl. ¶ 22.)

3 Based on Plaintiff's counsels' analysis, this claim was worth as little as \$0 (a defense verdict
4 or denial of class certification) or as much as \$31,500.00. (Yaeckel decl. ¶ 24.)

5 **D. WAGE STATEMENT CLAIMS**

6 Plaintiff contends Defendant also violated California Labor Code § 226 on multiple grounds,
7 in that it failed to provide accurate information on the Wage Statements it provides to its California
8 employees. However, Plaintiff acknowledges that these claims are largely derivative, in that both the
9 gross and net wages would be inaccurate, due to the above-referenced claims. Defendant argued that
10 list failure to list gross and net wages are derivative of other claims that may ultimately fail and as a
11 result there is no "knowing and intentional failure" to list information, which is what triggers liability
12 under Labor Code § 226 (e).

13 Based on Plaintiff's counsels' analysis, this claim was worth as little as \$0 (a defense verdict
14 or denial of class certification) or as much as \$126,000.00. (Yaeckel decl. ¶ 24.)

15 **E. DERIVATIVE CLAIMS (PAGA AND LABOR CODE § 203)**

16 The remaining claims are derivative in that PAGA and Labor Code section 203 penalties would
17 only be permissible if the above claims are proven.

18 Based on Plaintiff's counsels' analysis, the PAGA claim was with as little as \$0 (a defense
19 verdict or denial of class certification) or as much as \$63,000.00. (Yaeckel decl. ¶ 24.)

20 Based on Plaintiff's counsels' analysis, the Labor Code section 203 claim was worth as little
21 as \$0 (a defense verdict or denial of class certification) or as much as \$97,200.00. (Yaeckel decl. ¶ 24.)

22 **F. CASE LAW SUPPORTS A FURTHER REDUCTION ON ANY RECOVERY**

23 Plaintiff concedes he would be unlikely to ever be awarded an amount approaching the
24 maximum damages set forth above. To wit, the majority of the damages would be "derivative"
25 penalties under PAGA, Labor Code section 203 and 226. The Court would have great discretion to
26 mitigate any penalties awarded. *Thurman v. Bayshore Transit Managemenet, Inc.* (2012) 203
27 Cal.App.4th 1112, 1135 (disapproved on other grounds).
28

1 In a trial involving plaintiff's counsel, the Court found liability, but then significantly reduced
2 the PAGA penalties, down to \$5 a violation. See *Carrington v. Starbucks Corp.* (2018) 30
3 Cal.App.5th 504; See accord *Fleming v. Covidien, Inc.*, No. ED-CV-10-1487-RGK(OPx), 2011 WL
4 7563047 at *4 (C.D. Cal. Aug. 12, 2011) (reducing PAGA penalties by over 82%, in part because
5 employer was "not aware" of violations).

6 In the *Carrington* decision, the Court also noted that other trial courts have declined to "stack"
7 (impose multiple) penalties based on the same underlying Labor Code violation. See *Ruelas v. Costco*
8 *Wholesale Corporation* (N.D. Cal. 2014) 67 F.Supp.3d 1137; See accord *Naranjo v. Spectrum Security*
9 *Services, Inc.* (2019) 40 Cal.App.5th 444 (Cal. Supreme Court Decision pending) [declining to impose
10 Labor Code sections 203 and 226 penalties based on unpaid meal break premiums.]

11 Accordingly, counsel submits the approximately \$855.17 average recovery secured via this
12 settlement, is a reasonable compromise and is in the best interests of the class given all the risks of the
13 continued litigation. (Yaeckel decl. ¶ 25.)

14 **IV. SETTLEMENT TERMS**

15 The Agreement includes the following key terms:

16 **1. Contingent Nature of the Settlement**

17 Should the Court, for any reason, not approve the Agreement, or if the Agreement is otherwise
18 terminated for any reason, then the parties have acknowledged that the Agreement will be null and
19 void and this action will revert to its status with respect to any and all matters as they existed prior to
20 the parties signing the Agreement. (See **Exhibit 1** ¶ 5, p. 3.)

21 **2. Description of the Settlement Classes**

22 Solely for the purposes of the Agreement, the parties have agreed that "Class" is defined as:

23 All current and former hourly non-exempt persons employed by Defendant School of Rock,
24 LLC and SOR Schools VI, LLC, in the State of California between April 1, 2018 through the
25 date of preliminary approval of the settlement.
(**Exhibit 1** ¶ 6, p. 3.)

26 The class size is estimated to contain approximately 145 individuals, as will be determined by
27 Defendant employment records. (*Id.*)

28 ///

3. Appointment of Settlement Claims Administrator

The parties agreed to use CAC Services Group, LLC (“CAC”) as the “Settlement Administrator” for purposes of providing the Notice, and Opt-Out instructions to Settlement Class Members, issuing all payments pursuant to the Agreement, and to track all opt-outs and objections to the settlement. (**Exhibit 1** ¶ 34, p. 8.) CAC’s primary business has been the administration of class action settlement and class action notices, an area in which it has extensive experience. (Yaeckel decl. ¶ 26.)

4. Scope of the Release

Participating Class Members will release any claims and resultant penalties and damages, arising from or related to the claims litigated in the Lawsuit against School of Rock, during the Class Period, based upon the following categories of allegations in the operative pleadings: Failure to pay minimum wages and overtime wages; failure to timely pay wages due at termination, failure to provide accurate itemized employee wage statements, rest break liability under § 226.7, meal period liability under Labor Code § 226.7, violations of Business and Professions Code § 17200, *et seq.* Based on the foregoing facts and claims; penalties pursuant to PAGA (Labor Code § 2698 *et seq.*; **Exhibit 1** ¶ 71, p.21: “Release of Class Claims By Plaintiff and Class Members.”)

Please Note: Plaintiff has also executed a separate individual settlement agreement and release in exchange for an additional \$10,000 to be paid by Defendant. This amount being paid to Plaintiff is separate and apart from the amount negotiated for the class. This individual package negotiated with the assistance of the mediator and provides a much broader release of claims in exchange for the consideration. Specifically, after Mr. Packes complained of wage and hour violations he alleges he was retaliated against, and it led to a constructive termination in violation of public policy. Had these separate claims not settled at mediation for additional consideration, Plaintiff would have pursued a separate action. (Yaeckel decl. ¶ 28.) The class is being notified. (See **Ex. A** to the Agreement at p. 2 §IV(B).)

5. Cash Payment and Allocation

The Agreement provides for a non-reversionary and automatic cash payment to the members of the class who do not submit valid requests for exclusion. (**Exhibit 1** ¶ 61, p.18.) The payment will

1 be based on the amount of workweeks they were employed during the Settlement Period. (*Id.*) There
2 is no need for class members to submit claim forms. (*Id.*)

3 The Agreement further provides that \$24,000.00 of the Net Settlement Payments shall be
4 allocated by the parties as penalties for claims arising under PAGA, with 75% of that amount going
5 to the LWDA. (**Exhibit 1** ¶ 45, p.12.) Based on the risk that PAGA penalties are largely discretionary
6 (as analyzed above) Plaintiff submits the PAGA allocation is fair, reasonable, and adequate. (Yaeckel
7 decl. ¶ 23.)

8 For the payments to all participating class members, 33% will be allocated as wages and 67%
9 will be treated as penalties. (**Exhibit 1** ¶ 66, p.19.) These allocations were negotiated in good faith by
10 the parties and in recognition that the unpaid wages allegedly owed are small in proportion to the
11 penalties that would be warranted with meal and rest period claims, wage statement violation, final
12 pay penalties and PAGA penalties. (See Yaeckel decl. ¶ 24.)

13 **6. Proposed Settlement and Notice Program**

14 Subject to Court approval, the Parties agree that, within ten (10) calendar days after the Court
15 enters any Order granting preliminary approval of the Settlement, Defendant will provide to the Claims
16 Administrator with data that is within Defendant's possession containing, for each Class Member: (a)
17 the Class Member's name; (b) the Class Member's last known address; (c) the Class Member's social
18 security number; and (d) the total number of "qualified weeks" during which the Class Member was
19 employed by Defendant in California during the Class Period and during the PAGA Period. (**Exhibit**
20 **1** ¶ 52, p.15.)

21 The Administrator will perform additional address updates and verifications, as necessary, prior
22 to the first mailing. After the Administrator receives the Class Information from Defendant, and
23 subject to Court approval, the Administrator will mail a Notice of Proposed Class Action Settlement
24 ("Notice") to each Class Member by first class mail. (**Exhibit 1** ¶ 53, p.15.) The proposed Class Notice
25 is attached to the parties Settlement Agreement as Exhibit A.

26 The Notice is designed to provide Class Members with information about the lawsuit, the
27 Agreement, their rights and the settlement benefits, and how to exclude themselves or object. (**Exhibit**
28 **A** to the Settlement Agreement.) From the date the Notices are mailed, the Class Members will have

1 forty-five (45) calendar days to be requested to be excluded, or file objections. (**Exhibit 1 ¶ 55**, p.15.)

2 The notice also informs Class Members of their right to appear to comment on, or object to,
3 the Settlement at the Final Approval Hearing. (See **Exhibit A & B** to the Settlement Agreement.)

4 The Notice program also has additional safeguards. For instance, for Notices returned as
5 non-deliverable, the Class Administrator is permitted to perform a skip-trace and mail or re-mail
6 Notice to an updated address (if any), upon receipt of the returned mail. (**Exhibit 1 ¶ 56**, p.16.) It is
7 the intent of the parties that all reasonable means be used to locate Class Members.

8 The Notice will inform Class members of the number of weeks worked during the Class Period
9 and their estimated settlement amounts and how to dispute that figure if they disagree. (See **Exhibit**
10 **A** to the Agreement § IV (D).)

11 **7. Contingent Costs**

12 Subject to Court approval, Defendant agrees to pay \$80,000.00 in attorney's fees, which is 33
13 1/3% of the Gross Fund Value.(**Exhibit 1 ¶ 42**, p.11.) Defendant agrees to pay ten-thousand dollars
14 (\$10,000.00) in litigation costs. (**Exhibit 1 ¶ 42**, p.11.)

15 For the costs of administration, Defendant will pay an amount not to exceed three-thousand
16 dollars (\$3,000.00) to the Settlement Administrator. (**Exhibit 1 ¶ 44**, p.12.)

17 The parties have agreed to allocate \$24,000.00 to Plaintiff's representative claims under
18 California Labor Code § 2698 *et seq.*, with 75% of this amount (\$18,000.00) being paid directly to the
19 LWDA, and 25% (\$6,000.00), being distributed amongst the class members who were employed
20 during the PAGA limitations period. (**Exhibit 1 ¶ 45**, pp. 12-13.)

21 Defendant also agrees to pay Plaintiff five-thousand dollars (\$5,000.00) as an enhancement
22 award in consideration for his service as Class Representative. (**Exhibit 1 ¶ 43**, p.11.) The
23 enhancement is justified given the assistance Plaintiff provided to counsel and the risks Plaintiff faced
24 by sticking his neck out as a representative in this action. (Yaeckel decl. ¶ 27.)

25 **V. PROVISIONAL CERTIFICATION OF THE CLASS IS APPROPRIATE**

26 Under California law, a class action is appropriate when the class is ascertainable and there is
27 "a well defined community of interest in the questions of law and fact involved affecting the parties
28 to be represented." Cal. Code Civ. Proc. § 382; *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34

1 Cal.4th 319, 341. State law requirements under California Code of Civil Procedure §382 for class
2 certification mirror those federal law under Rule 23 of the Federal Rules of Civil Procedure:
3 numerosity, typicality of the class representatives' claims, adequacy of representation, predominance
4 of common issues, and superiority. See Fed. R. Civ. P. 23(a); see also *Hanlon v. Chrysler Corp.* (9th
5 Cir. 1998) 150 F.3d 1011, 1019. Thus, for settlement purposes, each of these elements must be present.
6 *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 237-38.

7 **A. THE PROPOSED SETTLEMENT CLASS IS ASCERTAINABLE**

8 The proposed class is ascertainable because all Class Members currently (or formerly) worked
9 for Defendant in the State of California, and are identifiable from School of Rock's employment
10 records. See *Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 932 (finding that "Class Members
11 are 'ascertainable' where they may be readily identified without unreasonable expense or time by
12 reference to official records"). Thus, the ascertainability requirement is met.

13 **B. THE PROPOSED SETTLEMENT CLASS IS SUFFICIENTLY NUMEROUS**

14 Defendant's records show that approximately 145 class members worked for the company,
15 making joinder impracticable. *In re Tobacco II Cases* (2009) 46 Cal.4th 298, 318.

16 **C. THE COMMONALITY REQUIREMENT WAS MET**

17 The commonality requirement is met if there are questions of law and fact common to the class.
18 See *Hanlon, supra*, 150 F.3d at 1019 ("The existence of shared legal issues with divergent legal factual
19 predicates is sufficient, as is a common core of salient facts coupled with disparate legal remedies
20 within the class").

21 Here, for purposes of the Settlement, the parties stipulated that class certification is appropriate.
22 (Exhibit 1 at ¶ 38, p. 9.) The claims of Class Members all involve the same questions of law and fact.
23 Namely, all class members worked in the same or similar capacities and were subject to the same
24 compensation policies and practices of Defendant. Thus, the common question exists as to whether
25 the policies and practices Class Members were subjected to are illegal.

26 **D. THE TYPICALITY REQUIREMENT IS MET**

27 The typicality requirement is met if the class representatives and class counsel have no interests
28 adverse to the interests of the proposed Class Members and are committed to vigorously prosecuting

1 the case on behalf of the class. *See Wehner v. Syntex Corp.*, 117 F.R.D. 641, 644 (N.D. Cal. 1987).

2 Here, there are no such adverse interests. Plaintiff has claims substantially the same as all the
3 Class Members.

4 **E. THE ADEQUACY REQUIREMENT IS MET**

5 The adequacy of the representation component of the community of interest requirement
6 “comes into play when the party opposing certification brings forth evidence indicating widespread
7 antagonism to the class suit.” *Capitol People First v. Dep’t of Developmental Servs.* (2007) 155 Cal.
8 App. 4th 676, 696-97. The adequacy inquiry “serves to uncover conflicts of interest between named
9 parties and the class they seek to represent.” *Id.* To assure “adequate” representation, the “class
10 representative’s [...] claim must not members of the claims of other members of the class.” *Id.*

11 No such “inconsistencies” exist here. As part of his payment as a participating Class Member,
12 Plaintiff will be paid in the same manner, through the same formula, and releases all the same claims
13 as the other Class Members. (**Exhibit 1 a** ¶71, p. 21.) As detailed above, Plaintiff’s separate release
14 and severance has no bearing on the class action settlement. (Yaeckel decl. ¶ 28.)

15 Additionally, any Class Member who wishes to “opt out” of the Settlement may do so. There
16 is therefore no conflict of interest between Plaintiff and the Class Members. Thus, at least for
17 settlement purposes, the adequacy prong is met.

18 **F. COMMON ISSUES PREDOMINATE AND CLASS-WIDE SETTLEMENT IS** 19 **SUPERIOR TO OTHER AVAILABLE METHODS OF RESOLUTION**

20 Class certification is authorized where common questions of law and fact predominate over
21 individual questions, and where class-wide treatment of a dispute is superior to individual litigation.
22 *See Richmond v. Dart Indus., Inc.* (1981) 29 Cal.3d 462, 469. The test is whether the proposed class
23 is sufficiently cohesive to warrant adjudication by representation. *See Hanlon*, 150 F.3d at 1022.

24 As detailed above in section III, the primary claims all involved standard School of Rock
25 policies and/or practices, which would stand - or fall - based primarily on a legal determination as
26 found and applied by the Court. As such, it would be preferable to resolve all of the Class Members’
27 claims by means of a class-wide settlement than to require each Class Member to litigate individual
28 claims.

VI. PRELIMINARY APPROVAL OF THE CLASS ACTION SETTLEMENT IS PROPER

The trial court has broad discretion to determine whether a class action settlement is fair and reasonable. *In re Microsoft I-V Cases* (2006) 135 Cal.App.4th 706, 723. Fairness is presumed 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. *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 52; *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802. But, even where it appears the settlement is fair, the court must still determine on the record before it whether the settlement should be approved after considering "the strengths and weaknesses of the claims and risks of the particular litigation." *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129. It considers: (i) the strength of the plaintiff's case; (ii) the risks, expense, complexity and likely duration of further litigation; (iii) the risk of maintaining class action status throughout the trial; (iv) the amount offered in settlement; (v) the extent of discovery completed; (vi) the stage of the proceedings; (vii) the experience and views of counsel; (viii) the presence of a governmental participant; and (ix) any reaction of putative class members to the proposed settlement. *Dunk*, 48 Cal.App.4th, at 1800-1801; *In re Microsoft I-V Cases*, 135 Cal.App.4th, at 723.

When evaluating, the court "must stop short of the detailed and thorough investigation that it would undertake if it were actually trying the case," but nonetheless it "must eschew any rubber stamp approval in favor of an independent evaluation." *Kullar*, 168 Cal.App.4th, at 130.

A. FAIRNESS OF THE SETTLEMENT

For preliminary approval purposes, a proposed class action settlement is *presumed* to be fair where, as here, (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; and (3) counsel is experienced in similar litigation. *Chavez, supra*, 162 Cal.App.4th at 52.

The proposed settlement in this action meets these criteria, and merits preliminary approval. As discussed above, the parties only agreed to the Agreement after engaging in a full day Mediation with an experienced wage and hour mediator, Mike Young. (Yaeckel decl. ¶¶ 10-14.) These settlement discussions were preceded by substantial investigation and discovery into the claims at issue,

1 interviews of numerous Class Members, disclosure and review of documents detailing company
2 policies and practices, informal information exchanges for mediation purposes, and ongoing
3 discussions about the merits between the parties' counsel during the span of the litigation. (*Id.*)
4 Ultimately, the parties were able to come to a mutual understanding regarding general settlement
5 terms. Thereafter, the parties memorialized the details of this settlement via the Agreement. (*Id.*)

6 **B. STRENGTH OF PLAINTIFF'S CASE**

7 All of Plaintiffs' claims – individual, PAGA, and class claims – presented hurdles including
8 obtaining class certification, in addition to a substantial risk of a defense verdict by way of summary
9 judgment motion or at trial. (Yaeckel decl. ¶¶ 19-23.)

10 The parties discovery conducted, exchange of briefs, the assistance of an experienced mediator,
11 and the parties' ongoing negotiations all helped the parties realize the strengths and weaknesses of
12 their case, as well as the risks and expenses of continuing litigation. (Yaeckel decl. ¶¶ 8-14.)

13 Additionally, as trial approaches, each party's monetary risk increases significantly as
14 substantial additional attorney hours and expert witness hours would have to be devoted to this case
15 by each party. Each party bears a real risk at trial, and considering the balance of the strengths of
16 Plaintiff's claims versus the risks inherent in trial and the consideration given to settle now, the
17 settlement reflects a fair and adequate resolution to this action.

18 **C. THE RISK, EXPENSE, COMPLEXITY, AND LIKELY DURATION OF FURTHER** 19 **LITIGATION**

20 Plaintiff's Counsel's effectiveness in prosecuting this case has translated into tangible monetary
21 benefits for the Settlement Class Members in the following respects: **(1)** a guaranteed favorable result;
22 **(2)** guaranteed monetary recovery over a reasonably short period of time, as opposed to waiting
23 additional years for a potentially worse result; and **(3)** significant savings in attorneys' fees and costs,
24 which would have increased had the case progressed through trial and possible appeals.

25 If the litigation were to proceed in lieu of settlement, additional and substantial attorneys fees
26 and costs, expert witness fees, and discovery costs and fees would quickly accumulate. Given the
27 numerous claims being litigated, the parties may be required to hire up to as many as three experts
28 each. This would result in not only the production of up to six expert reports, but six depositions as

1 well. And, based on previous discussions between counsel regarding the remaining claims (including
2 the PAGA claims), the parties anticipated (at the very least) two dueling motions for summary
3 judgment / adjudication (one from each side). (Yaeckel decl. ¶ 29.)

4 Importantly, even after engaging in all of the potential continued and protracted litigation set
5 forth above, the putative class would continue to have no guarantee of success on any of the claims
6 advanced in this case. Thus, the parties and their counsel believe in good faith that the proposed
7 resolution is a fair, reasonable, and adequate compromise. (**Exhibit 1** at ¶ 4, pp. 2-3.)

8 **D. THE RISK OF MAINTAINING CLASS ACTION STATUS THROUGH THE TRIAL**

9 Even assuming Plaintiff did obtain class certification of their claims, each claim is subject to
10 substantial risk of a defense verdict at trial. Regarding Plaintiff’s representative (PAGA) claims, there
11 is also a substantial risk that, at trial, Plaintiff will either fail to obtain a favorable judgment on one or
12 more of these claims, or that a favorable award on one or more PAGA claims may be greatly reduced,
13 as these claims are subject to mitigation by the Court. *See Thurman v. Bayshore Transit Mgmt., Inc.*
14 (2012) 203 Cal.App.4th 1112, 1135 (overruled on other grounds).

15 **E. THE AMOUNT OFFERED IN THE SETTLEMENT**

16 After deduction from the total “Settlement Amount” of the projected costs of administration,
17 proposed class representative service award, potential attorney fees and costs, the “Net Settlement
18 Amount” (“NSA”) will be distributed to the Class Members. Participating Class Members will be able
19 to claim their share of the NSA based on the total workweeks they worked during the Class Period.
20 (**Exhibit 1**, ¶49, p. 13.)

21 Based on the current proposed figures, there will be a net settlement of **\$124,000.00** and each
22 Class Member will receive an average of **\$855.17**. (Yaeckel decl. ¶ 18).

23 School of Rock also presented significant hurdles to class certification given, *inter alia*, the
24 variance in job positions and responsibilities across the class. School of Rock was nonetheless willing
25 to settle claims on a class wide basis so that employees would be significantly compensated for any
26 perceived violations. Plaintiff therefore contends the amount of the recovery achieved was significant
27 in light of the circumstances of the case. (Yaeckel decl. ¶ 30.)

28 ///

1 **F. THE EXTENT OF DISCOVERY COMPLETED**

2 Sufficient discovery, both formal and informal, has been conducted to allow the parties to
3 participate in an informed, arms-length negotiation process.(See section II above and Yaeckel decl.
4 ¶¶ 7-9, 12.)

5 **G. THE STAGE OF THE PROCEEDINGS**

6 Plaintiff had already served written discovery, which Defendant responded to informally.
7 Depositions, a class certification motion, and/or motions for summary judgment or adjudication would
8 have followed.

9 Depending on the outcome, Plaintiff would have lost his ability to negotiate a class-wide or
10 class and representative settlement agreement on certain issues. Likewise, Defendant stood to lose a
11 key negotiating tool in the event that Plaintiff’s motions were successful. Therefore, the parties
12 achieved a tentative settlement agreement at a point when neither side had a stated advantage in the
13 litigation.

14 **H. THE EXPERIENCE AND VIEWS OF COUNSEL**

15 Class Counsel has considerable experience in wage and hour and class action litigation.
16 William Sullivan has over 27 years of experience, 24 years of which has been devoted to both
17 prosecuting and defending class action litigation. Attorney Eric Yaeckel has over 11 years of
18 experience all of which have been dedicated to class action and representative action (PAGA)
19 litigation. (Yaeckel decl. ¶ 31.)

20 Plaintiff’s counsel considers the Agreement to represent a fair, adequate and reasonable
21 settlement that is well within the accepted range of recoveries when compared to similar wage and
22 hour class actions. (Yaeckel decl ¶ 32.)

23 **I. PRESENCE OF A GOVERNMENTAL ACTOR**

24 Although the State is not directly involved in this action, Plaintiff “stands in the shoes” of the
25 Labor and Workforce Development Agency (“LWDA”) by bringing his PAGA action. Consideration
26 has been made to compensate to Labor Workforce Development Agency (“LWDA”) in the amount
27 of \$18,000.00 (the LWDA’s 75% share of a \$24,000 allocation). (**Exhibit 1**, ¶ 45, p. 12-13.)

28 The LWDA declined to prosecute the claims itself. Counsel for the parties believe this is a fair,

1 reasonable, and adequate allocation. (Yaeckel decl. ¶ 33.) The LWDA has also been served with copies
2 of the proposed settlement and all preliminary approval papers for this motion and has not objected
3 or responded. (*Id.*) Plaintiff will update the Court if any response is received. (*Id.*)

4 **J. REACTION OF THE CLASS MEMBERS TO THE PROPOSED SETTLEMENT**

5 Prior to preliminary approval, and class notice, what can be said of the reaction the class
6 members is limited. However, Plaintiff's counsel has spoken to a few Class Members prior to agreeing
7 to the proposed settlement, and **all** were in favor of the settlement. (Yaeckel decl ¶ 34.)

8 As explained in the Agreement, the Settlement Claims Administrator will send a detailed
9 Notice and Request for Exclusion instructions to the Settlement Class Members. (**Exhibit 1** at ¶ 56,
10 p. 16.) The proposed Notice packet is attached as Exhibit A to the Agreement.

11 The proposed Notice advises the Settlement Class Members of their anticipated recovery under
12 the Agreement, how they can object, how they can exclude themselves, the amount of fees and costs
13 sought by Settlement Class Counsel, the amount of enhancement payments sought on behalf of the
14 class representatives, and the date of the final approval hearing. (See **Exhibit A** to the Agreement.)
15 Thus, the proposed Notice complies with the notice requirements set forth in CRC Rule 3.766(d) and
16 Rule 3.769(f).

17 **VII. PROPOSED TIMELINE OF EVENTS AND FINAL APPROVAL**

18 Plaintiff also requests that the Court set a Final Approval Hearing in accordance with the
19 chronology of events set forth in the Settlement Agreement:

- 20 • Within 20 calendar days of the Court's Preliminary Approval: Defendant will provide to the
21 Claims Administrator, Class Members' names, last known addresses, social security numbers,
22 and the total number of workweeks each Class Member was employer during the class period.
- 23 • Within 10 calendar days of receipt of the Class Member data from Defendants, the Claims
24 Administrator will mail the Notice Packet to Class Members;
- 25 • 45 calendar days after the Claims Administrator has mailed the Notice Packets to Class
26 Members: Deadline for Class Members to postmark and submit all Requests for Exclusions,
27 or to file written objections to the settlement with the Court;
- 28 • Approximately 15 days after the conclusion of the Notice and Claims Period, and at least 16

- 1 days before the hearing, Plaintiff will file an *Unopposed* Motion for Final Approval; and
- 2 • Consistent with the above, Plaintiff requests a final approval hearing that is approximately 90
- 3 days (or the first available Court date thereafter) after the date the Court enters an Order
- 4 granting preliminary approval of the Settlement.

5 **VIII. CONCLUSION**

6 Based on the foregoing, Plaintiffs respectfully requests that the Court issue an Order: (1)

7 Certifying the Proposed Settlement Class; (2) Preliminarily approving the settlement as set forth in the

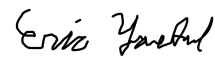
8 Agreement; and (3) Approving the proposed Class Notice.

9

10 Dated: June 8, 2022

SULLIVAN & YAECKEL LAW GROUP, APC

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13 _____
Eric K. Yaeckel
14 Attorneys for Plaintiffs JAMES PACKES, in a
15 Representative capacity only, and on behalf of other
16 members of the general public similarly situated

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