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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **FOR THE COUNTY OF LOS ANGELES**

15 VA PAU LO, as an individual and on behalf
16 of all others similarly situated,

17 Plaintiff,

18 vs.

19 CYBERPOWER, INC. doing business as
20 CYBERPOWER P.C., a California
21 corporation; and DOES 1 to 50, inclusive

Case No.: 21STCV31479

Assigned for all Purposes to:

Hon. Daniel Freeman

Dept. SSC-14

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, Va
Pau Lo, Julie Green, Rodney W. Bell, and
Stanley Kwong; [Proposed] Order]

Date: October 5, 2023

Time: 10:00 a.m.

Dept.: SSC-14

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Federal Judicial Center, *Managing Class Action Litigation: A Pocket Guide for Judges* (3d ed. 2010) 16

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1 **I. INTRODUCTION**

2 Plaintiff Va Pau Lo respectfully requests that the Court preliminarily approve the Class
3 Action and PAGA Settlement Agreement and Class Notice (“Agreement”) entered into between
4 Plaintiff and Defendant CyberPower, Inc. dba Cyberpower P.C. (“Cyberpower” or “Defendant”).
5 The proposed settlement seeks to resolve claims in the above captioned matter in exchange for a
6 non-reversionary \$1,925,000 Gross Settlement Amount. The settlement class is comprised of “all
7 current and former non-exempt employees who worked as for Defendant in California at any time
8 between August 25, 2017 and December 31, 2022.” (Agreement, Section 1.5).¹

9 The Agreement and Notice distribution plan are the products of adversarial, arm’s-length
10 negotiations by informed counsel and parties, facilitated by an experienced mediator. The
11 settlement is fair, reasonable, and adequate to all. Plaintiff has analyzed the strengths and
12 vulnerabilities of the claims with Defendant’s potential exposure and determined the \$1,925,000
13 proposed settlement is well within the range of reasonableness and is in the Class Members’ best
14 interests. The length and risks of trial and perils of litigation that affect the values of the claims
15 were all carefully weighed. In addition, the defenses asserted by Defendant, the uncertainty of
16 class certification, the difficulties of complex litigation, the lengthy process of establishing
17 specific damages and various possible delays and appeals, were also considered by Plaintiff and
18 counsel in negotiating the proposed settlement. Further, the proposed settlement satisfies the
19 criteria for preliminary approval under California Rules of Court, Rule 3.769.

20 Accordingly, Plaintiff seeks: (1) preliminary approval of the settlement; (2) provisional
21 certification of the Class; (3) appointment of Plaintiff as Class Representatives; (4) appointment of
22 Crosner Legal, PC as Class Counsel; (5) approval of the Parties’ proposed Notice of Class Action
23 Settlement (“Notice”) and method of notifying the Class Members; (6) a hearing date for Plaintiff’s
24 Motion for Final Approval of Class Action Settlement; and (7) entry of an Order Granting
25 Preliminary Approval of Class Action Settlement.

26 **II. BACKGROUND/LITIGATION HISTORY**

27 Defendant Cyberpower is a computer system manufacturer, manufacturing and distributing
28

¹ The fully executed Agreement is attached to the Declaration of Zachary M. Crosner (“Crosner Decl.”) as Exhibit 1.

1 customized high-end gaming machines, notebook systems, and high-performance workstations.
2 Plaintiff worked for Cyberpower in one of its Los Angeles County warehouse locations from
3 approximately August 2020 to June 2021, as an hourly paid general warehouse laborer. (Crosner
4 Decl., ¶ 12.)

5 On August 25, 2021, Plaintiff filed a class action complaint in this Court alleging various
6 wage and hour violations. Plaintiff also submitted a PAGA notice letter to the LWDA on August
7 23, 2021, and exhausted his administrative remedies. (Crosner Decl. ¶ 13; Exh. 4.) Plaintiff did not
8 receive notice from the LWDA that it intended to investigate the alleged violations outlined in his
9 PAGA letter, and consequently, on November 8, 2021, he filed a PAGA-only complaint² against
10 Defendant, seeking civil penalties for alleged violations of various Labor Code provisions.³
11 (Crosner Decl., ¶ 13.)

12 In April 2022, the Parties participated in mediation with Steve Cerveris, Esq., a respected
13 wage and hour class action mediator. The mediation lasted a full day but did not result in a
14 resolution. After additional meeting, conferring, and investigation, the Parties attempted a second
15 mediation with Mr. Cerveris in October 2022, and finally reached agreement on all major issues.
16 They then formally reduced the proposed settlement to the Agreement now before the Court for
17 approval. The Agreement meets the requirements in the LASC Checklist for Preliminary Approval.
18 The Agreement has also been uploaded to the LWDA. (Crosner Decl., ¶ 14; Exh. 6.)

19 In order to fully effectuate the tentative settlement, the Parties agreed Plaintiff would amend
20 his complaint in this matter to allege claims under PAGA, and subsequently dismiss the PAGA-only
21 matter. By stipulation, Plaintiff filed his first amended complaint on March 17, 2023, and dismissed
22 the PAGA matter without prejudice on March 21, 2023. The operative Complaint alleges claims
23 for minimum and overtime wages, meal and rest break violations, inaccurate wage statements,
24 waiting time penalties, unfair competition, and penalties under PAGA. (Crosner Decl., ¶ 15.)

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27 _____
28 ² LASC Case No. 21STCV41181.

³ Plaintiff uploaded the PAGA complaint to the LWDA. (Crosner Decl., Exh. 5.)

1 **III. INVESTIGATION**

2 Prior to the mediation, Defendant provided Plaintiff with extensive informal discovery,
3 including Plaintiff's personnel, time, and payroll records, time records and payroll records for a
4 randomly selected sampling of about 15% of Class Members,⁴ wage statement exemplars, employee
5 handbooks, including Defendant's policies and procedures regarding the payment of wages, the
6 provision of meal and rest breaks, timekeeping policies (including recording hours), issuance of
7 wage statements, and termination wages, as well as information regarding the number of putative
8 Class Members who are current and former employees, the number of PAGA Members, the number
9 of workweeks throughout the Class Period, and the number of pay periods throughout the PAGA
10 Period. From this information, Plaintiff was able to analyze Defendant's liability for the claims
11 asserted in this case and, with the assistance of Plaintiff's consulting experts at Berger Consulting
12 Group, the potential exposure and damages. (Crosner Decl., ¶ 16.)

13 Based on this informal discovery, Plaintiff contends the Class Members were not paid all
14 minimum or overtime wages, not provided with legally compliant meal and rest periods, did not
15 receive compliant wage statements, and did not receive all wages due on separation of employment.
16 In considering the reasonableness of the proposed settlement, Plaintiff considered each of
17 Defendant's counterarguments, which sharply contested Plaintiff's claims. Plaintiff's Counsel
18 weighed the strength of Defendant's arguments, including the risks of prevailing at class
19 certification and on the merits, and determined that the proposed settlement is in the best interests
20 of the Class. Although remaining confident in the strength of their claims, all these factors led
21 Plaintiff to discount the exposure analysis, as discussed in detail below. (Crosner Decl., ¶ 17.)

22 **IV. TERMS OF THE PROPOSED SETTLEMENT**

23 **A. Deductions from the Settlement**

24 The Parties have agreed (subject to the Court's approval) that this action be settled and
25 compromised for the non-reversionary total sum of \$1,925,000.00 ("Gross Settlement Amount" or
26 "GSA") (Agreement, § 3.1), which includes: (a) attorney's fees of up to \$641,666.00 (one-third of

27 _____
28 ⁴ Plaintiff submits this sampling was statistically viable based upon input from his experts at Berger Consulting, and it
allowed them to extrapolate out for the entire class with a reasonable degree of accuracy for purposes of evaluating
potential damages for mediation. (Crosner Decl., ¶ 16.)

1 the GSA)⁵ to compensate Class Counsel for work already performed and all work remaining to be
2 performed (Agreement, § 3.2.2.); (b) actual litigation expenses not to exceed \$30,000⁶ (*Id.*); (c) a
3 Class Representative Service Payment in an amount not to exceed \$10,000.00 (Agreement, § 3.2.1);
4 (d) Administration Costs to CPT Group, Inc. in an amount not to exceed \$16,400.00 (Agreement,
5 § 3.2.3); and (e) PAGA penalties to the LWDA of \$37,500.00 (which is 75% of the \$50,000.00
6 PAGA Payment, with the remaining 25%, or \$12,500.00, to PAGA Members) (Agreement, § 3.2.5).
7 Employer-side payroll taxes (including FICA, FUTA, and SDI) will be paid by Defendant separate
8 and apart from the GSA. (Agreement, §§ 3.1 and 4.3)

9 **B. Calculation of the Individual Settlement Payments to Class and PAGA**
10 **Members**

11 After all Court-approved deductions from the GSA, it is estimated that about \$1,176,943
12 (“Net Settlement Amount” or “NSA”), less all applicable employee-side taxes, will be distributed
13 to the estimated 549⁷ Class Members, with an average individual settlement amount of around
14 \$2,143.⁸ Additionally, the 25% PAGA Payment (\$12,500.00) will be distributed to the estimated
15 364⁹ PAGA Members, resulting in an average payment of about \$34.34¹⁰ per PAGA Member.
16 (Crosner Decl., ¶ 18.) Under no circumstances will any portion of the Settlement revert to
17 Defendant. (Agreement, § 3.1.)

18 Subject to the terms and conditions of the Settlement, CPT will calculate and issue Individual
19 Settlement Payments to Participating Class Members based on the following formula:

20 Each Participating Class Member will receive a proportionate share of the Net
21 Settlement Amount that is equal to (i) the number of weeks he or she worked for
22 Defendants in California during the Class Period based on the Class Data provided
23 by Defendants, divided by (ii) the total number of weeks worked by all Participating
Class Members during the Class Period based on the same Class Data, which is then
multiplied by the NSA. One day worked in a given week will be credited as a week

24 ⁵ The percentage method, with or without a lodestar cross-check, may be used in common fund cases like this one.
25 *Laffitte v. Robert Half Internat., Inc.* (2016) 1 Cal.5th 480, 503. In support of their fee request at Final Approval, Class
Counsel will provide the Court with lodestar information to permit the Court to do a lodestar cross-check in connection
with Class Counsel’s request for attorney’s fees.

26 ⁶ At Final Approval, Class Counsel will provide documentation regarding actual expenses incurred to support Class
Counsel’s request for reimbursement of actual expenses.

27 ⁷ This is based on information provided by Defendants in advance of mediation and separately confirmed by Plaintiff.

28 ⁸ \$1,176,943 NSA / 549 Class Members

⁹ This information is also based on data provided by Defendants in advance of mediation.

¹⁰ \$12,500 (25% PAGA Payment) /364 PAGA Members

1 for purposes of this calculation. Therefore, the value of each Class Member's
2 Individual Settlement Share ties directly to the amount of weeks that he or she
worked.

3 (Agreement, § 3.2.4.)

4 Additionally, CPT will calculate and issue payments to PAGA Members based on the
5 following formula:

6 Each PAGA Member will receive a proportionate share of the 25% PAGA Payment
7 payable to PAGA Members that is equal to (i) the number of pay periods he or she
8 worked for Defendants in California during the PAGA Period based on the Class
9 Data provided by Defendants, divided by (ii) the total number of pay periods worked
10 by all PAGA Members during the PAGA Period based on the same Class Data, which
is then multiplied by the 25% PAGA Payment. One day worked in a given pay period
will be credited as a pay period for purposes of this calculation. Therefore, the value
of each PAGA Member's share of the PAGA Payment ties directly to the amount of
pay periods that he or she worked.

11 (Agreement, § 3.2.5.)

12 The number of pay periods and weeks worked by each Participating Class Member and
13 PAGA Member will be derived from Defendant's records. (Agreement, §§ 1.8, 3.2.4.1, 3.2.5.1.)
14 Each Class Member's gross settlement award will be apportioned as follows: 25% wages and 75%
15 penalties and interest. (Agreement, § 3.2.4.1) CPT will be responsible for issuing Form W-2s for
16 amounts deemed "wages" and Form 1099s for the portions allocated to penalties and interest.
17 (Agreement, §§ 3.2.4.1 and 3.2.5.2.)

18 **C. Uncashed Funds to Unclaimed Property Fund**

19 Settlement checks must be cashed or deposited within 180 days after the checks are mailed.
20 (Agreement, § 4.4.1.) In the event a settlement check remains uncashed, such uncashed funds shall
21 be transmitted to the State Controller's Office Unclaimed Property Fund in the name of the
22 Participating Class Member and/or PAGA Member for later claim. (Agreement, § 4.4.3.) Because
23 this lawsuit benefits Class Members/PAGA Members who release claims by participating in the
24 lawsuit, the funds representing their settlement payments should remain their property. By sending
25 the uncashed funds to the Unclaimed Property Fund in the name of the Class Member/PAGA
26 Member, he or she can claim his or her property at a future date convenient to the Class Member.
27 (Crosner Decl., ¶ 22.)

28 ////

1 **D. Notice and Extended Response Deadline for Re-Mailed Notices**

2 Within fifteen business days after entry of the Preliminary Approval Order, Defendant will
3 provide CPT with the Class Data, containing each Class Member's first and last name, last known
4 mailing address, Social Security number, total number of weeks worked during the Class Period,
5 and total number of pay periods worked during the PAGA Period. (Agreement, § 4.2.) CPT will
6 maintain the Class Data as private and confidential, but Class Counsel will have access to the Class
7 Data so that nothing shall impede Class Counsel from discharging their fiduciary duties to the Class.
8 (Agreement, § 4.2.)

9 Prior to mailing, CPT will perform a search for updated addresses in the National Change of
10 Address Database. (Agreement, § 7.4.2.) CPT will use the NCOA and skip traces to attempt to find
11 current addresses for any Notice returned as undeliverable. For any re-mailed Notice, CPT will
12 extend the Class Member's Response Deadline by 14 calendar days. (Agreement, § 7.4.3-4.) If CPT
13 is unable to obtain a better address for a Class Member, the Notice will be deemed undeliverable.
14 (Agreement, § 7.4.3-4.) Within 15 business days after receipt of the class data, CPT will mail via
15 regular First-Class mail the Notice to all Class Members. (Agreement, § 7.4.2.)

16 The contents of the Notice are consistent with the terms of the Agreement. The Notice
17 informs Class Members how and when to request exclusion from or object to the settlement and of
18 their estimated payment amount which they will automatically receive a settlement payment if they
19 do nothing. The Notice further advises Class Members of the Court's COVID-19 procedures, how
20 to obtain documents filed in the case from the Court, CPT or Class Counsel, how to check the
21 Court's website to find out whether the Final Approval hearing date/location has been changed,
22 directs the Class Member to CPT's website and the Court's website to find out whether final
23 judgment has been entered. (Crosner Decl., Exh. 3.)

24 **E. Responses to the Settlement**

25 Class Members will have 45 days from the initial mailing of the Notice to respond to the
26 settlement by submitting a challenge to the number of weeks or pay periods attributed to them,
27 submitting an objection, or requesting to be excluded from the settlement and the consequences of
28 each choice. (Agreement, 7.4.4.) Class Members can object to the settlement in writing via mail or

1 fax by submitting a document with their name, the words “Notice of Objection” or “Formal
2 Objection” and a description of the arguments supporting their objection. Class Members are
3 informed that the Court will hear any objections from any Class Member who attends the Final
4 Approval Hearing. (Agreement, § 7.7.)

5 Class Members can also submit a written request for exclusion from the settlement by
6 mailing or faxing a written request, including his or her name, address, and phone number, and a
7 statement demonstrating his or her intent to opt out of the settlement. (Agreement, § 7.5.)

8 The Notice also informs the Class Member/PAGA Members that they can dispute the
9 number of weeks/pay periods allotted to them to calculate their settlement payments by contacting
10 CPT before the Response Deadline and include any documentation supporting the dispute. CPT will
11 investigate the dispute, request additional information from Defendant, and make a final decision as
12 to the number of eligible work weeks/pay periods. (Agreement, § 7.6.)

13 **F. Funding and Distribution of the Settlement**

14 Defendant shall fund the settlement within fifteen business days after the Effective Date.
15 (Agreement, § 4.3.). CPT shall disburse all payments required under this Settlement within 14
16 calendar days of receipt of the GSA. (Agreement, § 4.4.)

17 **G. Release of Claims**

18 Upon Defendant’s payment funding the GSA, Participating Class Members shall forever
19 release the Released Parties¹¹ for the Released Claims for the Class Period. (Agreement, § 5.) The
20 Released Claims are:

21 (a) all claims that were alleged, or reasonably could have been alleged, based on facts
22 stated in the Operative Complaint, including claims for (a) failure to pay minimum
23 wages (b) failure to pay overtime wages, (c) failure to provide meal periods or
24 compensation in lieu thereof (d) failure to provide rest periods or compensation in
25 lieu thereof (e) failure to provide accurate itemized wage statements (f) failure to
26 timely pay wages upon resignation or termination (g) failure to produce records
27 during the Class Period.

28 ¹¹ “Released Parties” means Defendant and each of its former and present directors, officers, shareholders, owners,
members, attorneys, insurers, predecessors, successors, assigns, subsidiaries, affiliates. (Agreement, § 1.42.)

1 (Agreement, § 5.2.) Likewise, upon Defendant's payment of the GSA, Plaintiff, the Aggrieved
2 Employees, and the State of California shall forever release the Released Parties for the PAGA
3 Released Claims for the PAGA Period. (Agreement, § 5.) The PAGA Released Claims are:

4 all claims for PAGA penalties that were alleged, or reasonably could have been alleged,
5 based on the facts stated in the Operative Complaint and the PAGA Notice, including:
6 (a) failure to pay minimum wages (b) failure to pay overtime wages, (c) failure to
7 provide meal periods or compensation in lieu thereof (d) failure to provide rest
8 periods or compensation in lieu thereof (e) inaccurate wage statements (f) record
keeping violations (g) untimely payment of wages at termination (h) refusal to pay
wages owed, and (i) secretly paying wages lower than the statutory requirements
during the PAGA Period.

9 (Agreement, § 5.3.)

10 As discussed below, Plaintiff's Counsel is convinced that the proposed settlement is in the
11 Class Members' best interests based on the negotiations and a detailed knowledge of the issues
12 present in this action. The length and risks of trial and perils of litigation that affect the value of the
13 claims were all carefully weighed. In addition, the affirmative defenses asserted by Defendant, the
14 uncertainty of class certification, the difficulties of complex litigation, the lengthy process of
15 establishing specific damages and various possible delays and appeals were also carefully
16 considered by Plaintiff's Counsel in arriving at the proposed settlement.

17 **H. The Class Representative Service Award Is Justified Given the Risks and**
18 **Should be Preliminarily Approved**

19 The Agreement provides for a service payment not to exceed \$10,000.00 to Plaintiff.
20 (Agreement, § 3.2.1.) Courts routinely approve service payments, or incentive awards, to
21 compensate named plaintiffs for the services they provide and the risks they incur during class
22 litigation. *In re Cellphone Fee Termination Cases* (2010) 186 Cal. App. 4th 1380, 1393 ("These
23 awards are discretionary...and are intended to compensate class representatives for work done on
24 behalf of the class, to make up for financial or reputational risk undertaken in bringing the action,
25 and, sometimes, to recognize their willingness to act as a private attorney general."); *Bell v. Farmers*
26 *Ins. Exch.* (2004) 115 Cal. App. 4th 715, 725-26 (upholding service payments to class
27 representatives); Manual § 21.62 n.971 (noting that service payments are warranted).

1 The requested service award is reasonable in light of the benefits Plaintiff conferred upon
2 the entire Class, resulting in a benefit to all Class Members and the State of California, the time
3 spent assisting counsel with the investigation and prosecution of these claims, commitment to
4 responding to discovery, and consenting to the proposed Agreement. Furthermore, by attaching his
5 name to this lawsuit, Plaintiff also took on the reputational risk that future employers would learn
6 of his participation in this case and would unfairly associate them with costly litigation, costing them
7 future employment opportunities. Any future employer could easily perform a simple Google search
8 – an unauthorized simple background check unknown to Plaintiff that can still provide a plethora of
9 information – and conclude that Plaintiff is not worth the risk of hiring given his prior involvement
10 in a lawsuit against a former employer. This is the kind of reputational risk, borne only by Plaintiff
11 and no other Class Member, that the incentive award is meant to compensate. Furthermore, in
12 pursuing this action on behalf of the Class, Plaintiff risked a judgment against him for attorney’s
13 fees and costs in the event this matter had been lost. For these reasons, at final approval, Plaintiff
14 will request the Court award him an enhancement payment in an amount that does not exceed
15 \$10,000. (Declaration of Va Pau Lo, ¶¶ 2-10; Crosner Decl., ¶ 32.)

16 **V. ARGUMENT**

17 In deciding whether to approve a proposed class action settlement under Code of Civil
18 Procedure section 382, the Court must find that a proposed settlement is “fair, adequate and
19 reasonable.” *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801 [quoting *Officers for*
20 *Justice v. Civil Serv. Comm’n* (9th Cir. 1982) 688 F.2d 615, 625, cert. den. (1983) 459 U.S. 1217].
21 A proposed class action settlement is **presumed** fair under the following circumstances: (1) the
22 parties reached settlement after arms-length negotiations; (2) investigation and discovery were
23 sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
24 litigation; and (4) the percentage of objectors is small. *Id.* at 1802. As the following shows, all of
25 these elements are present here and the Court should grant of preliminary approval.

26 **A. The Settlement Resulted from Arm’s Length Negotiations**

27 The proposed settlement was reached as a result of arm’s-length negotiations. Though
28 cordial and professional, the settlement negotiations have been, at all times, adversarial and non-

1 collusive in nature. Following mediation, Counsel for the Parties conducted extensive arm's length
2 settlement negotiations regarding the settlement terms memorialized in the Agreement. (Crosner
3 Decl., ¶ 33.)

4 While Plaintiff believes in the merits of his case, he also recognizes the inherent risks of
5 litigation and understand the benefit of Class Members receiving significant settlement funds
6 immediately as opposed to risking continued litigation in achieving class certification, the merits of
7 the case before and after trial, the damages awarded and/or an appeal that can take several more
8 years to litigate. (Crosner Decl., ¶ 33.)

9 **B. The Settlement is the Result of Thorough Investigation and Discovery**

10 The Parties thoroughly investigated and evaluated the factual strengths and weaknesses of
11 their arguments before reaching the proposed settlement, and engaged in sufficient investigation,
12 research and discovery, referenced above, to support the settlement. The proposed settlement was
13 only possible following significant analysis and evaluation of Defendant's relevant policies and
14 procedures, as well as the data it produced for the putative Class, which permitted Plaintiff's Counsel
15 and expert to engage in a comprehensive analysis of liability and potential damages to prepare for
16 mediation. (Crosner Decl., ¶ 34.) This litigation has reached the stage where "the Parties certainly
17 have a clear view of the strengths and weaknesses of their cases" sufficient to support the Settlement.
18 *Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F. Supp. 610, 617.

19 **C. Counsel for the Parties are Experienced in Similar Litigation**

20 Counsel for the Parties are particularly experienced in wage and hour employment law, class
21 actions and PAGA actions. Plaintiff's Counsel has prosecuted numerous cases on behalf of
22 employees for wage and hour violations and thus are experienced and qualified to evaluate the class
23 and PAGA claims, evaluate settlement versus trial on a fully informed basis, and to evaluate the
24 viability of the defenses. This experience informed Plaintiff's Counsel on the risks and uncertainties
25 of further litigation and guided their determination to endorse the proposed settlement.¹² (Crosner
26 Decl. ¶¶ 6-11.)

27 ¹² The final factor mentioned in *Dunk* - the number of objectors - is not determinable until the Notice of Class Action
28 Settlement has been provided to the Class and they have had an opportunity to respond. This information will be
provided to the Court in conjunction with the Motion for Final Approval of Class Action Settlement.

1 **D. The Proposed Settlement is a Reasonable Compromise of Claims**

2 An understanding of the amount in controversy is an important factor into whether the
3 settlement “of the class members’ claims is reasonable in light of the strengths and weaknesses of
4 the claims and the risks of the particular litigation.” *Kullar v. Foot Locker Retail, Inc.* (2008) 168
5 Cal.App.4th 116, 129; *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th
6 399, 409. The most important factor in this regard is “the strength of the case for plaintiffs on the
7 merits, balanced against the amount offered in settlement.” *Kullar*, 168 Cal.App.4th at 129..

8 In weighing the strength of Plaintiff’s case, *Kullar* instructs that the court is not to “decide
9 the merits of the case or to substitute its evaluation of the most appropriate settlement for that of the
10 attorneys.” 168 Cal.App.4th at 133. Further, this analysis does not require an explicit statement of
11 the maximum amount the plaintiff class could recover if it prevailed on all its claims, provided there
12 is a record which allows “an understanding of the amount that is in controversy and the realistic
13 range of outcomes of the litigation.” *Munoz*, 186 Cal. App. 4th at 409. Put differently, “as the court
14 does when it approves a settlement as in good faith under Code of Civil Procedure section 877.6,
15 the court must at least satisfy itself that the class settlement is within the ‘ballpark’ of
16 reasonableness.” *Kullar*, 168 Cal. App. 4th at 133 citing *Tech-Bilt v. Woodward-Clyde & Associates*
17 (1985) 38 Cal. 3d 488, 499-500. As shown below, the Parties’ investigation and discovery revealed
18 several reasons to discount claims and agree to this settlement.

19 **E The Settlement is Fair and Reasonable Based on the Strengths of Plaintiff’s**
20 **Case and the Risks and Costs of Further Litigation**

21 The proposed settlement was only possible following significant analysis and evaluation of
22 Defendant’s relevant policies and procedures, as well as the data that Defendant produced for the
23 Class. This permitted Plaintiff’s Counsel to engage in a comprehensive analysis of liability and
24 potential damages. The discovery conducted resulted in Plaintiff’s central theories of liability, which
25 are based on Plaintiff’s claims that Defendants failed to provide compliant meal and rest periods,
26 failed to pay all minimum and overtime wages, failed to provide accurate, itemized wage statements
27 and failed to pay all wages due on separation of employment. As explained above, Defendant
28 maintain that the discovery produced demonstrates that it would succeed at both class certification

1 and on the merits. (Crosner Decl., ¶¶ 35-36.)

2 Plaintiff believes this case is suitable for certification on the claimed basis that there are
3 company-wide policies that Plaintiff contends violate California law and uniformly affect the Class
4 Members. However, Defendants' counterarguments raise uncertainties with respect to both class
5 certification and success on the merits. As the California Supreme Court emphasized in *Sav-On v.*
6 *Superior Court* (2004) 34 Cal.4th 319 (2004), class certification is always a matter of the trial court's
7 sound discretion, and decisions following *Sav-On* have reached different conclusions with respect
8 to certification of wage and hour claims.¹³ While remaining confident in the strengths of his claims,
9 all of these factors led Plaintiff to discount the following maximum potential damage claims.
10 (Crosner Decl., ¶ 36.)

11 **1. The Settlement Amount is Reasonable**

12 Defendant provided Plaintiff with class-wide data from which Plaintiff's Counsel could
13 extrapolate a damage analysis in preparation of mediation. Prior to mediation, there were a total of
14 549 Class Members (___ formerly employed in the limitations period), who collectively worked
15 approximately 66,433 work weeks during the Class Period. There are also approximately 364
16 aggrieved employees and 13,557 pay periods within the PAGA Period. (Crosner Decl. ¶ 37.)

17 Plaintiff contends Defendants failed to provide legally compliant meal and rest breaks.
18 Specifically, Plaintiff contends Defendant placed substantial restrictions on how employees used
19 their break time, such as prohibiting any personal business being conducted on company premises
20 and further limiting employee's ability to leave the work site during their breaks. Accordingly,
21 Plaintiff contends class members remained subject to employer control during their breaks. Beyond
22 that, Plaintiff also contends Defendant did not provide required second meal breaks and third rest
23 breaks on shifts longer than 10 hours, and that review of Defendant's time records suggests
24 numerous "de facto" violations for missed, late, and short meal periods. Plaintiff claims this violates

25
26 ¹³ *E.g., Harris v. Superior Court*, 154 Cal.App.4th 164 (2007) (reversing decertification of class claiming
27 misclassification and ordering summary adjudication in favor of employees), *review granted*, 171 P.3d 545
28 (2007) (not cited as precedent, but rather for illustrative purposes only); *Walsh v. IKON Solutions, Inc.*, 148
Cal.App.4th 1440 (2007) (affirming decertification of class claiming misclassification); *Aguilar v. Cintas
Corp. No. 2*, 144 Cal.App.4th 121 (2006) (reversing denial of certification); *Dunbar v. Albertson's Inc.*, 141
Cal.App.4th 1422 (2006) (affirming denial of certification).

1 Labor Code sections 512, 226.7, and the applicable IWC Wage Orders, as well as *Brinker*
2 *Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004 and *Augustus v. ABM Security Serv.,*
3 *Inc.* (2016) 2 Cal.5th 257 for failure to provide meal and rest periods and within the applicable time
4 frames. Furthermore, Plaintiff contends Defendant unlawfully rounded meal period time punches,
5 resulting in shortened meal breaks to appear compliant, in violation of *Donahue v. AMN Services,*
6 *LLC* (2021) 11 Cal.5th 58. (Crosner Decl., ¶ 38.)

7 Defendant denies Plaintiff's contentions, claiming they made meal and rest breaks available
8 to Class Members in compliance with California law. Defendant contended its meal and rest break
9 policies are lawful and that Class Members were frequently reminded via training and supervisors,
10 that they were required to take all meal and rest breaks. Defendant also contends that time records
11 and signed declarations demonstrate that Class Members took duty-free, timely meal and rest breaks.
12 Defendants contend their meal and rest break policies and practices comported with the flexibility
13 the *Brinker* court held was integral to California's meal and rest period requirements. Finally,
14 Defendant argued that Plaintiff's meal and rest break claims are not susceptible to common proof,
15 as the claims would require individualized inquiry, including whether there was an unlawful
16 companywide policy, whether employees had the opportunity to take meal and rest periods, whether
17 they voluntarily chose to forego their meal and rest periods, and whether Defendant ever prevented
18 them from taking meal and rest periods. Accordingly, Defendant contends these claims are
19 vulnerable to a ruling that class treatment is not appropriate. (Crosner Decl. ¶ 39.) Without taking
20 into consideration any of Defendant's defenses to certification or on the merits, Plaintiff calculated
21 Defendant's maximum exposure for the meal and rest break claims as \$7,227,934. (Crosner Decl.,
22 ¶ 39.)

23 Plaintiff also asserts Defendant's rounding of time entries deprived employees of earned
24 wages and gave rise to unpaid wages, and also that employees lost compensable time while waiting
25 in long lines to clock in. Plaintiff further contends Defendant failed to pay all overtime wages at the
26 regular rate of pay, as Defendant failed to incorporate non-discretionary bonuses paid during the
27 same pay periods that overtime wages were earned, in violation of *Alvarado v. Dart Container Corp.*
28 (2018) 4 Cal.5th 542. (Crosner Decl., ¶ 43.) Without taking into consideration any of Defendant's

1 defenses to certification or on the merits (such as the rounding policy being legal under *See's*
2 *Candies v. Superior Court* (2012) 210 Cal. App. 4th 889), Plaintiff's expert calculated Defendant's
3 maximum exposure for this claim as \$743,422 on the off the clock/rounding claim and about
4 \$81,189 on the regular rate claim. (Crosner Decl., ¶ 40.)

5 Plaintiff's claims for inaccurate wage statements and waiting time penalties are derivative
6 of the unpaid wage claims. Should those claims fail, Plaintiff's claim for inaccurate wage statements
7 and waiting time penalties would also fail. Defendant also contended it would not be liable for
8 waiting time penalties because a "good faith dispute" exists over the payment of past wages. Cal.
9 Code Regs. Tit. 8 § 13520; *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1201.
10 Further, Defendants contend Plaintiff would have to prove that Defendant "willfully" failed to pay
11 Class Members appropriate wages due upon separation of employment. Defendant contended that
12 any failure to pay wages upon separation was not willful. (Crosner Decl., ¶ 41.) Without taking into
13 consideration any of Defendant's defenses to certification or on the merits, Plaintiff calculated
14 Defendants' maximum exposure for wage statement penalties as \$788,150 and waiting time
15 penalties as \$1,196,565. (Crosner Decl., ¶ 41.)

16 As far as potential PAGA liability, the theoretical civil penalties likely exceed \$2,043,000
17 million should Plaintiff prevail on all claims and establish violations of the multiple Labor Code
18 sections at issue. (Crosner Decl., ¶ 42.) As with the class claims, Plaintiff discounted the potential
19 PAGA penalties based on Defendant's various defenses on the merits and also accounted for the
20 Court's wide discretion to reduce such penalties, or to decline to award penalties at all. Labor Code
21 § 2699(e)(2); *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504 (trial court awarded
22 penalties of \$5 per pay period after a bench trial, which decision was upheld on appeal); *In re Taco*
23 *Bell Wage and Hour Actions* (E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. LEXIS 48557 (PAGA
24 penalties denied after trial). Accordingly, the Parties allocated \$50,000 to PAGA penalties.

25 Plaintiff submits this amount is reasonable under the circumstances and in line with
26 comparable settlements in other wage and hour class actions in California. *E.g., Van Kempen v.*
27 *Matheson Tri-Gas, Inc.* (N.D. Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182 (granting final
28 approval of \$5,000 PAGA penalty from \$370,000 settlement, or 1.4 percent of total settlement);

1 *Slavkov v. First Water Heater Partners I* (N.D. Cal. July 25, 2017) 2017 U.S. Dist. LEXIS 116303
2 (finding a \$7,500 PAGA payment reasonable when measured against the overall settlement of
3 \$345,000 and the possible weaknesses in plaintiffs' case, or 2.2 percent of total settlement).
4 Additionally, the LWDA has been informed of the terms of the PAGA portion of the settlement,
5 and will be able to weigh in as necessary. *Jennings v. Open Door Mktg. Inc.* (N.D. Cal. Oct. 3,
6 2018) 2018 U.S. Dist. LEXIS 171356, at *27 (approving settlement with PAGA penalties of 0.6%
7 where "[p]laintiffs [have] submitted the settlement agreement to the LWDA, and the LWDA has
8 not objected to the settlement.").

9 Thus, Plaintiff and his counsel discounted the value of the class claims consistent with the
10 risks discussed above, and carefully weighed the likelihood of the class receiving substantially
11 greater benefit if the litigation continued. Plaintiff and counsel concluded – in light of these very
12 real and substantial risks – settlement on the proposed terms and without prolonged and costly
13 litigation was in the best interests of the class. The overall \$1,925,000 recovery represents a
14 significant percentage of Defendant's potential exposure, and is roughly 19% of the theoretical
15 maximum value of the class claims (\$1,925,000/\$10,037,000). Given Defendant's multi-layered
16 defenses and all other potential risks of continued litigation, a total recovery for the class of
17 \$1,925,000, which will result in average award of some \$2,140 per class member, plus additional
18 sums under PAGA, is a significant result well within the range of reasonableness considering all
19 potential outcomes, and it will provide direct monetary awards to all Class Members without further
20 delay. [Crosner Decl., ¶¶ 43-46.]

21 Importantly, the mere fact that a settlement does not provide the same recovery as might be
22 achieved at trial is not a proper indicator of whether the settlement is fair, reasonable, and adequate.
23 *Wershba*, 91 Cal.App.4th at 246, 250 ("Compromise is inherent and necessary in the settlement
24 process...even if the relief afforded by the proposed settlement is substantially narrower than it
25 would be if the suits were to be successfully litigated, this is no bar to a class settlement because the
26 public interest may indeed be served by a voluntary settlement in which each side gives ground in
27 the interest of avoiding litigation"); *7-Eleven Owners for Fair Franchising v. Southland Corp.*
28 (2000) 85 Cal.App.4th 1135, 1150 ("The fact that a proposed settlement may amount to only a

1 fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is
2 grossly inadequate and should be disapproved”); *White v. Experian Information Solutions, Inc.*
3 (C.D. Cal. 2011) 803 F.Supp.2d 1086, 1098 (rejecting contention settlement was not fair and
4 reasonable even though it represented 99% discount off the maximum value of the claims); *Lane v.*
5 *Facebook, Inc.* (9th Cir. 2012) 696 F.3d 811, 819 (“[T]he question whether a settlement is
6 fundamentally fair . . . is different from the question whether the settlement is perfect in the
7 estimation of the reviewing court”). Importantly as well, the proposed settlement is non-
8 reversionary and will provide immediate benefits to the Class Members without a claims process.
9 *White*, 803 F.Supp.2d at 1098; *c.f.*, Federal Judicial Center, *Managing Class Action Litigation: A*
10 *Pocket Guide for Judges* (3d ed. 2010) at 20, available at [http://](http://www.fjc.gov/sites/default/files/2012/ClassGd3.pdf)
11 www.fjc.gov/sites/default/files/2012/ClassGd3.pdf (reversionary provisions and/or cumbersome
12 claims process may indicate lack of fairness). Plaintiff and his counsel submit the settlement is
13 within the “range of reasonableness,” and is fair and adequate for the Class.

14 F. Provisional Class Certification Should be Granted

15 A class action is appropriate when the class is ascertainable and there is “a well-defined
16 community of interest in the questions of law and fact involved affecting the parties to be
17 represented.” Code Civ. Proc. § 382. Class certification requirements under Section 382 follow Rule
18 23 of the Federal Rules of Civil Procedure, and require: numerosity, typicality of the class
19 representatives’ claims, adequacy of representation, predominance of common issues, and
20 superiority. Fed.R.Civ.Pro. 23(b)(3); *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1019.
21 While a court must certify a class for settlement purposes if a class has not already been certified,
22 “it is well established that trial courts should use different standards to determine the propriety of a
23 settlement class, as opposed to a litigation class certification. Specifically, a lesser standard of
24 scrutiny is used for settlement cases.” *Glob. Minerals & Metals Corp. v. Superior Court* (2013) 113
25 Cal.App.4th 836, 859 *citing Dunk*, Cal.App.4th 1794, 1807, n.19; *Wershba v. Apple Computer*
26 (2001) 91 Cal.App.4th 224, 237-38.

27 1. The Proposed Class is Sufficiently Numerous and Ascertainable

28 First, the class is both sufficiently numerous, consisting of approximately 549 individuals,

1 and ascertainable by reference to Defendant’s personnel and payroll records. (Crosner Decl., ¶ 46.)
2 “There is no set number required to maintain a class action, and the statutory test is whether a class
3 is so numerous that ‘it is impracticable to bring them all before the court.’” *Hebbard v. Colgrove*
4 (1972) 28 Cal. App. 3d 1017, 1030 (noting that there is no set minimum to meet the numerosity
5 prerequisite, but that a class of as few as 28 is acceptable); *Bowles v. Superior Court* (1995) 44 Cal.
6 2d 574 (upholding a class of ten members); *Rose v. City of Hayward* (1981) 126 Cal. App. 3d 926,
7 932 (finding that “Class Members are ‘ascertainable’ where they may be readily identified without
8 unreasonable expense or time by reference to official records.”). Thus, the ascertainability
9 requirement is met.

10 2. The Typicality and Adequacy Requirements Are Met

11 The typicality requirement is met if the claims of the named representative are typical of
12 those of the Class, though, “they need not be substantially identical.” *Classen v. Weller* (1983) 145
13 Cal.App.3d 27, 46-47. Here, Plaintiff contends his claims are typical of the Class Members’ claims
14 because they arise from the same factual basis and are based on the same legal theories applicable
15 to the Class Members. Plaintiff further contends Defendant’s policies applied to all Class Members
16 and each Class Member is challenging the same policies and practices. As such, the typicality
17 requirement is satisfied for purposes of settlement. (Lo Decl., ¶¶ 2-3; Crosner Decl. ¶ 47.)

18 Adequacy requires that the Plaintiff have no interests adverse to the interests of the proposed
19 Class Members and be committed to vigorously prosecuting the case on behalf of the Class. *McGhee*
20 *v. Bank of America* (1976) 70 Cal.App.3d 442, 450-51. Plaintiff has been and will continue to be
21 committed to vigorously prosecuting this case, and he has no conflicts of interest with the Class.
22 (Lo Decl., ¶¶ 3-7.)

23 3. The Commonality Requirement is Met

24 Next, common questions of law and fact predominate – particularly for purposes of a
25 settlement class – as the Class Members all were subject to the same meal and rest break policies
26 and alleged “de facto” policies resulting in meal period violations, and similarly subject to the same
27 improper time rounding policy. Since the focus of the claims against Defendant concern the legality
28 of common policies applied uniformly to the entire class, common issues predominate over

1 individualized inquiries concerning liability. For instance, Defendant’s meal and rest break policy
2 is company-wide policy applied equally and consistently to all class members, and this policy is
3 either compliant with California law or it is not. Regardless of that determination, it will decide
4 liability for all class members one way or another. Similarly, whether the time rounding policy
5 improperly deprived class member of hours worked or was entirely neutral is another question
6 common to all class members. [Crosner Decl., ¶ 48.]

7 By now it is well-settled a theory of recovery asserting the existence of a uniform policy
8 violating California law is sufficient to satisfy the requirements for class certification. Jones v.
9 Farmers Ins. Exch. (2013) 221 Cal.App.4th 986, 996 (“Claims alleging that a uniform policy
10 consistently applied to a group of employees is in violation of the wage and hour laws are of the
11 sort routinely, and properly, found suitable for class treatment”); Williams v. Superior Court (2013)
12 221 Cal.App.4th 1353 (“A company-wide practice can sustain a common question of fact or law
13 that supports commonality for class certification”). Lastly, a class action is superior to other means
14 for the fair and efficient adjudication of this controversy. [Crosner Decl., ¶ 49.]

15 **G. CPT Should be Appointed as the Settlement Administrator**

16 The Parties agreed to use CPT Group, Inc. as the Settlement Administrator in this matter.
17 (Agreement, § 1.2). CPT is highly qualified and experienced as a settlement administrator,
18 committed to the security of data (having experienced no data breaches at all), carries insurance for
19 the theft of money or data, and has no relationship with Counsel. (Declaration of Julie Green, ¶¶ 2-
20 11; Exhs. A-B.)

21 **H. Notice to Class Members Complies With California Rule of Court 3.769(f)**

22 California Rule of Court 3.769(f), provides: “If the court has certified the action as a class
23 action, notice of the final approval hearing must be given to class members in the manner specified
24 by the court. The notice must contain an explanation of the proposed settlement and procedures for
25 class members to follow in filing written objections to it and in arranging to appear at the settlement
26 hearing and state any objections to the proposed settlement.” Here, the proposed Notice meets all of
27 these requirements, as it advises Class Members of their rights to participate in the settlement, how
28 to and when to object to or request exclusion from the settlement, and the date, time, and location

1 of the final approval hearing. Class Members need not do anything to receive their *pro rata* share
2 of the settlement. (Crosner Decl., Exh. 3.)

3 **VI. CONCLUSION**

4 Plaintiff respectfully submits that the proposed settlement is in the best interests of the Class
5 Members, as it is fair, adequate, and reasonable. Plaintiff accordingly requests the Court certify the
6 class for settlement purposes, appoint Plaintiff as Class Representatives, appoint Plaintiff's Counsel
7 as Class Counsel, appoint CPT as Settlement Administrator, approve the method of notice and the
8 Notice to be sent to the Class, preliminarily approve the Settlement Agreement, enter the proposed
9 order filed herewith, and set a Final Approval hearing date.

10
11 Dated: April 11, 2023

CROSNER LEGAL, P.C.

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13 By: 
14 Zach Crosner
15 Jamie Serb
16 Nikki Trenner
17 Attorneys for Plaintiff Va Pau Lo
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